

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

To: Board of Directors

From: Inder Khalsa, General Counsel

Subject: Employment Agreement for Executive Officer between Valley Clean Energy Alliance and Mitch Sears

Date: March 10, 2022

RECOMMENDATIONS

Approve resolution appointing Mitch Sears as Executive Officer of Valley Clean Energy Alliance, and approving Employment Agreement with Mitch Sears.

BACKGROUND AND ANALYSIS

Mitch Sears has served as Interim General Manager of VCE since 2018. Mitch is a full-time employee of the City of Davis, where he has worked for over 26 years, and provided his services to VCE under a cooperative agreement with the City. When Mitch shared his plans to retire from the City of Davis, negotiations to transition him to employment with VCE as Executive Officer commenced.

The proposed resolution appoints Mitch Sears as Executive Officer of VCE, and approves an Employment Agreement for Executive Officer. The Agreement provides the following significant terms:

- **Salary:** \$240,000 annual compensation
- **Benefits:** The Executive Officer (“EO”) shall be entitled to participate in any group insurance plan or retirement program established by the Board for VCE employees to the extent he is eligible. In addition, the EO shall receive 120 hours Paid Time Off upon employment and shall accrue 200 hours annually.
- **Expenses:** Reimbursement of out-of-pocket expenses in connection with VCE business and Board-approved continuing education, attendance at conferences, etc.
- **Severance:** If VCE terminates the Executive Officer without cause, the EO would be entitled to three months salary as a severance payment.

Negotiations were conducted by a Board Subcommittee composed of Chair Jesse Loren and Director Don Saylor. The Board Subcommittee reviewed salaries and benefits for other CCA program CEOs and executive officers and determined that the proposed salary and benefits are generally at or below market average compensation of other CCA CEOs or executive officers.

CONCLUSION

Assuming the Board approves the resolution appointing Mitch Sears as Executive Officer, Mitch Sears would become Executive Officer effective immediately with Board action.

Attachments

1. Resolution Appointing Mitch Sears as Executive Officer and approving Employment Agreement for Executive Officer
2. Employment Agreement for Executive Officer

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022-___

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
APPOINTING MITCH SEARS AS EXECUTIVE OFFICER AND APPROVING EMPLOYMENT
AGREEMENT WITH MITCH SEARS**

WHEREAS, Valley Clean Energy Alliance (“VCE”) was formed as a community choice aggregation agency (“CCA”) on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions; and,

WHEREAS, the City of Winters, located in Yolo County, was added as a member of VCE and a party to the VCE in December of 2019; and,

WHEREAS, Mitch Sears has served VCE as Interim General Manager of VCE while serving as a full time City of Davis employee since 2018; and,

WHEREAS, Mitch plans to retire from employment with the City of Davis and the Board of Directors desires to hire Mitch Sears as Executive Officer of VCE; and,

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

Section 1. Mitch Sears is hereby appointed Executive Officer of VCE.

Section 2. The Board of Directors hereby approves the Employment Agreement for Executive Officer, attached hereto and incorporated herein, with any minor clerical changes requested by the Board or Mr. Sears and approved by General Counsel.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the __ day of _____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jesse Loren, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment:

1. Employment Agreement for Executive Officer

EMPLOYMENT AGREEMENT FOR EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the Valley Clean Energy Alliance, a Joint Powers Agency also known as “Valley Clean Energy” (“VCE”) and Mitch Sears, an individual (“EMPLOYEE”) as of the Effective Date provided below. VCE and EMPLOYEE are sometimes collectively referred to herein as the “Parties.”

RECITALS

This Employment Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. The Yolo County Board of Supervisors and the City Councils of the City Davis, the City of Woodland, and the City of Winters (respectively, “Participant City”; or collectively, “Participant Cities”), adopted ordinances authorizing the implementation of a Community Choice Aggregation Program (“CCA Program”) to be operated by VCE, pursuant to California Public Utilities Code Section 366.2(c)(12).

B. The Participant Cities and County have entered into a Joint Powers Agreement (the “JPA Agreement”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “Act”) to operate and administer the CCA Program.

C. The JPA Agreement provides that the VCE shall have the power to employ agents and employees, including an Executive Officer, and the Board shall appoint the Executive Officer for the VCE, who shall be responsible for the day-to-day operation and management of the VCE and the CCA Program, and provides for the powers and authority of the Executive Officer.

D. EMPLOYEE possesses the skill, experience, ability, background, and knowledge to perform the duties and services provided by this Agreement as the CEO of VCE.

E. VCE desires to appoint and employ EMPLOYEE as its Executive Officer on the terms provided by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. Incorporation of Recitals. The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. Duties and Authority. VCE shall employ EMPLOYEE as the Executive Officer of VCE, with the full power and authority to perform all of the duties of the Executive Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).

3. Restrictions on Outside Business Activities and Conflicts. During his employment, EMPLOYEE shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without VCE's prior written consent, tender to others services of any kind for compensation, or engage in any other business activity. In addition, EMPLOYEE shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Executive Officer's duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. The term of this Agreement shall commence upon the final execution of the Agreement ("Effective Date"), and shall expire three years after Employee commences employment with VCE, unless earlier terminated as provided in this Agreement. Upon expiration of the term, the Agreement will extend on a month-to-month basis on the terms provided herein until a new employment agreement is entered between the Parties.

5. Salary. Effective on the commencement of employment, VCE shall pay EMPLOYEE an annual salary of \$240,000, prorated and paid on VCE's normal paydays, subject to legally permissible or required deductions. EMPLOYEE's salary is compensation for all hours worked and for all services under this Agreement. EMPLOYEE shall be exempt from overtime pay provisions of California law (if any) and federal law. EMPLOYEE's salary may be adjusted annually to reflect cost of living increases and merit increases tied to EMPLOYEE'S annual performance evaluation.

6. Evaluation of Performance. The Board shall evaluate the performance of EMPLOYEE at each annual anniversary. Evaluations may be conducted more often at the Board's discretion. EMPLOYEE will request and schedule the minimum required evaluations as appropriate under the VCE's agenda procedures or as otherwise directed by the Board.

7. Benefits. During the Term of this Agreement, EMPLOYEE shall be entitled to participate in any group insurance plan (including medical, dental, vision, life, and disability), retirement program or similar plan or program of VCE established by the Board during the term of this Agreement to the extent EMPLOYEE is eligible under its provisions. In the event VCE establishes a separate benefit program for executive and management employees, EMPLOYEE shall be entitled to participate only in such benefit program. VCE may establish additional benefit programs and may modify, reduce, or eliminate any benefit plan or program in its discretion, in accordance with applicable law.

In addition, EMPLOYEE shall be entitled to the following benefits:

- a. Paid Time Off ("PTO"). PTO may be used as vacation, sick, or any personal business. EMPLOYEE shall be provided 120 hours (three weeks) of PTO upon his employment as the Executive Officer. EMPLOYEE will accrue PTO at the rate of 200 hours (five weeks) annually, prorated and credited each pay period. EMPLOYEE may also take unpaid leave with the approval of the

VCE Chair. EMPLOYEE may accrue PTO to a limit of two times the annual accrual. Once EMPLOYEE reaches the maximum accrual limit he will not accrue any additional vacation time until his accrued balance falls below the maximum limit. Except as otherwise provided in this Agreement, PTO shall be subject to any VCE PTO policy applicable to employees generally. Upon termination of employment, EMPLOYEE will be paid for unused PTO that has been earned through the last day of work.

d. Holiday Leave. EMPLOYEE shall be entitled to the following paid holidays: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, Friday after Thanksgiving, and Christmas Day, as well as any holiday that may be provided to all VCE employees during the term of the Agreement. In the event a holiday falls on a weekend or another question arises in the administration of a holiday, the holiday will be administered in a manner similar to the benefit applied to other employees of VCE.

e. Other Benefits. VCE will provide EMPLOYEE with the opportunity to participate in VCE's 401(a) and 457 plans, group life insurance coverage, state disability insurance, unemployment compensation, workers' compensation, social security, Section 125 Cafeteria Plan and other benefits, as provided for the VCE Employee Handbook.

9. Expenses. During the employment term, and subject to the availability of funds, VCE shall reimburse EMPLOYEE for budgeted and reasonable out-of-pocket expenses incurred in connection with VCE's business, including reasonable expenses for travel, food, and lodging while away from home, subject to such policies as VCE may from time-to-time reasonably establish for its employees. Additionally, EMPLOYEE shall be entitled to Board-approved or budgeted and reasonable reimbursement for continuing education expenses, and for attendance at conventions, and conferences.

10. Termination of Agreement.

a. Termination by VCE. EMPLOYEE is employed at the pleasure of the Board, and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

b. Termination on Resignation. EMPLOYEE may terminate the Agreement by giving VCE at least sixty days (or more if possible) prior written notice. VCE may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

c. Termination on Death. If EMPLOYEE dies during the term of this Agreement, this Agreement shall be terminated on the date of EMPLOYEE's death. All warrants or checks for accrued salary, accrued vacation or other items

shall be released to the person designated in writing by EMPLOYEE pursuant to Government Code Section 53245 or, if no designation is made, to EMPLOYEE's estate.

11. Severance. VCE shall pay EMPLOYEE for all services through the effective date of termination. EMPLOYEE shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits.

a. If VCE terminates this Agreement (thereby terminating EMPLOYEE's Employment) without cause during the initial three-year term of this Agreement, VCE shall pay EMPLOYEE a lump sum severance benefit equal to three months of his then applicable base salary.

b. If VCE terminates this Agreement (thereby terminating EMPLOYEE's Employment) with cause, EMPLOYEE shall not be entitled to any severance. As used in this Agreement, "with cause" shall mean termination due to:

(1) A conviction, plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission involving any felony, intentional tort, crime of moral turpitude or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest;

(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of EMPLOYEE's duties under this Agreement and involving a willful or intentional violation of law;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful, and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures;

(6) A material breach of this Agreement or the VCE Employee Handbook; and

(6) Any other action or inaction by EMPLOYEE that materially and substantially harms VCE's interests, materially and substantially impedes or disrupts the performance of VCE, or that is detrimental to employee safety or public safety.

c. If EMPLOYEE terminates this Agreement (thereby terminating EMPLOYEE's Employment), EMPLOYEE shall not be entitled to any severance.

d. Any other term of this Agreement notwithstanding, the maximum severance that EMPLOYEE may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event EMPLOYEE is convicted of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the VCE for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

12. Miscellaneous Provisions.

a. Integration. Subject to all applicable Government code sections, the Agreement contains the entire agreement between the Parties and supersedes all prior oral and written agreements, understandings, commitments and practices between the Parties before the date of this Agreement. No amendments to this Agreement may be made except in writing signed by the Parties.

b. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances it shall nevertheless remain in full force and effect in all other circumstances.

c. Notices. Any notices required or permitted under this Agreement must be in writing and shall be deemed effective on the earlier of personal delivery (including personal delivery by facsimile or similar means intended to provide actual delivery on the same day) or the third day following mailing by first class mail to the recipient. Notice to VCE shall be addressed to the Secretary of the Board of Directors at the VCE's then principal place of business. Notice to EMPLOYEE shall be addressed to his home address, as then shown in VCE's files.

d. Agreement is Binding. This Agreement shall be binding upon and inure to the benefit of VCE, its successor and assigns, and shall be binding upon EMPLOYEE, his administrators, executors, legatees, heirs, and assigns.

e. Waiver. The failure of either PARTY to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other PARTY shall not be deemed a waiver of that term, covenant or condition, nor a waiver or relinquishment of any right or power.

f. Employee Handbook. EMPLOYEE acknowledges that he has read VCE Employee Handbook. The terms of the Employee Handbook, as may be amended by VCE from time to time, shall apply to EMPLOYEE. In the event of a conflict between this Agreement and the Employee Handbook, the terms of this Agreement shall apply.

*Valley Clean Energy
Executive Officer
Employment Agreement*

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Dan Carson, Chair
Valley Clean Energy Alliance

Mitch Sears

DATE: _____, 2022

DATE: _____, 2022

APPROVED AS TO FORM:

Inder Khalsa, Interim General Counsel

ATTEST:

Alisa Lembke, VCE Board Clerk