



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council      **Date:** November 15, 2016

**From:** Joseph Moon      **Item No:** 9  
Public Services Manager  
Public Services Department

**Subject:** APPROVAL FOR DATA MANAGEMENT AND CUSTOMER CALL CENTER SERVICES FOR THE APPLE VALLEY CHOICE ENERGY (AVCE) CCA

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

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### RECOMMENDED ACTION:

1. That the Town Council approve Noble Americas Energy Solutions to provide Data Management and Customer Call Center Services for the Apple Valley Choice Energy (AVCE) CCA.
2. That the Town Council authorize the Town Manager to execute the contract.

### SUMMARY:

In July 2016, Town staff, at the direction of the Council, solicited Requests for Proposals (RFP) for data management and customer service support functions necessary to operate the Town's Community Choice Aggregation program, Apple Valley Choice Energy ("AVCE"). The support functions will serve certain residential and commercial customers located within the geographic boundaries of the Town. After receipt of the proposals and subsequent interviews, staff recommends Noble Americas Energy Solutions (Noble) be selected to provide services as outlined in the attached Professional Services Agreement and Addendum for Data Management Services. It is noted that Noble is the current Data Services provider of all other operating CCA's within California.

**FISCAL IMPACT:**

There is no immediate fiscal impact with approval of the Professional Services Agreement and Addendum for Data Management Services. Payments will be provided from funds collected from the operation of the AVCE program.

**ATTACHMENTS:**

1. Professional Agreement for Data Management and Customer Call Center Services
2. Addendum For Data Manager Services
3. Exhibit A - Insurance

**MASTER PROFESSIONAL SERVICES AGREEMENT**

This Master Professional Services Agreement (the "Agreement") is entered into effective October 18, 2016 (the "Effective Date"), by and between Noble Americas Energy Solutions LLC ("DM Services Provider") and the Town of Apple Valley, a municipal corporation and charter city, d/b/a Apple Valley Choice Energy ("AVCE"). Each party listed above may be referred to individually as a "Party," and collectively as the "Parties."

**WITNESSETH**

WHEREAS, Town of Apple Valley is scheduled to begin providing Community Choice Aggregation ("CCA") Services through its Apple Valley Choice Energy program (the "Program"), on or around April 1, 2017;

WHEREAS, AVCE has requested that DM Services Provider perform the Data Manager Services described in the Addendum, attached hereto and incorporated herein by this reference (the "Addendum"); and

WHEREAS, AVCE will be purchasing electricity for the CCA Program from one or more electric energy suppliers ("Supplier").

NOW, THEREFORE, for and in consideration of the mutual benefits, obligations, covenants, and consideration, the receipt and sufficiency of which are hereby acknowledged, DM Services Provider and AVCE hereby agree as follows:

1. **SERVICES.** Subject to the terms and conditions of this Agreement and during the term of this Agreement, DM Services Provider shall provide to AVCE the services described in the Addendum (the "Services"). From time to time the parties may add new addenda, which upon execution by both parties, shall be subject to the terms and conditions of this Agreement.
2. **CONDITIONS TO DM SERVICES PROVIDER'S PERFORMANCE.**
  - (a) **Information and Assistance.** Upon DM Services Provider's reasonable request, AVCE shall provide such information and assistance as is reasonably required for DM Services Provider to provide the Services. If AVCE fails to provide DM Services Provider with such requested information or assistance then DM Services Provider shall continue to provide in a timely manner any such portion(s) of the affected Services that DM Service Provider can reasonably provide to the extent possible in the absence of such information or assistance. Notwithstanding any provision to the contrary herein, failure by AVCE to provide DM Service Provider with such information or assistance shall not constitute an Event of Default, provided, however, that DM Service Provider's performance or lack of performance under this Agreement shall be excused to the extent that it is hindered, prevented or

impacted as a result of AVCE's failure or inability to provide such information or assistance.

- (b) **Notification.** AVCE shall notify all other relevant parties, including but not limited to Supplier, the Utility Distribution Company ("UDC"), which is currently Southern California Edison ("SCE"), and AVCE's banker(s), as necessary, of the existence of this Agreement and DM Services Provider's role as contemplated in this Agreement.

3. **FEES AND BILLING.**

- (a) **Fees.** AVCE shall pay all fees due in accordance with the Addendum.
- (b) **Billing and Payment Terms.** Unless otherwise indicated in the applicable Addendum, DM Services Provider shall invoice AVCE monthly for all fees related to Services performed during the previous month. Payment of fees shall be due within thirty (30) days after the date of invoice. All payments must be made in U.S. dollars. Late payments hereunder shall accrue interest at the lower of the rate of one percent (1%) per month, or the highest rate allowed by law.
- (c) **Taxes.** Payments due to DM Services Provider under this Agreement shall be net of all sales, value-added, use or other taxes and obligations.

4. **REPRESENTATIONS AND WARRANTIES.** On the Effective Date and the date of entering into each Addendum, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Addendum; (iii) the execution, delivery and performance of this Agreement and each Addendum are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement, each Addendum, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt, and (vi), in the case of DM Services Provider, that it has the qualifications, experience and ability to perform the Data Manager Services described in the applicable Addendum.

5. **INDEMNIFICATION.** Each party to this Agreement (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party"), and the Indemnified Party's supervisors, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, to the extent resulting from the Indemnifying Party's breach of any material term of this Agreement, or

the Indemnifying Party's negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from the Indemnified Party's breach of any material term of this Agreement, or the Indemnified Party's negligence or willful misconduct in connection with the performance of this Agreement. The Indemnified Party shall have the right to select its legal counsel at the Indemnifying Party's expense, subject to the Indemnifying Party's approval, which shall not be unreasonably withheld. The indemnity obligation set forth in this Section 5 shall survive termination of this Agreement.

6. **TERM.** Unless earlier terminated pursuant to the terms of Section 7, the term of this Agreement shall be the Effective Period described in the Addendum.

7. **TERMINATION.**

- (a) **Early Termination Due to Cancellation of AVCE's Program.** If AVCE determines on or before January 1, 2017, in its sole and absolute discretion, not to proceed with the Program, AVCE may terminate this Agreement by giving written notice to DM Services Provider as provided in Section 20 of this Agreement. In such event, AVCE shall have no further liability or financial obligation to DM Services, except as follows: (i) DM Services Provider shall be entitled to keep any fees already paid; and (ii) AVCE shall pay any amounts owed under Section 3 of the Addendum.
- (b) **Early Termination Due to Delay of AVCE's Program.** If the Program has not commenced by December 31, 2017, either Party may terminate this Agreement by giving 30 days' written notice to the other Party so long as the Program has not yet begun. In such event neither Party shall have any further obligations under the Agreement.
- (c) **Termination for Cause.** If any one of the following events (each an "Event of Default") occurs with respect to a Party, then the other Party may terminate this Agreement or the applicable Addendum upon written notice to the defaulting Party: (i) with respect to AVCE, AVCE fails to pay amounts due hereunder and such failure continues for seven (7) business days following written notice from DM Services Provider; (ii) with respect to DM Services Provider, DM Services Provider defaults in the observance or performance of any of its material covenants or agreements in this Agreement and such default continues uncured for twenty (20) business days following written notice to DM Services Provider; (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they fall due; or (iv) AVCE fails to satisfy UDC's credit-worthiness requirements set forth in the UDC

tariffs and such failure continues uncured for twenty (20) business days following written notice to AVCE from UDC.

- (d) **Effect of Termination.** Upon the effective date of expiration or termination of this Agreement: (i) DM Services Provider shall immediately cease providing Services hereunder; and (ii) any and all payment obligations of AVCE under this Agreement will become due within thirty (30) days; provided, however, that in the event that DM Services Provider is the defaulting Party, AVCE shall have the right to deduct or set off against any part of the balance due DM Services Provider any amount due from DM Services Provider under this Agreement. Upon such expiration or termination, and upon request of AVCE, DM Services Provider shall reasonably cooperate with AVCE to ensure a prompt and efficient transfer of all data, documents and other materials to a new services provider in a manner such as to minimize the impact of expiration or termination on AVCE's customers. If AVCE is the defaulting Party, AVCE agrees to pay DM Services Provider reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Addendum.

8. **LIMITATION ON DAMAGES.** FOR ANY BREACH HEREOF, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY, INCLUDING ANY CLAIMS FOR MONETARY PENALTIES ASSESSED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ASSOCIATED WITH THE SETTLEMENT QUALITY METER DATA REPORTING OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 13 OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WITH THE EXPRESS EXCLUSION OF ANY CLAIM FOR INDEMNITY OR OTHER RIGHT UNDER SECTION 5, IN NO EVENT SHALL DM SERVICES PROVIDER'S LIABILITY TO AVCE HEREUNDER EXCEED THE AMOUNT OF THE FEES PAID TO DM SERVICES PROVIDER BY AVCE FOR THE

SERVICES PROVIDED HEREUNDER. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

9. **FORCE MAJEURE EVENT.** A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of, or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence; (f) the affected Party shall exercise all commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party promptly shall resume performance under this Agreement. The term "Force Majeure Event" means the occurrence of any event beyond the reasonable control of the Party affected that results in the failure or delay by such Party of some performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a governmental authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include lack of financial resources, material cost increases in commodities or labor, or other economic conditions.

10. **RELATIONSHIP OF PARTIES.** DM Services Provider and AVCE are independent contractors and this Agreement will not establish any relationship or partnership, joint venture, employment franchise or agency between DM Services Provider and AVCE. Neither DM Services Provider nor AVCE will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

11. **ASSIGNMENT OF RIGHTS.** Neither Party shall assign any of its rights or delegate any of its responsibilities hereunder without first obtaining the consent of the other Party except it may be assigned or transferred without such consent (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets of the transferring Party, whether by merger or acquisition, or (ii) by either Party to any wholly-owned affiliate. Any such request shall be made

in writing and the consent, if any, shall be made in writing. Any transfer in violation of this provision shall be void.

12. **FURTHER ACTIONS.** The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

13. **CONFIDENTIALITY.**

- (a) This Agreement and all information shared between the Parties regarding this Agreement and the Services to be provided hereunder (e.g., reports, etc.) is strictly confidential and shall not be disclosed by a Party (except to such Party's affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have a need to know the information and have agreed to treat such information as confidential) without the prior written consent of the other Party, except (i) as required by Law, including but not limited to the California Public Records Act and the Brown Act; and (ii) that AVCE may share all such data with its Supplier. In addition, DM Services Provider shall comply with the requirements of the customer information confidentiality policy adopted by AVCE, and shall take all reasonable steps necessary to ensure that such data remains confidential.
- (b) DM Service Provider acknowledges that the confidential information about AVCE's customers to which it will have access under this Agreement could give it or a third party an unfair competitive advantage in the event that DM Services Provider or any third party were to compete with AVCE in the provision of electrical or other services to AVCE's customers. DM SERVICES PROVIDER AGREES THAT IT WILL NOT USE ANY INFORMATION IT RECEIVES REGARDING AVCE CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. DM Services Provider agrees not to use any of the CCA data provided to it by AVCE for its own marketing purposes. DM Services Provider shall not use such customer information to compete with AVCE in any manner, except as provided herein below. Upon termination of this Agreement, DM Services Provider shall (i) return all documents and other materials received from the AVCE and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in DM Services Provider's possession that contain AVCE customer data, and (iii) deliver to AVCE a certificate, signed by an authorized representative of DM Services Provider, stating that DM Services Provider has returned or destroyed all such documents and materials; provided, however, that DM Services Provider may retain copies of information necessary for tax, billing or other financial purposes, to be used solely for such purposes. **Notwithstanding anything in the foregoing to the contrary, however,** that DM Service Provider is not prohibited from conducting its business with potential customers in AVCE's territory, either due to a business opportunity already known to DM Service Provider as of the



date of this Agreement, or made known to DM Service Provider, other than AVCE, in the ordinary course of DM Service Provider's business. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that DM Service Provider knows of, learns of or is provided to DM Service Provider by a third party in the ordinary course of DM Service Provider's business other than performance of the Services under this Agreement shall not be deemed to be confidential information for purposes of this Agreement, even if it is the same or similar information such as would be confidential information, if provided to DM Service Provider pursuant to this Agreement.

- (c) The Parties agree that damages would be an inadequate remedy for breach of the provisions in this Section 13 and that either Party shall be entitled to equitable relief in connection therewith, and shall be entitled to recover any damages for such breach as may be provided by law.

14. **COMPLIANCE WITH LAW.** Each party shall be responsible for compliance with all laws or regulations applicable to the Services being provided under this Agreement. If either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the Parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only; the remaining provisions of this Agreement will remain in full force and effect. Any such termination shall not constitute a basis for termination for cause as defined in Section 7, above.

15. **CHOICE OF LAW.** This Agreement, and the rights and duties of the Parties arising hereunder, shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law rules that may require the application of the laws of another jurisdiction.

16. **INTEGRATION.** This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

17. **WAIVER.** No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

18. **GOVERNMENTAL ENTITY.** AVCE shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Except as provided in Section 7(a) above, AVCE's failure to obtain any necessary budgetary approvals, appropriations, or funding for its obligations under this Agreement shall not excuse AVCE's performance hereunder.

19. **NOTICES.** All notices and other communications required under this Agreement shall be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or email and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by facsimile or email, provided the original is concurrently sent by first class mail, and provided that notices received by facsimile or email after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3<sup>rd</sup>) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

Noble Americas Energy Solutions LLC  
Attn: Legal Dept.  
If to DM Services Provider: 401 West A Street, Suite 500  
San Diego, CA 92101  
619-684-8251 (Phone)  
619-684-8350 (Fax)

Town of Apple Valley  
Attn: Joseph Moon  
If to AVCE: 14955 Dale Evans Parkway  
Apple Valley, CA 92307  
(760) 240- 7521  
Fax (760) 240-7399

20. **TIME.** Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code §10, which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded."

21. **LIMITATIONS.** Nothing contained in this Agreement shall in any way limit DM Services Provider from marketing any of its products and services outside of AVCE's service territory.

22. **THIRD PARTY BENEFICIARIES.** The Parties agree that there are no third-party beneficiaries to this Agreement either expressed or implied.

23. **INSURANCE.** With respect to performance of services under this Agreement, DM Services Provider shall maintain and shall require any subcontractor performing Call Center or other functions as described in the Addendum, to maintain, insurance as described in Exhibit A, which is attached hereto and incorporated herein by this reference.

24. **ATTORNEYS' FEES.** In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys' fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing party.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as of the Effective Date provided herein.

Noble Americas Energy Solutions LLC

Town of Apple Valley

By:



Name: James Wood

Title: President

Date:



By:

Name:

Title:

Date:

## **Exhibit A – Insurance**

### **General Requirements**

DM Services Provider shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by Apple Valley's Risk Management, and DM Services Provider shall use diligence to obtain such insurance and to obtain such approval. DM Services Provider shall furnish AVCE with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending DM Services Provider's coverage to include the contractual liability assumed by DM Services Provider pursuant to this Agreement. DM Services Provider shall provide notice in writing, to AVCE of any pending material change in the limits of liability or of any cancellation or material modification of the policy. Such notice shall be provided to AVCE within thirty (30) calendar days of DM Services Provider receiving such notice. Such insurance and certificates, which do not limit DM Services Provider's indemnification obligations under this Agreement.

### **Workers' Compensation and Employer's Liability Insurance**

DM Services Provider shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. In signing this Agreement, DM Services Provider certifies, as required by Section 1861 of the California Labor Code, that (a) 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 the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

### **Liability Insurance**

DM Services Provider shall take out and maintain during the term of this Agreement commercial general liability insurance that shall protect DM Services Provider and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from DM Services Provider's operations under this Agreement, whether such operations be by DM Services Provider, any subDM Services Provider, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall include, at a minimum, the following:

Coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);

\$2,000,000 general aggregate

AVCE and its officers, agents, employees, and servants shall be named as additional insured on any policies of insurance required by this Agreement. All insurance policies required by this Agreement shall also contain a provision that (a) the insurance afforded thereby to AVCE and its officers, agents, employees,

and servants shall be primary insurance to the full limits of liability of the policy and (b) if the AVCE or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be canceled or materially reduced, AVCE, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**Subrogation Waiver**

DM Services Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, DM Services Provider shall look solely to its insurance for recovery. DM Services Provider hereby grants to AVCE, on behalf of any insurer providing comprehensive general or automotive liability insurance to either DM Services Provider or AVCE with respect to the services of DM Services Provider herein, a waiver of any right to subrogation which any such insurer of DM Services Provider may acquire against AVCE by virtue of the payment of any loss under such insurance.

**ADDENDUM FOR DATA MANAGER SERVICES**

Reference: MASTER PROFESSIONAL SERVICES AGREEMENT

Between Noble Americas Energy Solutions LLC ("DM Services Provider")

And Town of Apple Valley, d/b/a Apple Valley Choice Energy ("CCA")

As of October 18, 2016

Addendum Date: October 18, 2016

This Addendum (the "Addendum") supplements the Town of Apple Valley Master Professional Services Agreement referred to above (the "Agreement").

1. **EFFECTIVE PERIOD.** The Effective Period for the Addendum shall be from October 18, 2018 through December 31, 2021. Further, the Effective Period for this Addendum shall automatically be extended until December 31, 2024, (the "First Extended Term"), unless either Party notifies the other Party by September 30, 2021, in a manner consistent with the notice provisions of the Agreement, that the notifying Party wishes, in its sole discretion, to cancel the First Extended Term.
2. **DESCRIPTION OF DATA MANAGER SERVICES.** During the Effective Period, DM Services Provider shall provide the Data Manager Services listed below.
  - a. Start-Up Support Services:
    - i. DM Services Provider shall participate in coordination meetings to initiate Community Choice Energy service ("CCA Service") in SCE's territory. Such meetings may include CCA and/or SCE, as necessary, and may require on-site participation by DM Services Provider staff.
    - ii. DM Services Provider shall complete the technical testing of all necessary electronic interfaces with SCE, which provide for the communication by Internet and Electronic Data Interchange ("EDI") between DM Services Provider and SCE to confirm system compatibility related to CCA Service Requests ("CCARs"), billing collections, meter reading, and electricity usage data.

- iii. DM Services Provider shall demonstrate successful completion of all standard SCE technical testing and shall have the capability to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to SCE.
  - iv. Obtain customer information data, including historical usage for enrolled customers, from CCA or SCE.
  - v. Provide customer mailing list to CCA designated printer for customer notices during each Enrollment Phase using methodology agreed upon by CCA, DM Services Provider and CCA designated printer.
- b. Electronic Data Exchange Services:
- i. Process CCA Service Requests (CCASRs) from/to SCE which specify the changes to a customer's choice of services such as enrollment in CCA programs, customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
  - ii. Obtain all customer usage data from SCE's Metered Data Management Agent (MDMA) server to allow for timely billing (according to SCE requirements) of each customer (867 Electronic Data Interchange Files).
  - iii. Maintain and communicate the amount to be billed by SCE for services provided by CCA (810 Electronic Data Interchange Files).
  - iv. Receive and maintain data related to payment transactions toward CCA Service charges from SCE after payment is received by SCE from customers (820 Electronic Data Interchange Files).
  - v. Process CCASRs with SCE when customer status changes.
  - vi. Provider shall participate in the Customer Data Acquisition Program (CDA) beta testing for SmartMeter data sharing as CCA's Data Manager.
- c. Customer Information System:
- i. Maintain an accurate database of all eligible accounts who are located in the CCA service area and identify each account's enrollment status, rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may



become necessary to effectively administer CCA Service as mutually agreed to by parties from time to time.

- ii. Allow CCA to have functional access to the Customer Relationship Management system ("CRM") to add customer interactions and other account notes.
- iii. Allow CCA to view customer email or written letter correspondence within the CRM.
- iv. Maintain and provide as needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of service to present or (b) five years.
- v. Until a cloud-based storage solutions for SmartMeter historical usage data is implemented, Provider will store SmartMeter historical usage data, as received by the MDMA, for a 48 hour window.
- vi. Maintain viewing access, available to appropriate CCA staff, to view SCE bills for CCA customers. Maintain accessible archive of billing records for all CCA customers from the start of CCA Service or a period of no less than five years.
- vii. Maintain and communicate as needed record of customers who have been offered CCA Service with CCA but have elected to opt out, either before or after starting CCA Service.
- viii. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
- ix. When requested by CCA, place program charges on the relevant customer account, identified by Service Agreement ID ("SAID").
- x. Identify customers participating in various CCA programs in database.
- xi. Include various program payment information in all relevant reports.
- xii. Perform quarterly CCA program reviews to assess appropriate customer charge level.
- xiii. Maintain all customer data according to CCA's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process.

- xiv. Maintain a Data Management Provider Security Breach Policy.
- d. Customer Call Center:
- i. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.
  - ii. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.
  - iii. Staff a call center, during any CCA Statutory Enrollment Period, 24 hours a day 7 days a week to process opt out requests.
  - iv. Staff a call center during Non-Enrollment Period between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding CCA and SCE holidays.
  - v. Provide sufficient call center staffing to meet the requirements set forth herein, including designating CCA specific agents to the extent needed to provide for full functionality.
  - vi. Provide sufficient number of Data Manager Experts available to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding CCA and SCE holidays ("Regular Business Hours").
  - vii. Ensure that a minimum of 75% of all calls will be answered within 45 seconds during Non-Enrollment Periods.
  - viii. 100% of voicemail messages answered within one (1) business day.
  - ix. 100% of emails receive an immediate automated acknowledgement.
  - x. 95% of emails receive a customized response within one (1) business day.
  - xi. 100% of emails receive a customized response within three (3) business days.
  - xii. Achieve a no greater than 10% abandon rate for all Non-Enrollment Period calls.
  - xiii. Provide callers with the estimated hold time, if applicable. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer.
  - xiv. Record all inbound calls and make recordings available to CCA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
  - xv. Track call center contact quality with criteria including:

- a. Use of appropriate greetings and other call center scripts
  - b. Courtesy and professionalism
  - c. Capturing key customer data
  - d. Providing customers with correct and relevant information
  - e. First-contact resolution
  - f. Accuracy in data entry and call coding
  - g. Grammar and spelling in text communication (email and chat)
- xvi. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.
  - xvii. Respond to customer emails.
  - xviii. Receive calls from CCA customers referred to Provider by SCE and receive calls from CCA customers choosing to contact Provider directly without referral from SCE.
  - xix. Provide the call center number on SCE invoice allowing CCAA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
  - xx. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
  - xxi. Respond to telephone inquiries from CCA customers using a script developed and updated quarterly by CCA. For questions not addressed within the script, refer inquiries either back to SCE or to CCA.
  - xxii. Respond to customer inquiries within 24 hours, excluding weekends and holidays, including inquiries received either through telephone calls, email, fax or web-portal.
  - xxiii. Offer bi-annual cross training to SCE call center in coordination with CCA.
  - xxiv. Ensure monthly status reports are provided during the first week of each month.
  - xxv. Provide weekly status reports during Statutory Enrollment Periods.

- xxvi. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.
  - xxvii. Provide translation services for inbound calls for the following languages: Spanish, Cantonese, Mandarin, Tagalog.
  - xxviii. Create and maintain forms for the CCA website so that customers may change their account status to enroll or opt out of various CCA programs.
  - xxix. Host CCA meetings with call center management and representatives on a monthly basis.
- e. Billing Administration:
- i. Maintain a table of rate schedules offered by CCA to its customers.
  - ii. Send certain CCA program charges for non-CCA customers, when supported by SCE, based on information provided to Provider by CCA.
  - iii. Send certain CCA program charges as a separate line item to SCE for placement on monthly bill during term of repayment.
  - iv. Apply SCE account usage for all CCA customers against applicable rate to allow for customer billing.
  - v. Review application of CCA rates to SCE accounts to ensure that the proper rates are applied to the accounts.
  - vi. Timely submit billing information for each customer to SCE to meet SCE's billing window.
  - vii. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.
  - viii. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
  - ix. Provide customer mailing list to CCA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
  - x. Send an CCA provided letter to customers that are overdue. If no payment is

received from the customer after a certain amount of time, issue a CCASR to return customer to SCE.

f. Settlement Quality Meter Data Services:

- i. DM Services Provider shall provide CCA or CCA's designated Scheduling Coordinator ("SC") with Settlement Quality Meter Data ("SQMD") as required from SC's by the California Independent System Operator ("CAISO").
- ii. Obtain historical usage data for enrolled customers, from SCE, and utilize for estimation in SQMD process. In the absence of current historical usage, CCA to provide DM Services Provider with usage received from Schedule CCA-INFO in order to calculate Default Usage. CCA will approve Default Usage.
- iii. Upon CCA's request, DM Services Provider shall submit the SQMD directly to the CAISO on behalf of CCA or CCA's designated SC
- iv. CCA agrees that DM Services Provider shall have no responsibility for any charges or penalties assessed by the CAISO associated with the SQMD under an indemnity or otherwise.
- v. DM Services Provider shall prepare the SQMD in accordance with Prudent Utility Practice, however, DM Services Provider hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete, or free from error.

g. Qualified Reporting Entity ("QRE") Services:

- i. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between CCA and DM Service Provider, serve as QRE for up to ten (10) locally situated, small-scale renewable generators supplying electric energy to CCA through its feed-in tariff (FIT).
- ii. Submit a monthly generation extract file to the Western Renewable Energy Generation Information System ("WREGIS") on CCA's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
- iii. DM Services Provider shall receive applicable electric meter data from SCE for

CCA FIT projects, consistent with SCE's applicable meter servicing agreement, and shall provide such data to CCA for purposes of performance tracking and invoice creation.

- h. Reporting – DM Services Provider Shall include the following reports, frequency and delivery methods:

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
Call Center Statistics	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
Invoice Summary Report	Weekly, Monthly	SFTP
Days To Invoice	Weekly, Monthly	SFTP
Program Opt Up with Address	Weekly, Monthly	SFTP
Utility User Tax where applicable	Monthly	Email
Invoice Summary Report	Weekly, Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Ad hoc	CRM
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Customer Account Snapshot	Ad hoc	CRM
Customer Account Snapshot with Addresses	Ad hoc	CRM
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP

Provider shall also assist CCA, as needed, in compiling various customer sales and usage statistics that may be necessary to facilitate CCA's completion of requisite external reporting activities.

Such statistics will likely include annual retail sales statistics for CCA customers, including year-end customer counts and retail electricity sales (expressed in kilowatt hours) for each retail service option offered by CCA.

**3. SERVICE FEES.**

- a. Commencing with the first month of CCA Service, up to and including the twelfth month of CCA Service, CCA shall pay DM Services Provider \$1.35 for each customer meter enrolled in CCA Service.
- b. Commencing with the thirteenth month of CCA Service, up to and including December 2021, CCA shall pay DM Services Provider \$1.30 for each customer meter enrolled in CCA Service.
- c. Commencing with the first month of the First Extended Term, if applicable, the Service Fee shall escalate annually at either the Consumer Price Index (CPI-U for the Los Angeles-Riverside-Orange County region) or 3%, whichever is lower.

**4. PRICING ASSUMPTIONS.**

The Fees defined in Section 3 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables provided by DM Services Provider to CCA shall be billed at a labor rate of \$150.00 per hour plus any out-of-pocket costs incurred by DM Service Provider without mark-up.

**5. DEFINITIONS.**

"CCA Service" means CCA's Community Choice Energy Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric power needs, hereinafter referred to as Community Choice Energy (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.

"CCA Service Request ("CCASR")" means requests in a form approved by SCE to change a CCA Service customer's, utility customer's or direct access customer's choice of services which could include returning a CCA Service customer to bundled utility service or direct access service.

“SCE” is the local Utility Distribution Company.

“Mass Enrollment” means the automatic enrollment of customers into a CCA Service program where new service is being offered for the first time to a group of eligible customers.

“Meter Data Management Agent (MDMA) Services” means reading SCE’s customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SCE standards.

“Prudent Utility Practice” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of similar generating facilities in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, any governmental requirements or guidance, including CAISO, applicable laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Utility Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“Statutory Enrollment Period” means three months prior to a Mass Enrollment, the month in which the Mass Enrollment occurs, and two billing cycles following Mass Enrollment. The Statutory Enrollment Period takes place over a six month period.

“Default Usage” means the average monthly usage value, by rate schedule, used for estimation in the absence of actual historical usage data.

*[Remainder of page intentionally left blank]*



IN WITNESS WHEREOF, the Parties hereto have executed the Addendum as of the Addendum Date provided herein.

Noble Americas Energy Solutions LLC

Town of Apple Valley

By:

Name: James Wood

Title: President

Date:



By:

Name:

Title:

Date:

## **Exhibit A – Insurance**

### **General Requirements**

DM Services Provider shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by Apple Valley's Risk Management, and DM Services Provider shall use diligence to obtain such insurance and to obtain such approval. DM Services Provider shall furnish AVCE with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending DM Services Provider's coverage to include the contractual liability assumed by DM Services Provider pursuant to this Agreement. DM Services Provider shall provide notice in writing, to AVCE of any pending material change in the limits of liability or of any cancellation or material modification of the policy. Such notice shall be provided to AVCE within thirty (30) calendar days of DM Services Provider receiving such notice. Such insurance and certificates, which do not limit DM Services Provider's indemnification obligations under this Agreement.

### **Workers' Compensation and Employer's Liability Insurance**

DM Services Provider shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. In signing this Agreement, DM Services Provider certifies, as required by Section 1861 of the California Labor Code, that (a) 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 the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

### **Liability Insurance**

DM Services Provider shall take out and maintain during the term of this Agreement commercial general liability insurance that shall protect DM Services Provider and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from DM Services Provider's operations under this Agreement, whether such operations be by DM Services Provider, any sub-DM Services Provider, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall include, at a minimum, the following:

Coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

\$1,000,000 each occurrence (combined single limit);

\$2,000,000 general aggregate

AVCE and its officers, agents, employees, and servants shall be named as additional insured on any policies of insurance required by this Agreement. All insurance policies required by this Agreement shall also contain a provision that (a) the insurance afforded thereby to AVCE and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the AVCE or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be canceled or materially reduced, AVCE, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

**Subrogation Waiver**

DM Services Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, DM Services Provider shall look solely to its insurance for recovery. DM Services Provider hereby grants to AVCE, on behalf of any insurer providing comprehensive general or automotive liability insurance to either DM Services Provider or AVCE with respect to the services of DM Services Provider herein, a waiver of any right to subrogation which any such insurer of DM Services Provider may acquire against AVCE by virtue of the payment of any loss under such insurance.