

CSE CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT (“Agreement”) is entered into on the commencement date shown in Section 1 below, by Center for Sustainable Energy, a California non-profit 501(c)(3) corporation (“CSE”) and _____, a _____ corporation (“Consultant”). CSE and Consultant are also each individually referred to herein as “Party” and collectively as “Parties.”

RECITALS

A. CSE is the contractor tasked by the California Public Utilities Commission (“CPUC”) in collaboration with the California Energy Commission (“CEC”), to provide programmatic and administrative services for the statewide marketing, education and outreach brand “Energy Upgrade California” (“Contractor”) to increase residential and small-business consumer awareness about and action related to energy use and management (“Program”). CSE is also the brand manager for the statewide marketing, education and outreach brand “Energy Upgrade California” (“Manager”). CSE participates in the Diversity and Equal Opportunity hiring outlined in Exhibit A, in coordination with the compliance policies of its fiscal partner, Pacific Gas and Electric Company

B. CSE has contracted with Consultant to develop and implement _____ that consists of the detailed tasks outlined in Exhibit B (“Work”).

C. CSE desires to contract with Consultant to perform the Work called for under the Agreement, and Consultant, having read and actively participated in the negotiation process of the Agreement, desires to contract with CSE to perform the Work.

D. CSE and Consultant desire to formalize their legal relationship regarding performance of the Work and all necessary related services as further set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Parties hereby agree as follows:

1. **Term.** This Agreement shall commence on _____ and end on _____. The Agreement may terminate sooner if the Work is completed sooner, or the Agreement is terminated.

2. **Phases.** The Work shall be done in sync with the timing outlined as follows:

Period	Focus
	Phase 1
	Phase 2
	Phase 3
	TBD

3. **Compensation.** Consultant will receive payments from CSE for the Work rendered under this Agreement for a not-to-exceed amount of \$_____ as set forth in Exhibit B for the Work. The Work shall be billed on a time and materials basis. The overall budget for the Work is dependent upon delivery timelines outlined herein and final CPUC decision. External and third party costs and expenses are estimated. All external and third party fees and expenses shall be approved by CSE in writing in advance. Travel, legal or other miscellaneous expenses are not included in Exhibit B but will be submitted to CSE, in writing in advance, for approval. In no event shall any fees or expenses exceed the not-to-exceed amount of \$_____.00.

4. **Invoices.** Consultant shall invoice CSE on the 10th of each month for the Work performed under this Agreement. Approved invoices shall be paid within 45 days of CSE approval by electronic payment to the bank account specified by Consultant. Each invoice shall include information on status including task description, itemization and substantiation of non-labor expenses. It should also include the employees' names, employee labor classification, number of hours spent in the month being billed and the billing rate in addition to the description of the hours per person by Deliverables as outlined in the chart in Exhibit B.

5. **Work Authorization.** All Work requirements and scope will be approved by CSE and Consultant before starting the Work. Consultant shall perform the Work specified and referenced in Exhibit B to the Agreement. Consultant agrees to abide by all the terms and conditions contained in this Agreement, and any exhibits and attachments hereto. Consultant shall take all steps necessary and required by the Agreement to begin performing the Work per the commencement date shown in Section 1 above, unless instructed otherwise by CSE. Consultant shall work in a manner satisfactory to CSE and consistent with the requirements set forth in the Agreement. Consultant shall keep CSE informed of any events or anticipated events which will interfere with the timely completion of the Work. CSE agrees that Consultant is authorized to act as its agent to perform the services in this Agreement. Consultant shall require that all contracts entered into by Consultant are assignable and transferable to CSE on the same terms as this Agreement.

6. **Deliverables.** Consultant shall perform the Work to create, provide, and deliver _____ ("Deliverable(s)"). All Deliverables will be done in U.S.-English, unless otherwise specified within this Agreement.

7. Acceptance and Change Requests. CSE shall require a document to be issued by Consultant for any changes or modifications to the Work outlined in Exhibit B (“Change Order”). Consultant shall only be authorized to make changes or modifications to the Work if CSE approves the Change Order in advance in writing.

A. CSE will have five (5) business days to accept all Deliverables. If CSE does not accept or specifically reject the Deliverables within the period, the Deliverables will be deemed accepted.

B. Rejection of a Deliverable will be delivered in writing, and will identify the specific gaps and areas of failure where the Deliverable does not meet the requirements. A change in scope or requirements is not a specific gap or failure and will require a Change Order. If the specific gap or failure is due to CSE or third party enhancing, modifying or altering the Deliverable without Consultant’s approval, Consultant shall correct the gap or failure with an executed Change Order. Upon immediate correction of identified gaps and areas of failure, the Deliverable will be resubmitted to CSE for approval and the acceptance period will re-commence. If it is not accepted due to Consultant’s failure to correct such gaps or areas of failure, then a revised project schedule will be agreed upon between CSE and Consultant in writing. Notwithstanding the foregoing, this process shall continue until the Deliverable is accepted by CSE or this Agreement is terminated by CSE.

C. CSE shall alert Consultant in writing if additional time is needed to review and accept the Deliverables. CSE and Consultant shall meet, within ten (10) days, to determine impact on project schedule and budget. If it is determined by either Party that the budget or schedule will be impacted, CSE and Consultant shall determine budgetary needs, adjust the timeline, and determine if a Change Order is necessary.

D. CSE will have the right at any time to direct Consultant to modify, revise or cancel any previously authorized plans, schedules or work in process. If CSE directs such a modification, revision or cancellation, CSE agrees to be responsible for any payments sustained as a result of CSE’s cancellation, revision or modification of plans if Consultant is unable to cancel including cancellation penalties and third party claims in accordance with the terms of this Agreement and indemnify Consultant against all losses, costs or liabilities.

8. Staff. CSE will designate one (1) primary person with the authority to perform the following tasks: (i) approve all Deliverables outlined in this Agreement; and, (ii) act as primary project manager and point of contact for Consultant to make decisions, allocate resources and supply items as necessary for successful completion of the Work. CSE will ensure all relevant stakeholders attend key review meetings and sessions. CSE staff will facilitate timely access to internal resources and information as required for successful long-term relationship building and management of this project. Consultant will obtain CSE’s prior approval before reassigning any full-time staff performing the Work and shall use its best efforts to ensure the professionalism and continuity of personnel that it uses to perform Work.

9. Termination.

A. CSE may, at its option, cancel or suspend this Agreement at any time if it becomes dissatisfied with Consultant's performance. CSE shall provide Consultant with at least five (5) days written notice of the effective termination date ("Termination Notice"). This Agreement shall be deemed terminated effective upon the date referred to in the Termination Notice and Consultant shall cease all work and advise all contractors and consultants to cease work effective that date. CSE shall allow Consultant an additional thirty (30) days to transfer, assign and deliver all Deliverables and any contracts, documents or product related to the Work (Termination Period). Consultant shall not engage in any new Work during the Termination Period. Consultant shall provide CSE with a list of all existing contracts during the Termination Period and CSE will advise Consultant which contracts to terminate and which to assign or transfer to CSE.

B. The rights, duties, and responsibilities of the parties shall continue in full force and effect during the Termination Period, including the payment by CSE of any previously billed Work on a time and materials basis.

C. Any contract that CSE previously authorized that cannot be terminated by Consultant by the Termination Notice shall be transferred and assigned to CSE or its designee. All associated costs will be paid for by CSE. CSE will also indemnify Consultant against any expense or loss Consultant may incur, including reasonable attorneys' fees, as a result of claims relating to such contracts that arise after their assignment to CSE for any work performed by CSE post-transfer. Any materials or services Consultant committed to purchase for CSE's account with CSE approval, and any uncompleted work previously approved by CSE specifically or, as part of a program, shall be paid for by CSE as specified in Section 3.

D. All contracts Consultant has entered into with talent who have performed or will perform in CSE advertising will be automatically assigned to CSE simultaneously with the termination of this Agreement. CSE will assume all of the rights and obligations under all such assigned contracts and Consultant shall be relieved of any further responsibility or liability with respect to them. CSE will also indemnify Consultant against any expense or loss Consultant may incur (including reasonable attorneys' fees) as a result of claims relating to such contracts that arise after their assignment to CSE for any work performed by CSE post-transfer.

E. Upon termination of this Agreement, or at any time CSE so requests, Consultant shall deliver immediately, and no later than ten (10) days after notice of termination from CSE, any reports, drawings, materials, contracts or other documents prepared for CSE in the course of rendering the Work, including all Deliverables then in progress and all material in Consultant's possession that contains CSE's Proprietary Information (as defined below) and any copies thereof, whether prepared by Consultant or others under Consultant's control. Following termination, Consultant shall not retain any written or other tangible (including machine-readable) material containing any Proprietary Information, subject to Section 12(B) below. Consultant will transfer to CSE all reservations, contracts and arrangements with third parties for services or materials yet to be used.

F. Upon termination of this Agreement, Consultant shall not be entitled to any damages or loss of profits against CSE. Consultant's sole right to compensation for the Work actually performed and the costs and expenses actually incurred to the date of termination shall be limited to its rights as set forth in Section 3 above. Consultant shall have no other rights or remedies against CSE. CSE shall have all rights and remedies available to it in law and equity, including, without limitation, monetary damages, should Consultant breach this Agreement, terminate the Agreement in an unauthorized manner, or otherwise fail to complete the Work as called for under the Agreement.

G. Upon termination of this Agreement neither party shall make an announcement or release information of any kind to the press or other news media without the written consent of the other party.

10. Reporting.

A. Audit: During the term of this Agreement, CSE may audit any costs, payment, settlement, or supporting documentation relating to the Work provided by Consultant. Such audit(s) shall be conducted at reasonable times with at least ten (10) business days written notice. Notwithstanding, CSE shall have no right to audit individual payroll, personnel records, profitability, overheads, non-billable expenses and other proprietary information of Consultant. Except as provided in this section, the cost of an audit shall be borne by CSE provided, however, that Consultant shall pay the cost of the audit and refund any overage payment amounts, if the audit reveals a discrepancy of more than two (2) percent between the compensation paid to Consultant, and the compensation earned by Consultant, as determined by the audit.

B. Accounting Records: The CPUC may conduct an audit during the term or for up to seven (7) years after the termination of the contract. Consultant shall maintain all necessary records and documentation for a period of no less than seven (7) years, and shall fully cooperate with any such audit(s). Consultant shall maintain all records within a 10-mile radius of its offices or Consultant agrees to reimburse CSE for travel expenses to the records site in the event of an audit or provide electronic files and records for CSE review.

C. Progress Reporting: Consultant shall provide CSE with written progress reports, if required or requested by CSE.

11. Tools, Equipment, Materials and Personnel. Consultant shall, at its sole cost and expense, furnish all facilities, tools, machinery, equipment, materials, personnel and such other items that may be required for performing the Work.

12. Proprietary Information.

A. General: Each party (the "Receiving Party") acknowledges that the other party's (the "Disclosing Party") obligations under the Agreement will involve access to confidential, proprietary and trade secret information and materials of the other and/or its respective partners, vendors or customers ("Proprietary Information"). Proprietary Information includes, without limitation, any: (i) information, ideas or materials of a technical or creative nature, such as designs and specifications,

computer source and object code, and other materials and concepts relating to Disclosing Party's intellectual property rights; (ii) information, ideas or materials of a business nature, such as non-public financial information or information regarding profits, costs, marketing, purchasing, sales, customers, suppliers, contract terms, employees, salaries, development plans, business and financial plans, and forecasts; (iii) all books, manuals, records, reports, notes, contracts, lists, blueprints and other documents or materials, or copies thereof, received by Receiving Party from Disclosing Party in the course of Receiving Party's rendering of its obligations under the Agreement, including, without limitation, records and any other materials pertaining to the deliverables; and (iv) certain terms and conditions of this Agreement.

B. Restrictions on Use and Disclosure: Receiving Party acknowledges that Proprietary Information is extremely valuable to Disclosing Party and its partners, vendors and customers. Receiving Party agrees during the term of this Agreement and thereafter that Receiving Party: (i) shall hold all Proprietary Information in confidence and trust for the benefit of Disclosing Party; (ii) shall not copy or use (or allow any of Receiving Party's officers, directors, representatives, employees, contractors, or agents to copy or use) any Proprietary Information, except as may be necessary to perform the Work; (iii) shall use the Proprietary Information only for the benefit of Disclosing Party, as the case may be (and not for the benefit of Receiving Party or any third party); and (iv) shall not disclose or otherwise make available any such Proprietary Information to any third party except as authorized in writing and in advance by Disclosing Party as the case may be. All Proprietary Information is and shall remain the sole property of the State of California with CSE as its manager. The foregoing restrictions on disclosure shall not apply with respect to any information that Receiving Party can convincingly demonstrate: (a) was or has become generally known or publicly available through no act or failure to act on the part of Receiving Party; (b) is known by Receiving Party without restrictions on disclosure at the time of receiving such information; (c) has been rightfully furnished to Receiving Party by a third party without restrictions on disclosure by the third party and without a breach of such third party's obligations of confidentiality; (d) is required by law to be disclosed by Receiving Party, provided, that (unless prohibited by applicable law) Receiving Party gives Disclosing Party prompt notice of such requirement immediately upon becoming aware of such requirement and discloses the information only to the extent required by law, or (e) is disclosed by Receiving Party after obtaining written consent from Disclosing Party, as the case may be.

C. Restrictions on References to CSE: Consultant is prohibited from making any representations, written, oral or electronic, regarding the relationship between Consultant and CSE, the Energy Upgrade California program or brand, the State of California or any partners in this program without the prior written consent of CSE. Consultant shall not represent in any way that CSE or its partners endorse or support Consultant's activities without the prior written consent of CSE. Consultant shall not make any representations about CSE or use the name of CSE or any of their respective employees, agents, officers or directors in documents or material generated by Consultant's employees or agents without the prior written consent of CSE.

D. Public Release of Results: Consultant agrees not to release any results of the Work performed under the Agreement without prior, written approval by CSE. Consultant shall provide CSE with the proposed material sought to be released and a description of the publication for CSE's prior approval at least thirty (30) days prior to such release. Consultant further agrees that it will not release or present any material findings not reasonably inferable from the data. Any public release of material shall acknowledge CSE's oversight of the Work.

13. Ownership of Deliverables.

A. All deliverables, upon payment of all amounts due under this Agreement, are the property of the State of California with CSE as contractor and manager of the deliverable on behalf of the State of California, except if any shall have been reserved by third parties in accordance with the customary trade/artistic talent agreements, including, but not limited to, actors, photographers, and persons engaged or employed by Consultant to compose the words and/or music of musical compositions used on behalf of CSE (“Excepted Material”). CSE shall still have the right to use the Excepted Material for the time period and specified media stated under Consultant’s contract and Consultant shall provide a list of all such Excepted Material and the applicable time period and specified media. CSE may reproduce the Deliverables at its discretion. Consultant, at its own cost and expense, shall deliver all Deliverables to CSE when requested by CSE. Consultant shall have the right to make duplicate copies of the Deliverables for its own file; copies of Deliverables made for other purposes must be expressly authorized in writing by CSE. The deliverables, including any duplicate copies kept by Consultant, shall not be shown to any other public or private person or entity except as expressly authorized in writing by CSE or as required by law. Consultant hereby irrevocably assigns to CSE all right, title and interest in and to all deliverables, and documentation produced pursuant to CSE’s requests for Work hereunder including, without limitation, all applicable intellectual property rights excluding Consultant Tools and Third Party Property, as defined below. If Consultant has any such rights that cannot be assigned to CSE, Consultant waives the enforcement of such rights, and if Consultant has any rights that cannot be assigned or waived, Consultant hereby grants to CSE an exclusive, irrevocable, perpetual, worldwide, fully paid license, with right to sublicense through multiple tiers, to such rights.

B. Consultant Tools, Consultant Property, Third Party Property: “Consultant Tools” means all databases of information and specialized database applications, software, software tools (including but not limited to certain knowledge, techniques, procedures, algorithms, protocols, routines and methods), software applications, computer programming and coding developed by or for Consultant (other than any confidential, proprietary information, programs, databases or applications specifically provided by CSE to Consultant in connection with Consultant’s performance of services under this agreement) which Consultant has already developed or which Consultant independently develops or licenses from a third party, excluding any tools that Consultant creates pursuant to this Agreement. “Consultant Property” may include, without limitation, creative concepts, digital files, original artwork, ads, marketing materials, videos, photos, musical compositions and all other production of any creative property that is used in the advertising or marketing of Energy Upgrade California. “Third Party Property” means those portions of the Deliverables in which the intellectual property is owned by a third party.

C. Consultant Tools, Consultant Property and Third Party Property Use: In the event any Consultant Tools, Consultant Property and Third Party Property are incorporated into or are used in conjunction with the Work or deliverables, Consultant hereby grants to CSE a worldwide, non-exclusive, sublicense (through multiple tiers), that is an assignable, royalty-free, perpetual, irrevocable right to use, reproduce, distribute (through multiple tiers), create derivative works of, publicly perform, publicly display, digitally perform, make, have made, sell, offer for sale and import such Consultant Tools, Consultant Property and Third Party Property for Energy Upgrade California’s

business purposes and for the use, operation, and maintenance of the Work except to Excepted Materials. CSE shall still have the right to use the Excepted Material for the time period and specified media stated under Consultant's contract and Consultant shall provide a list of all such Excepted Material and the applicable time period. Throughout the term of the Agreement, and immediately upon termination, Consultant shall provide to CSE the most current copies of any Consultant Tools, Consultant Property and Third Party Property to which CSE has rights pursuant to the foregoing, plus any related documentation. To the extent that any of the Deliverables include Third Party Property, CSE shall receive those rights as negotiated between Consultant and the Third Party through its written agreement, including, specifically, with respect to the scope of the grant of rights, under such Third Party agreements.

D. Ownership of Content and Website: As between Consultant and CSE, any content given to Consultant by CSE under this Agreement or otherwise, and all user content, shall at all times remain the property of CSE or its licensor. Consultant shall have no rights in such content or user content other than the limited right to use such content for the purposes expressly set forth in this Agreement.

14. Provider Warranties.

A. Deliverables Warranties: Consultant warrants that any Deliverables, Consultant Tools, Consultant Property, Third Party Property or Consultant-made changes to the content shall not: (i) infringe on the intellectual property rights of any third party or any copyrights, trades secrets, or rights of publicity or privacy of any third party; (ii) violate any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, false advertising or antidiscrimination); (iii) be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (iv) be obscene, child pornographic or indecent. Consultant warrants that it will use industry software standards to prevent the release of any viruses, trojan horses, trap doors, back doors, Easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information belonging to CSE.

15. Independent Contractors.

A. No Liability: Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of CSE. CSE assumes no liability for Consultant's actions and performance. Except as otherwise provided herein, Consultant shall perform the Work as an independent contractor and shall have complete and exclusive authority and responsibility concerning the means and method of conducting such Work, subject to any restrictions, security, or compliance issues required by the Agreement. It is understood that CSE will not withhold any amounts for payment of taxes from the compensation of Consultant and shall not be responsible for amounts due on any bonds required by Consultant. Consultant and its agent or employees shall not have the right or entitlement in or to any of the pension, retirement, or other benefit programs now or hereafter available to CSE's regular employees, including, but not limited to, disability or unemployment insurance, workers' compensation, medical insurance and sick leave. Any and all sums subject to deductions, if any, required to be withheld and, or paid under any applicable state,

federal, or municipal laws, or professional organizations shall be the sole responsibility of Consultant. Consultant shall not have authority to act as an agent on behalf of CSE unless specifically authorized in writing. Consultant will not represent to be or hold itself out as an employee of CSE. Notwithstanding the foregoing, Consultant is authorized to act, on CSE's specific authorization, as CSE's agent for a disclosed principal and not as principal with regard to the approved purchase of materials and Work from third parties hereunder.

B. Employee and Subcontractor Contracts: Consultant shall cause each individual or company employed by Consultant in connection with the Deliverables to execute a contract regarding confidentiality and assignment of rights prior to each such individual or company's commencement of Work thereunder. Such contracts shall: (i) include a full assignment of all rights to CSE, except where rights have been reserved by third parties in accordance with customary trade/artistic talent agreements, (ii) include a waiver of any moral or similar rights, (iii) be freely assignable, and (iv) contain restrictions on use and disclosure. Unless agreed by CSE in writing, in advance, Consultant may not use any sub-consultants to perform the Work in this Agreement. With respect to any subcontractors that it employs: (a) Consultant shall obtain the written consent of CSE; (b) Consultant shall be responsible for the direction and coordination of the Work of such subcontractors; and (c) CSE shall have no obligation to pay such subcontractor(s) except as approved in writing, in advance, by CSE. Sub-consultants and/or subcontractors shall exclude temporary and/or freelance staff that are on Consultant's payroll as "Freelance Employees"; such Freelance Employees shall be billed at Contractor's hourly billing rate as specified in Exhibit B.

16. Insurance Requirements.

A. Consultant shall procure at its expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified below: (i) Commercial General Liability must be for \$2,000,000.00 each occurrence; (ii) Automobile Liability insurance coverage must be for \$1,000,000.00 CSL; (iii) Workers Compensation (statutory) and Employers' Liability: \$1,000,000.00; (iv) Professional Liability – Errors and Omissions coverage of \$1,000,000.00.

B. The specified insurance, except Workers' Compensation and Employers' Liability, shall also include CSE and their respective board of directors, officers, employees, and agents, and their successors and assigns as additional insureds, against the areas of risk described in the Agreement with respect to Consultant's Work and Deliverables performed by or on behalf of Consultant under this Agreement.

C. Each specified insurance policy (other than Worker's Compensation and Employers' Liability) shall contain a Severability of Interest (Cross Liability) and a Contractual Liability clause.

D. All such insurance shall be primary and noncontributing with any other insurance held by CSE where liability arises out of or results from the acts or omissions of Consultant, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Consultant. Such policies may provide for reasonable deductibles and/or retentions acceptable to CSE based upon the nature of Consultant's operations and the type of insurance involved.

E. CSE shall have no liability for any premiums charged for such coverage(s). The

inclusion of CSE as an additional insured is not intended to, and shall not make them, or any of them, a partner or joint venturer with Consultant in Consultant's performance of its Work or Deliverables under this Agreement. In the event Consultant fails to furnish CSE with evidence of insurance and maintain the insurance as required, CSE, upon ten (10) days prior written notice to comply, may (but shall not be required to) procure such insurance at the reasonable cost and expense of Consultant, and Consultant agrees to promptly reimburse CSE for the cost thereof plus fifteen (15) percent for administrative overhead. Payment shall be made by Consultant to CSE within fifteen (15) calendar days of invoice date. If payment is not made within fifteen (15) days, CSE shall have the right to withhold such amount from Consultant's compensation on the next monthly invoice.

F. Within five (5) days of the expiration date of the above policies, documentation showing that the insurance coverage has been renewed or extended shall be filed with CSE once Consultant has been provided with such documentation from its insurance carrier. If such coverage is canceled or materially reduced, Consultant shall, within ten (10) days of such cancellation of coverage, file with CSE evidence that the required insurance has been reinstated or provided through another insurance company or companies.

G. Consultant shall provide proof of all specified insurance and related requirements to CSE by production of a certificate of insurance acceptable to CSE. The certificate of insurance evidencing all specified coverages shall be filed with CSE prior to Consultant's performing under this Agreement or occupying the sites(s). The documents shall contain the applicable policy number, the inclusive dates of policy coverages, and the insurance carrier's name and the insurance broker's address and phone number. Consultant shall provide CSE with written notice at least thirty (30) days prior to any cancellation or material change of the policies referenced above.

H. Consultant agrees that the insurance policy limits specified herein may be reviewed by CSE and Consultant for adequacy throughout the term of this Agreement, and CSE may, thereafter, on thirty (30) days' prior written notice and agreement by Consultant, require Consultant to adjust the amounts of insurance coverage to whatever reasonable amount CSE and Consultant deems to be adequate. At all times, Consultant may meet all required insurance limits through a combination of primary and excess insurance.

I. Submission of insurance from a non-California admitted carrier is subject to the provisions of California Insurance Code Sections 1760 through 1780, and any other regulations and/or directives from the State Department of Insurance or other regulatory board or agency. Consultant agrees, except where exempted, to provide CSE proof of said insurance by and through a surplus line broker licensed by the State of California at the address specified below:

Center for Sustainable Energy
Attention: Associate Director of Programs
9325 Sky Park Court, Suite 100
San Diego, CA 92123

17. Indemnification.

A. Consultant shall indemnify, hold harmless and defend CSE and its officers, officials, directors, employees, agents and volunteers from and against all claims, damages, losses, expenses, penalties, fines and costs, including reasonable attorneys' fees and court costs, to the extent arising out of the performance of the Work caused by any negligent act or omission or the willful misconduct on the part of Consultant and/or any of Consultant's officers, officials, directors, employees, agents, volunteers or sub-consultants, except to the extent caused by the negligence or willful misconduct of CSE. Consultant's indemnification requirements shall not extend to materials provided by CSE and incorporated in the Deliverables. For purposes of this section negligent act, omission or willful misconduct may include but are not limited to those resulting in any claims CSE sustains as a result of: (i) any claim, suit or proceeding based upon materials created or provided by Consultant under this agreement which have not been approved by CSE prior to their publication, broadcast or dissemination; (ii) any claim, suit or proceeding relating to materials created or provided by Consultant under this agreement which is based on a claim that an element created or provided by Consultant in such materials violates the rights of a third party; constitutes libel, slander, defamation, trade piracy, invasion of privacy or unfair competition; or constitutes infringement of copyright or title; and (iii) a failure by Consultant to protect items of CSE property in Consultant's custody in the same manner as Consultant protects its own property.

B. Upon the assertion of any claim or the commencement of any suit or proceeding against CSE by any third party that may give rise to Consultant's indemnification liability under this Agreement, CSE shall promptly notify Consultant in writing and provide Consultant reasonable assistance and opportunity to defend and/or settle the claim at its own expense and with counsel of its own selection with the reasonable approval of CSE. Consultant will not settle the any claim or suit without the prior written consent of CSE, which shall not be unreasonably withheld. Section 17 shall survive the termination of the Agreement for all applicable statute of limitation periods.

18. Consequential Damages and Limitation of Liability. Anything herein notwithstanding, in no event shall either Consultant or CSE be liable to the other Party for special, indirect, incidental or consequential damages, including commercial loss, loss of use, or lost profits. Each Party's aggregate liability, if any, for any and all claims, losses, damages or expenses arising out of the Work or Agreement, whether based in contract, negligence, strict liability, tort, agency, warranty, trespass, indemnity or any other theory of liability, shall be limited to the applicable insurance policy limit(s) as set forth under Section 16 herein.

19. Conformance with Rules and Regulations. In performing all activities in connection with this Agreement, Consultant shall abide by and conform to any applicable laws of the State of California or the United States government as now exists or may hereafter be adopted or amended.

20. Bankruptcy. In the event Consultant commences a proceeding under Chapter XI of the Federal Bankruptcy Act or is adjudicated bankrupt or insolvent, or a judicial sale is made of Consultant's interest under this Agreement, this Agreement shall, at the option of CSE, immediately terminate.

21. Licenses and Permits. Consultant represents and warrants to CSE that it has all licenses, permits, qualifications and approvals of whatever nature that are legally required for Consultant and its employees and agents to practice its profession and perform the Work required herein. Consultant represents and warrants to CSE that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Consultant and any of Consultant's employees, and agents to practice its profession and perform the Work.

22. Non-Discrimination. Consultant agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of gender, color, race, religion, handicap, creed or national origin in performance of this Agreement. If the use provided for in this Agreement allows Consultant to offer accommodations or services to the public, such accommodations or services shall be offered on fair and reasonable terms.

23. Assignment. Consultant shall not in any manner, directly or indirectly, by operation of law or otherwise, assign, hypothecate, encumber or transfer this Agreement or any of the rights, duties, responsibilities or obligations under this Agreement, in whole or in part, without the written consent of CSE. Any attempted or purported assignment of any right or obligation pursuant to this Agreement, without written consent, shall be void and of no effect. CSE shall have the right to assign, hypothecate, encumber or transfer this Agreement or any of its rights, duties or responsibilities under this Agreement, in whole or in part, upon written notice to Consultant.

24. Conflict of Interest. Consultant is not now a party to, and during the term of this Agreement shall not enter into, any contract or agreement that will create a conflict of interest with its duties and ability to perform the Work under this Agreement. Should there be a conflict between the Agreement and the exhibits, this Agreement shall control.

25. Signatory to Union Agreements. CSE acknowledges Consultant is or may become a signatory to certain union or guild agreements (the "Union Agreements") including Screen Actors Guild Commercial Contract and American Federation of Television and Radio Actors Commercial Contracts, governing the hiring and use of performers in commercial material and that the production and use of commercial materials produced by Consultant on behalf of CSE therefore will be subject to the terms and conditions of the Union agreements. CSE acknowledges CSE will be responsible to pay Consultant for all amounts due under the Union agreements.

26. Entire Understanding. This Agreement contains the entire agreement of the Parties and supersedes all prior negotiations, discussions, obligations and rights of the Parties regarding the subject matter of this Agreement. Consultant acknowledges that there is no other written or oral understanding between the Parties. No modification, amendment, or alteration of this Agreement shall be valid unless it is in writing and signed by all Parties.

27. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

28. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; or (c) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below, or such other address as either Party may specify in writing:

If to Consultant:

[Address]

With a copy to:

If to CSE, to:

Center for Sustainable Energy
Attn: Jack Clark
9325 Sky Park Court, Suite 100
San Diego, CA 92123

And via email to: jack.clark@energycenter.org

29. Interpretation.

A. Section Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

B. Fair Meaning. The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either Party to this Agreement.

C. Two Constructions. It is the intention of the Parties hereto that if any provision in this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

D. Governing Law. This Agreement and all of the rights and obligations of the Parties and all of the terms and conditions shall be construed, interpreted and applied in accordance with, governed by and enforced under the laws of the State of California. In any action to enforce the provisions of this Agreement, venue shall lie in the County of San Diego.

E. Gender. The use of any gender herein shall include all genders, and the use of any number shall be construed as the singular or the plural, all as the context may require.

F. Other Agreements Not Affected. Except as specifically stated herein, this Agreement and the terms, conditions, provisions and covenants hereof shall not in any way change, amend, modify, alter, enlarge, impair or prejudice any of the rights, privileges, duties or obligations of either

of the Parties by reason of any other agreement between the Parties or between either Party and a third party.

G. Amendments. The Agreement may be altered, amended, modified, or repealed only by a writing signed by all of the Parties.

H. Time is of the Essence. Time is of the essence of every provision of the Agreement that specifies a time for performance.

I. Additional Documents and Acts. The Parties to the Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under the Agreement and to carry out the intent of the Parties.

J. No Agency. Except as otherwise provided in this Agreement, no provision of the Agreement shall be construed to constitute a Party as the agent of any other Party.

K. Statutory References. Unless expressly stated herein, any reference to a federal, state, or municipal code, regulation, act, or other statutes or laws of any jurisdiction shall include all amendments, modifications, or replacements of the specific sections and provisions referenced.

L. Interpretation of Agreement. The Parties hereto acknowledge and agree that the Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of the Agreement. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in the Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that the Agreement was drafted by or at the request of a particular Party or its legal counsel.

M. Force Majeure. Neither Party shall be liable to the other for any full or partial delay or failure to perform any of its obligations hereunder which delay or failure to perform is due to fires, storms, floods, earthquakes, acts of God, war, acts of terrorism, insurrection, riots, strikes, lockouts or other labor disputes, failure of postal services and governmental action, orders or regulations. In the event that an occurrence described in this section impacts the ability of either Party to meet its obligations under the Agreement, the impacted Party shall immediately give notice in writing, promptly try to remedy such situation, and as soon as practicable, fulfill its obligations.

N. Exhibits. All exhibits attached to the Agreement are incorporated herein, and shall be regarded as if set forth herein.

O. No Trade Usage or Prior Course of Dealing. The Parties agree that no trade usage, prior course of dealing, or course of performance under the Agreement shall be part of the Agreement or shall be used in the interpretation or construction of the Agreement.

30. Joint and Several Liability. If Consultant, as a party to this Agreement, is a limited liability company, partnership or joint venture, or is comprised of more than one party or entity, the obligation imposed on Consultant under this Agreement shall be joint and several, and each member, general

partner, joint venturer, party or entity of Consultant shall be jointly and severally liable for all obligations herein. Furthermore, nothing contained herein shall be deemed or construed as creating a partnership or joint venture between Consultant and CSE, or cause CSE to be responsible in any way for the debts or obligations of Consultant or any other party or entity.

31. Waiver. Any waiver by either Party of any breach by the other Party of any one or more of the covenants, conditions, or agreements of this Agreement shall not be binding unless set forth in writing and shall not be construed to be a waiver of any subsequent or other breach of the same or any other covenant, condition or provision of this Agreement, nor shall any failure on the part of either Party to require or exact full and complete compliance by the other Party with any of the covenants, conditions or provisions of this Agreement be construed as changing the terms or preventing the full enforcement of the other provisions.

32. Attorney Fees. If any action is brought by either Party under this Agreement by reason of any claim or cause of action against the other arising out of or in connection with any breach or other nonperformance of the provisions of this Agreement, then any Party that is successful upon any final determination of any such claim or cause of action shall be entitled to reasonable preparation, investigation and attorney fees and court costs, as are fixed by a court of competent jurisdiction.

33. Dispute Resolution.

A. In the event a dispute or controversy arises between the Parties with respect to the interpretation or enforcement of the Agreement, the Parties agree to negotiate in good faith for five (5) business days to resolve such dispute. If at the end of said five (5) day period, the Parties have not resolved the dispute, any Party may submit the dispute to arbitration by providing written notice to the other Party demanding arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by arbitration in San Diego County, before one arbitrator who is a retired judge. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures revised October 1, 2010 or in the alternative the most recent version of JAMS Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The parties hereby expressly retain all judicial rights to discovery. The judgment of the arbitrator shall be final and binding.

B. Allocation of fees and costs. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

C. Agreement. By initialing in the space below, you are agreeing to have any dispute arising out of the Agreement decided by mutual arbitration as provided by California law and you are giving up any rights you might possess to have the dispute litigated in a court or jury trial. By initialing in the space below, you are giving up your judicial rights to discovery on appeal, unless those rights are specifically included in the "arbitration of disputes" provision. If you refuse to submit to arbitration after agreeing to this provision you may be compelled to arbitrate under the authority of

the California Code of Civil Procedure. Each party acknowledges that agreement to this arbitration provision is voluntary.

WE HAVE READ AND UNDERSTOOD THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE AGREEMENT TO NEUTRAL BINDING ARBITRATION.

_____ Initials for CSE

_____ Initials for Consultant

34. Right to Contract with Others. The rights granted hereunder by this Agreement are not exclusive, and CSE and Consultant each reserves the right to enter into other agreements covering the same or similar Work as are described in the underlying Agreement.

35. Duplicate Originals. This Agreement may be executed by the Parties in counterparts, each of which shall be considered an original, but such counterparts shall constitute together one and the same document for all legal purposes.

[Signatures to Follow]

IN WITNESS WHEREOF, the Parties to this Agreement have executed this document effective on the date first set forth above by and through their authorized representatives.

CONSULTANT

CENTER FOR SUSTAINABLE ENERGY

Signature of Authorized Representative:

Signature of Authorized Representative:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

DIVERSITY AND EQUAL OPPORTUNITY

PG&E'S SUPPLIER DIVERSITY SOURCING POLICY: CONSULTANT AND SUBCONTRACTORS OF ALL TIERS MUST COMPLY WITH PG&E'S SUPPLIER DIVERSITY SOURCING POLICY IN THE AWARD OF ALL SUBCONTRACTS AND SUB-SUBCONTRACTS. This policy requires that Women, Minority, and Disabled Veteran Business Enterprises (WMDVBEs) shall have the maximum practicable opportunity to participate in the performance of Work.

1. The Consultant shall provide to each prospective Subcontractor a copy of this Exhibit.
2. Consultant shall provide a separate, signed Subcontracting Plan consisting of a specific list of Subcontractors that will participate in the performance of the Work and a statement setting forth the Consultant's goals for WMDVBE subcontracting of all tiers and setting forth such additional good faith efforts Consultant and Subcontractors will employ to increase the participation of WMDVBE in the performance of the Work.
3. No later than the 15th of each month, Consultant shall submit its subcontracting spent with women, minority, and service disabled veteran owned suppliers using PG&E's electronic reporting system located at: <https://www.pgesupplierdiversity.com/pge/login.asp>
 - a. To establish a user ID, Consultant shall request via email to: supplierdiversityteam@pge.com
4. In addition, for contracts exceeding \$500,000 (or \$1 million for construction contracts), the Consultant must comply with the Policy Regarding Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, as described in Exhibit 2. The Subcontracting Plan for these contracts must include provisions for implementing the terms prescribed in Exhibit 2.
 - a. Small Business and Small Disadvantaged Business Subcontracting Plans are not required for small business contractors, personal service contracts, contracts that will be performed entirely outside of the United States and its territories, or modifications to existing contracts which do not contain subcontracting potential.
 - b. For all PG&E contracts, the Consultant shall act in accordance with the Subcontracting Plan in the performance of the Work and in the award of all Subcontracts.
5. Consultant's supplier diversity subcontracting goal for this Contract is not pre-determined. However, Consultant is committed to supporting PG&E's General Order 156 and PG&E's diversity policy and seeks to encourage diversity in all contracting. Supplier

diversity shall be reported as Consultant's spend with verified WMDVBE subcontractors on PG&E work under this Contract.

6. These requirements and the Consultant's response will be incorporated into the Contract.

FEDERAL EQUAL OPPORTUNITY REGULATIONS: During the performance of this Contract and to the extent they may be applicable to this Contract and to Consultant's business, the Consultant agrees to comply with all laws, orders, and regulations included by summary or reference in the following Paragraphs:

1. **EQUAL EMPLOYMENT OPPORTUNITY – Executive Order No. 11246, 41 CFR Part 60-1:** (Contracts of \$10,000 or more) Provides that Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and further that Consultant shall take affirmative action to ensure that applicant and employees are treated without regard to their race, color, religion, sex, or national origin.

2. **CERTIFICATION OF NONSEGREGATED FACILITIES – 41 CFR 60-1.8:** (Contracts of \$10,000 or more) Consultant hereby certifies that Consultant will not maintain or provide segregated facilities for its employees and will not permit its employees to perform their services at any location under Consultant's control, where segregated facilities are maintained.

3. **CONSTRUCTION CONSULTANTS-AFFIRMATIVE ACTION REQUIREMENTS – 41 CFR Part 60-4:** (Contracts exceeding \$10,000) Establishes procedures for soliciting and awarding federal or federally assisted construction contracts.

4. **LISTING OF EMPLOYMENT OPENINGS – Executive Order 11701:** (Contracts of \$10,000 or more) Consultant will list employment openings with the Employment Development Department in accordance with the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Executive Order 11701. The affirmative action clause set forth in 41 CFR 60-250.4 is incorporated herein by reference.

5. **EMPLOYMENT OF THE HANDICAPPED – Rehabilitation Act of 1973, 41 CFR Part 60-741:** (Contracts of \$2,500 or more) The affirmative action clause and the regulations contained in 41 CFR 60-741.4, and Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), which prohibits discrimination on the basis of handicaps, are incorporated by reference in this Contract.

6. **FILING PROGRAM SUMMARIES AND PREPARING AFFIRMATIVE ACTION PLANS – Executive Order 11246, 41 CFR Part 60-2:** (Contracts of \$50,000 or more) If the value of this Contract is \$50,000 or more and the Consultant has 50 or more

employees, the Consultant agrees to file appropriate affirmative action program summaries in accordance with existing regulations and develop and maintain a current written affirmative action compliance program at each of its establishments.

7. VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE – Act of 1974, Title 41, Chapter 60, Part 250: (Contracts of \$10,000 or more) The affirmative action clause and the regulations pertaining to the employment of disabled veterans and veterans of the Vietnam era are incorporated by reference in this Contract.

8. Americans with Disabilities Act – 42 U.S.C. Section 12101, et seq.: Consultant agrees that, to the extent it may be applicable to this Contract; Consultant shall comply with the Americans with Disabilities Act.

EXHIBIT B
STATEMENT OF WORK (“SOW”)