

**Meeting of the Board of Directors of the  
Valley Clean Energy Alliance (VCEA)  
Thursday, May 10, 2018  
5:30 PM**

Woodland City Council Chambers, 300 1<sup>st</sup> Street, Woodland 95695

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Mitch Sears, VCEA Interim General Manager, at least 2 working days before the meeting at (530) 757-5610 or msears@cityofdavis.org.

If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of VCEA staff who will distribute the information to the Board members and other staff.

**Board Members:**

Angel Barajas (City of Woodland), Duane Chamberlain (Yolo County), Robb Davis (City of Davis), Lucas Frerichs (Chair/City of Davis), Don Saylor (Yolo County), Tom Stallard (Vice Chair/City of Woodland)

**5:30 PM CALL TO ORDER**

**1. Welcome and Roll Call**

**2. Approval of Agenda**

**3. Public Comment**

This item is reserved for persons wishing to address the Board on any VCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, but an extension can be provided at the discretion of the Chair.

**CONSENT AGENDA**

**4. Approval of Minutes from March 22, 2018 Board Meeting**

**5. Receive and Accept April 25, 2018 Board Meeting Recap**

**6. Approval of Long Range Calendar**

**7. Regulatory and Legislative Update**

**8. Customer Enrollment Update**

**9. Approval of Revised Tariff Sheets Reflecting 2.5% Generation Rate Discount**

**10. Approval of Amended Customer Data Policy to clarify customer data storage standard**

- 11. Approval of Financial Lock Box Control Agreement and Financial Reserve Account Control Agreement with SMUD and River City Bank**
- 12. VCE Financial Update – March 31, 2018**
- 13. Community Advisory Committee Report - May 10, 2018**

#### **REGULAR AGENDA**

- 14. Approval of Line of Credit/Loan Documents with River City Bank to provide working capital to fund power purchases, initial operations and reserves as needed to support power purchases (Action)**
- 15. Approval of VCE/SMUD Renewable Power Recontracting Master Agreement to transfer power contracts from SMUD to VCE (Action)**
- 16. Approval of VCE/SMUD Services Contract Task Order 5 for Long Term Energy Procurement Support (Action)**
- 17. Approval of Peak Day Pricing Pilot Program (Action)**
- 18. Small Scale/Local Renewable Energy Production Potential - Presentation (Informational)**
- 19. Update on Integrated Resource Plan Workshop / Process (Informational)**
- 20. General Manager's Report (Informational)**
- 21. Board Member and Staff Announcements**

Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members at VCEA expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.

#### **22. Adjournment (Approximately 7:30pm)**

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. Until VCEA has offices, the Board has designated the Department of Community Development and Sustainability at the City of Davis located at 23 Russell Blvd, Davis, CA for the purpose of making those public records available for inspection. The documents are also available on the Valley Clean Energy website located at: <https://valleycleanenergy.org/about-us/meetings/>

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 4

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**TO:** Valley Clean Energy Alliance Board of Directors  
**FROM:** Mitch Sears, Interim General Manager, VCEA  
**SUBJECT:** Approval of Minutes from March 22, 2018 Board Meeting  
**DATE:** May 10, 2018

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### RECOMMENDATION

Receive, review and approve the attached draft minutes from the March 22, 2018 Board Meeting.

**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE**  
**BOARD OF DIRECTORS**  
March 22, 2018

The Board of Directors of the Valley Clean Energy Alliance met in regular session beginning at 5:30 p.m. in the Woodland Council Chambers, 300 First Street, Woodland CA 95695.

Board Members Present:       Angel Barajas, Duane Chamberlain, Robb Davis, Lucas Frerichs, Don Saylor, Tom Stallard

Board Members Absent:       Skip Davies (Alternate)

Approval of                 R. Davis moved, seconded by A. Barajas to approve the agenda. Motion passed  
Agenda                     by the following vote:

AYES:    Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard  
NOES:    None  
ABSENT: None

Public Comment           None

Approval of                 Approval of  
Consent Agenda

- Minutes from February 8, 2018 Board Meeting
- Regulatory and Legislative Update
- Correct Typographical Error on Delegation for 2018 and 2019 Power Procurement
- Authorization to Contract for and Retain Regulatory and Legal Services
- Long Range Calendar

D. Saylor moved, seconded by A. Barajas to approve the consent agenda. Motion passed by the following vote:

AYES:    Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard  
NOES:    None  
ABSENT: None

Recommendation         Staff recommends the Board adopt a resolution approving the draft Enterprise  
to the Board on           Risk Management Policy.

Adoption of an           The draft Enterprise Risk Management Policy was revised for clarity following  
Enterprise Risk           the CAC and Board review in February. The updated version, contains two new  
Management              sections: Business Practices and Management Reporting and Metrics.  
Policy for VCE

- Introduction: This section introduces the value of ERM as a structured approach to managing risk and uncertainty. It lays out the objectives of VCEA's ERM function, providing the framework for evaluating and managing risk in the organization's decision-making process.
- ERM Roles and Responsibilities: The ERM roles are consistent with the Board-approved Wholesale Power Procurement & Risk Management Policy. The Enterprise Risk Oversight Committee (EROC) has primary responsibility for the implementation of ERM. The policy lays out the

- scope of the EROC’s risk management authority.
- Business Practices: This section identifies the steps of risk management and the basic process associated with each step. The intent is to provide a high-level framework.
- Specific tools and techniques for implementing enterprise risk management will be recommended by the portfolio manager following approval of the policy.
- Management Reporting and Metrics: The policy defines two enterprise risk reports that will be provided on a regular basis: a semi-annual report to the EROC and annual report to the Board.

On March 12, the CAC provided feedback on the policy document and unanimously recommended Board adoption of the Enterprise Risk Management policy.

Board questions and staff responses are summarized below:

- The thinking behind this policy is very clearly articulated in the slide presentation. Recommend appending the slides to the policy so that future board members are aware of the thinking behind the policy.

Public Comment

None

T. Stallard moved, seconded by D. Saylor to approve Enterprise Risk Policy. Motion passed by the following vote:

AYES: Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard  
 NOES: None  
 ABSENT:

Recommendation to the Board on Adoption of the VCE UltraGreen Policy/Rate for the 100% Renewable Energy Customer Option

Gary Lawson, Manager, Energy Commodity Contracts, SMUD

The “UltraGreen” product will provide customers with 100% renewable energy. Staff determined that a flat fee was inequitable and that a volumetric charge was most fair to the customers. Staff proposed \$0.015/kilowatt hour. This price puts VCE in the range of similar products offered by other CCAs. NEM customers charges would be assessed UltraGreen premium only on their net energy usage.

Staff expects 3-5% of VCE customers will choose to enroll in the “UltraGreen” 100% Renewable Energy program. The program will generate a fund of \$200-\$300k/year that will be allocated to pursue local energy generation.

Staff is recommending the Board adopt a resolution establishing a voluntary 100% renewable program that:

- Charges an additional \$0.015/kWh for both residential and commercial customers
- Is sourced with a mix of PCC-1 and PCC-2 resources equivalent to VCEA’s overall renewable portfolio
- Uses any excess net revenue to fund local renewable projects

- Is Green-e certified

Board questions and staff responses are summarized below:

- When Green-e conducts an annual audit, will the results be shared with customers?

Green-e does not share those results automatically. VCE will want to promote this certification.

- How can CCAs offer a 100% wind program if the wind is not always blowing?

CCA programs look at the energy consumed across a whole year, and that much energy is generated by their wind program. It is not tied to time of usage.

- How would the 1.5 cents/ kWh surcharge apply to the different rates?

It will be applied to all customers based on their usage.

- How was this cost developed?

The cost was developed by considering the underlying costs of procuring additional renewables.

- But it also generates reserves. Did we have a target for those reserves or did it just happen?

Staff sought to keep the program cost based. The higher the charge, the less attractive the program will be. Another consideration was the cost of PG&E's 100% Solar product.

- How will the marketing and outreach work for the 100% Renewable Program?

It will be an option on website, included in the presentations, and will be included in the first notice. The marketing for this specific program can be augmented as VCE moves forward.

- Is there any projections for how many numbers of customers we can expect to opt up?

Based on similar programs in other CCA's, we are projecting 3-5% for the first year.

- In the future, how would VCE cover marketing costs fro this program?

The excess revenues could be used for both marketing and local energy generation programs.

- How does the proposed NEM treatment -- in which NEM customers who choose to opt up to UltraGreen would have charges assessed UltraGreen premium only on their net energy usage -- compare to other CCAs?

It is fairly common.

- Does the annual cost for the Green-E certification vary based on the size of the organization?

No, it is a fixed cost.

- Are SMUD's program Green-E certified?

Yes, SMUD's renewable programs are Green-E certified.

- There is no cap on how many customers can enroll in this program. What would happen if the enrollment was 10% rather than 3-5%. Would we run into difficulties covering renewables for these customers?

No. VCE would just procure additional renewable energy.

#### Public Comment

None

#### Board Discussion

R Davis moved, seconded by D. Saylor, to approve staff recommendation. Motion passed by the following vote:

AYES: Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard

NOES: None

ABSENT: None

Recommendation to the Board on Program Launch related to Energy Rates, Power Mix and Budgets

Gary Lawson, Manager, Energy Commodity Contracts, SMUD

The VCE board initially set a policy of a 2% generation rate discount, which allowed us to achieve our goal for a 90-day operating cost reserve fund fairly quickly. However, PG&E increased their generation rate on March 1.

Under this new situation, a 4% discount would allow us to maintain our original projections in developing a reserve. However, since adopting this initial policy, VCE has proceeded in procuring a bank loan with a rolling line of credit. River City Bank insists on being repaid before the municipalities. This means that the repayment of each municipality's loan of \$500,000 will be delayed.

VCE needs to be cautious of the debt service coverage ratio. The debt service coverage ratio (DSCR) has a minimum of 1.25. A 4% discount would move VCE's

DSCR to 1.8. In addition, we do not know how PG&E rates might shift in the future, and PCIA is also a large variable.

However, another balancing point is that the opt-out rate will likely be lower if the discount rate is higher.

Staff is recommending that the Board adopt a resolution establishing the following:

- VCEA rates, included as Attachment 1, which are set at a 2% discount from PG&E's generation rates placed into effect March 1, 2018, net of PCIA and Franchise Fees.
- A Power Mix of 42% renewable, 75% clean for the default product.
- An Operating Budget of \$1.62M for March-June 2018.
- Administrative authority for VCEA staff to consolidate the Operating budget and the Implementation budget and direction to return to the Board for approval of a consolidated 2017-18 budget.
- A Delegation of Authority to the Interim General Manager to put in place new comparable rates schedules for any new rate schedules that PG&E may put in place at a level of 2% below PG&E's generation rate for such new tariff, net of PCIA and Franchise Fees.

Board questions and staff responses are summarized below:

- Is the difference between 2% and 3% enough to make customers not opt-out?

Staff does not have data on what the impacts of increasing the discount 1% might be on customer choices. Shawn Marshall, LEAN Energy has shared anecdotally that with MCE the difference between 1-2-3-4% did not make a significant change in the customer opt out rate. San Mateo's CCA developed their projections based on a 15% opt out rate. They are seeing only a 2% opt out.

- When will the VCE Board be setting 2019 rates?

Staff plans to bring forward the 2019 rates for board approval in November or December 2018.

- The rate that we set for launch will only be in place for six months?

Correct. The VCE board can adjust the rates when they choose. Staff suggests that the rates be set annually.

Board comments are summarized below:

- In the future, the board requests that staff please print the presentations in color.
- VCE would like to pay down the debt, and repay the founding municipalities, as swiftly as possible.
- At this juncture, VCE needs to be overly cautious and build reserves.



- I will advocate for increasing the discount. 2% is underwhelming for our customers who we are trying to attract and energize.
- Our customers are all automatically enrolled, unless they opt out. There's no guarantee that 3 or 4% generates enthusiasm.
- I wonder why a customer would give up a 2% discount, just because it's not a larger discount. Turning down a small savings seems unlikely.
- I would rather pass the savings directly to our rate payers rather than to future VCE decision-makers.
- The value of VCE is not just lower rates. It is also about local control and increasing renewables. We want rates to be lower, but I don't want VCE to pay interest on the debt.
- It is important to remember that this discount only applies to the energy generation cost. For my bill, that is only about 40% of my bill. A 2% discount on 40% of my bill is insignificant.
- Increasing the discount is one of the most effective ways to distinguish VCE from PG&E.
- Sustaining the current rate of 2% sends a good signal to the bank and our founding municipalities that we are serious about repaying our loans.
- We are trying to balance different values – we want to move more quickly to enable local programming, we want to build our reserve, and we want to minimize our opt-out rate. I appreciate the conversation.

Public Comment

Christine Shewmaker.

Appreciated the board's discussion of balancing building reserves, paying down debt, increasing rate discounts for customers, and building local programs. Suggested the board wait six months and then either increase discount or increase the level of renewable energy in the default rate.

The board chose to take up the first bullet point of the staff recommendation first, and then consider the rest of the staff recommendation.

D. Saylor moved, seconded by A. Barajas, that VCE increase the discount to a 3% discount from PG&E's generation rates.

T. Stallard made a substitute motion, seconded by L. Frerichs, that VCE remain at a 2% discount from PG&E's generation rates.

AYES: Barajas, Davis, Frerichs, Saylor, Stallard

NOES: Saylor, Chamberlain

ABSENT: None

Per section 3.7 of VCE Joint Exercise of Powers Agreement, the motion fails. Due to the requirement that board action shall require the affirmative vote of at least one director appointed by each member jurisdiction.

D. Saylor moved, seconded by L. Frerichs, that VCE increase the discount to a 2.5% discount from PG&E's generation rates.

AYES: Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard  
NOES: None  
ABSENT: None

T. Stallard moved, seconded by A. Barajas to approve balance of staff recommendation. Motion passed by the following vote:

AYES: Barajas, Chamberlain, Davis, Frerichs, Saylor, Stallard  
NOES: None  
ABSENT: None

The board requested an informational item be placed on the agenda for the next meeting on the possibility of VCE engaging with local, small energy providers.

Integrated  
Resource Plan –  
Introduction and  
Schedule

Olof Bystrom, Manager, Energy Research and Development, SMUD

The Integrated Resource Plan (IRP) is a long-term plan which will help set VCE's future energy procurement strategies. The plan will be returning to the board several times over the next six months for review, input and eventual approval in June.

In February, the CPUC has adopted a process that requires all load-serving entities under their jurisdiction to adopt an IRP. The IRPs are due in August 2018. This process will be about 1-year shorter than these planning processes usually take, so VCE will build in flexibility.

Key Dates for Integrated Resource Plan (IRP) Process

- February 8 – CPUC IRP Decision
- June 1 – CCA go-live
- July – VCEA Board Approves IRP
- August 1 – VCEA Submits IRP to CPUC

Key Issues for VCEA

- Articulates the long term Vision/Mission/Objectives and Action Plan with respect to
  - Resource mix
  - Local sources
  - Battery storage
  - Demand-side programs (EV, EE DR, etc.)
  - Costs / Rates
  - GHG targets
- Regulatory Compliance
- Approval and public stakeholder review process
- Retaining operational and strategic flexibility

CPUC-Required IRP Features (per February 2018 adoption by CPUC)

- Covers 2018-2030
- Must include at least one conforming portfolio based on 2017 IEPR Mid Demand Case
- 1-3 year action plan

- Report on GHG emissions of portfolio
- Methodology explanation
- Demonstrate compliance with PUC 454.52(a)(1), i.e. GHG, RPS, Just and reasonable rates, minimize ratepayer bills, reliability, diversity and sustainability, local pollution, distribution systems

Proposed IRP Milestones

- April – CAC meeting to review and discuss resource options and preferences
- End of May – Draft IRP Report
- June Board Meeting – discussion and feedback on draft IRP
- July – Board Approves IRP
- August 1 – VCEA Submits IRP to CPUC

The Community Advisory Committee (CAC) will be holding a workshop on April 26, 2018 to begin developing the IRP. The board will review, discuss and offer feedback on the draft IRP at their June meeting. VCE will need to file an IRP every two years.

Public Comment

None

Board Comments

- This is the type of planning discussions that the board has been talking about having.
- This is a compliance document, but we have the opportunity to use it to identify what the key policy decisions will be.
- It will be interesting and exciting to get into the some of the long term questions.

Community  
Advisory  
Committee Report

Gerry Braun, Chair, Community Advisory Committee (CAC)

The Chair and Vice Chair of the CAC will meet early next week with the VCE Board Chair and Vice Chair and the Interim General Manager for a check-in meeting. The CAC charge was focused on the launch phase. Now we are transitioning to operations phase, so this meeting will help clarify how the CAC can be most helpful in this next phase.

The CAC is looking forward to the IRP workshop and the IRP development process.

General Manager's  
Report

The board requested that the IRP workshop agenda be sent to the board.

Mitch Sears, Interim General Manager

- Staff recruitment: We are in the interview process for the outreach specialist. We hope to make an offer next week or the week after. We have gone thru initial screening for Board/Admin. Making progress on the Assistant General Manager position.
- VCE has fully procured energy for 2018.

- Vicky and the SMUD team have worked hard to identify staff who will be serving VCE under the SMUD contract.
- Introduced Lisa Limaco as VCE's Finance and Operations Director.
- Introduced Chris Cole as VCE's Key Accounts Representative
- Outreach to the 200 largest energy customers in the VCE service area has begun.
- Chad Rinde will be drafting a subordination agreement to go to each jurisdiction, outlining that the cities and Yolo County will be subordinating their loans until after bank loan is repaid. We anticipate repayment will take place within the five year window that was originally discussed.

Board Member and Staff Announcements

Duane Chamberlain

Please ensure that the first notice letter is clear that the discount is 2.5% off the generation rate, not the full rate.

Lucas Frerichs

Recently attended the Yosemite Policymakers Conference and presented about Valley Clean Energy and the partnership with SMUD. Monterey Community Power have a Community Advisory Committee (CAC) that has been operating on an ad hoc basis. They requested, and we have sent, our CAC charter to them, which they greatly appreciated.

Tom Stallard

Also attended the conference and greatly enjoyed Lucas' presentation. CCA's are a wonderful trend statewide. During the last week of February, attended a program at the Teton Science School which is a 100% renewable community. Hopefully VCE can help move us in this direction.

Mitch Sears

Met with Farm Bureau. A letter will be sent out by Farm Bureau to their members, at VCE's cost, with the details of VCE.

Emily Henderson

Due to schedule conflicts, the VCE board will meet next on Wednesday, April 25. Due to room availability, this meeting will take place at Woodland Council Chambers, 300 First Street, Woodland. Please note that not all board members will be able to attend.

Meeting was adjourned at 7:23pm

Emily Henderson  
Administrative Assistant



# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 5

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**TO:** Valley Clean Energy Alliance Board of Directors  
**FROM:** Mitch Sears, Interim General Manager, VCEA  
**SUBJECT:** Receive and Accept April 25, 2018 Board Meeting Recap  
**DATE:** May 10, 2018

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### RECOMMENDATION

Receive, review and accept the attached draft April 25, 2018 Board meeting recap.

**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE**  
**BOARD OF DIRECTORS**  
April 25, 2018

The Board of Directors of the Valley Clean Energy Alliance duly noticed their meeting scheduled for Wednesday, April 25, 2018 at 5:30 p.m. at the Woodland Council Chambers, 300 First Street, Woodland CA 95695. Due to a lack of quorum, Chairperson Lucas Frerichs announced that a meeting would occur to hear information only, no Board action would be taken, and another Board meeting would be scheduled within the next week. Chairperson Lucas Frerichs started the meeting at 5:34 p.m.

Board Members Present: Lucas Frerichs, Don Saylor, Tom Stallard

Board Members Absent: Angel Barajas, Robb Davis, Duane Chamberlain, Skip Davies  
(Alternate)

Approval of Agenda The Agenda was reviewed by Chairperson Frerichs who identified those Action items that would be tabled until the next scheduled meeting and those items that were information only would be presented at this meeting.

Public Comment Ms. Emily Fisher, Attorney at Law, introduced herself offering her law services to Community Service Aggregations. No other comments were made.

Approval of Consent Agenda The Consent Agenda was tabled to the next Board meeting; however, a few comments were made:

- Minutes from March 22, 2018 Board Meeting
- Long Range Calendar – Interim General Manager Mitch Sears announced that there were no updates to the calendar.
- Regulatory & Legislative Update – Mr. Sears commented that CalCCA is tracking regulatory and legislative developments. CalCCA
  - oppose AB 2208 (California Renewables Portfolio Standards Program) unless amended and
  - was requesting that a mandate a certain amount of biomass be included.
- Revised Tariff Sheets Reflecting 2.5% Generation Rate Discount
- Amended Customer Data Policy
- Community Advisory Committee (CAC) Report – April 9, 2018 meeting. CAC Vice Chairperson Ms. Christine Shewmaker commented that this was the first meeting summary provided to the Board although no action was taken by the CAC. She hopes that the report is informative and reflects their discussions.

Approval of Line of Credit/Loan Documents with River City Bank to provide working capital to fund power purchases, initial operations This item was tabled until the next scheduled meeting.

and reserves as needed to support power purchases.

Program Outreach/Customer Enrollment

**Program Outreach** - Rochelle Germano, Director of Communications, and Manny Sanchez, Project Manager, both of Circlepoint

Ms. Germano presented information on VECA's outreach program such as, current activities, outreach, advertisement campaign, VEC agriculture/business guides, general procedures, social media and general response/feedback that CirclePoint has been seeing since inception.

Board questions and staff responses are summarized below:

- Are we changing the true-up date of all of our NEM customers?

Yes. Based on the advice of our energy advisors at SMUD, all customers will be moved to an April date.

- How many "likes" on the page?

282.

- It was suggested that weekly analytics be provided and that the events page be populated.

Public Comment

- Christine Shewmaker – She suggested that the Board consider providing all NEM customers with information prior to launch on June 1, rather than waiting until the NEM customers true-up date..

NEM will receive a NEM specific notice prior to launch, and then four notifications as their true-up date approaches.

**Customer Enrollment Update** – Jim Parks of SMUD provided a brief introduction of himself, then provided a brief update:

As of April 25, 2018, 448 customers (0.07%) have opted out of VCE and 15 have opted up to UltraGreen. Of the customers who opted out, 38% are Woodland residents, 23% are Davis residents, and 39% are Yolo residents.

Of the customers who opted up, 20% are Woodland residents and 80% are Davis residents.

- Does Customer Service ask for the reason why a resident opts out of the program?



No, but the Customer Service Staff are well trained to ask questions and assist in educating the person about the program.

- If a Resident opts out before launch, can they opt back in?

Within the first 60 days, they can opt back in immediately. If it is after the 60 day mark, customers must wait a year before opt-in?

- What do the trends show for those who have opted out and then want to opt in at a later date?

Trends show that an opted out person will remain opted out.

Olof Bystrom, SMUD

Integrated  
Resource Plan  
April 25, 2018  
Workshop –  
Agenda Review

The VCE Community Advisory Committee will hold a workshop on Thursday, April 26, 2018 at 6 p.m. with an anticipate ending time around 8:30 p.m. An Integrated Resource Plan (IRP) is a regulatory requirement of the CPUC, of which VECA would need to be engaged in, so tomorrow is a long-term planning workshop. Mr. Bystrom provided a brief overview of what will be discussed, such as identifying resources needed, what resources are available, cost of those resources, and what would it look like. He hopes to set the stage for future discussion.

Board questions and staff responses are summarized below:

- It is a PUC requirement to file an IRP by August 1, 2018.

Public Comment

None

Gary Lawson, SMUD

Small Scale/Local  
Renewable Energy  
Production  
Potential

In 2006, the California Energy Commission (CEC) issued a report about potential new small hydro. The CEC evaluated that there is no potential for new small hydro within Yolo County. However:

- Within 20 miles of Yolo County’s southeastern boarder is the Montezuma Hills Wind Resource Area.
  - Near Rio Vista
  - 1,035 MW installed wind capacity
- Within 25 miles of Yolo County’s northwestern border is the Geysers Geothermal Resource Area.
  - Largest dry steam geothermal field in the world
  - 1,634 MW installed geothermal capacity

The existing renewable resources in the region surrounding and including Yolo county are being evaluated based on the

- DavisFREE study estimated PV potential on City of Davis preferred land parcels of 154 – 178 MWs (»300 GWhs/ year of energy production).
- CPUC estimates

VCE has discretion in how we define “Local Renewables.” Possible options include:

- Option 1: Projects only within Yolo County
- Option 2: Projects only having a nexus to Yolo county/VCEA. For example:
  - Projects sited within Yolo County/VCEA service area
  - Williams biomass – Rice processing operations in Yolo County send agricultural waste to plant for its fuel supply.
  - Indian Valley Hydro Project – owned by a public agency within Yolo county
  - A VCEA customer has a project not located in Yolo County
- Option 3: Define a geographic boundary beyond and including Yolo county

Board questions and staff responses are summarized below:

- Are the existing area renewable resource prices competitive?

This will have to be looked at.

- I’m interested in VECA pursuing opportunities at Yolo County landfill and UC Davis campus. How and when might we pursue that?

A local business with PV. Interested in investing in solar panel and selling energy to VCE.

- VECA needs to look at long-term renewables and work bilaterally.

Public Comment

- Michael Day - One question that is closely related is energy storage – not directly mentioned here, but this is as important. Batteries are one form of energy storage, but there are other opportunities – water tower, wastewater treatment plant, and others.

Board Comment

- We need to think regionally.
- “Local” needs to have a geographic component.

Committee Advisory Committee Report General Manager's Report	None.  Mitch Sears, Interim General Manager <ul style="list-style-type: none"><li>Introduced Alisa Lembke as VCE's Board Clerk/Administrative Analyst and first employee.</li></ul>
Board Member and Staff Announcements	Chairperson Frerichs informed those present that he and the Vice Chairperson had a very productive check-in.

Meeting was adjourned at 6:38 p.m.

Emily Henderson  
Administrative Assistant

**VALLEY CLEAN ENERGY ALLIANCE  
Board of Directors Meeting**

**Staff Report Item – 6**

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**TO:** VCEA Board  
**FROM:** Mitch Sears, Interim General Manager  
**SUBJECT:** Long Range Calendar  
**DATE:** May 10, 2018

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**Recommendation**

Review and approve long range calendar.

**VALLEY CLEAN ENERGY**  
**2018 Meeting Dates and Topics – Board and Community Advisory Committee**

MEETING DATE		TOPICS	ACTION
May 10, 2018	<b>Board</b> WOODLAND	<ul style="list-style-type: none"> <li>Recontracting Master Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Approve</li> </ul>
June 4, 2018	<b>Advisory Committee</b> DAVIS	<ul style="list-style-type: none"> <li>Integrated Resource Plan</li> </ul>	<ul style="list-style-type: none"> <li>Informational</li> </ul>
June 1, 2018 -- LAUNCH			
June 6, 2018	<b>Board</b> DAVIS	<ul style="list-style-type: none"> <li>Integrated Resource Plan</li> </ul>	<ul style="list-style-type: none"> <li>Discussion</li> </ul>
June 28, 2018 (Tentative)	<b>Board</b> WOODLAND	<ul style="list-style-type: none"> <li>Integrated Resource Plan</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
July 2, 2018	<b>Advisory Committee</b> WOODLAND	<ul style="list-style-type: none"> <li>Integrated Resource Plan</li> </ul>	<ul style="list-style-type: none"> <li>Recommend</li> </ul>
July 12, 2018	<b>Board</b> WOODLAND	<ul style="list-style-type: none"> <li>Integrated Resource Plan</li> </ul>	<ul style="list-style-type: none"> <li>Approve</li> </ul>
July 30, 2018	<b>Advisory Committee</b> DAVIS	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
August 9, 2018	<b>Board</b> DAVIS	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
September 3, 2018	<b>Advisory Committee</b> WOODLAND	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>
Sept 13, 2018	<b>Board</b> WOODLAND	<ul style="list-style-type: none"> <li></li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>

October 1, 2018	<b>Advisory Committee</b> DAVIS	•	•
October 11, 2018	<b>Board</b> DAVIS	•	•
October 29, 2018	<b>Advisory Committee</b> WOODLAND	•	•
November 8, 2018	<b>Board</b> WOODLAND	•	•
December 3, 2018	<b>Advisory Committee</b> DAVIS	•	•
December 13, 2018	Board DAVIS	•	•

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 7

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To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager  
Shawn Marshall, LEAN Energy US

Subject: Regulatory & Legislative Update

Date: May 10, 2018

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**RECOMMENDATION:** Receive regulatory and legislative report.

### **BACKGROUND & DISCUSSION:**

Participation in CCA regulatory and legislative affairs is a critical aspect of VCEA’s long-term planning, operations, and risk management strategy that will grow in importance as VCEA draws closer to full operations. At present, LEAN Energy is providing regulatory monitoring and reporting on key regulatory issues affecting emergent CCAs. Once the contract with legal counsel, Keyes & Fox, is finalized we anticipate that most of the regulatory monitoring and subsequent action items will shift to their service contract. Cal-CCA, a statewide trade association of which VCEA is now a full member, participates in regulatory proceedings and also provides coordinated legislative support in Sacramento.

### **Regulatory Priorities**

Attached please find LEAN’s most recent regulatory report (dated May 4, 2018) which provides a summary overview and several links to supporting documents regarding key regulatory issues currently before the CPUC and other State Commissions. Please note that in the report, LEAN makes use of **yellow-shading** to highlight those items that are **new** to the report, and **green-shading** to highlight items that may be of **particular interest**.

### Priority issues called out in the May report include:

- Issuance of CPUC’s “Green Report” regarding CA Customer Choice Regulatory Framework Options for an Evolving Electricity Market (*see below*)
- PCIA Rulemaking (*see below*)
- CCA Bond Requirements (*see below*)
- Integrated Resource Planning
- Time of Use (TOU) Pilots and Applications
- RPS Procurement Plans
- Implementation of AB 1110 – Power Source Disclosures

**CPUC Green Report Issued:** As an outgrowth of the ongoing [CPUC Customer Choice Project](#), the CPUC conducted a webinar on May 3, 2018 to introduce the CPUC’s draft report, entitled

[California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market](#); also being referred to as the "Green Book." As described by the CPUC, the Green Book is designed to initiate a policy conversation among a wide range of stakeholders and interests about the future of California's electricity market. This draft report will inform the next stage of the Customer Choice Project to gather input before issuing a final paper (expected Summer 2018). Public comments on the draft report are due June 4<sup>th</sup> and another En Banc in Sacramento will be scheduled in mid June. (date TBD). Both LEAN and Cal-CCA are working on responses to this report.

### **Schedule of PCIA Reform (track 2) Process**

- May 7-11: Evidentiary Hearings
- June 1: Concurrent Opening Briefs/ Request for Final Oral Argument Filed and Served.
- June 15: Concurrent Reply Briefs.
- Late July 2018: Proposed Decision mailed for comment.

### **CCA Bond Requirements**

This rulemaking proceeding was originally opened in 2003 to implement the CCA enabling statute (Assembly Bill (AB) 117). However, this rulemaking is now focused on the methodology for setting the CCA Bond, which is intended to cover the costs of involuntary re-entry fees of CCA customers to bundled IOU service. Expected Adoption of the Final Decision is May 10<sup>th</sup>.

### **Legislative Priorities**

Shalini Swaroop, Policy Director at MCE and a member of the Cal-CCA legislative committee, recently reported on 5 bills that are on the Cal-CCA watch list. As of now, CCAs are not sponsoring any legislation in the 2018 session, but will remain engaged in these and other bills.

- AB 2208 (Aguiar-Curry) – Baseload in RPS
- SB 1135 (Hertzberg) – New Resource Adequacy Rules
- AB 2693 (Quirk) – Natural Gas Cost Recovery
- AB 2726 (Levine) – GHG Accounting Mechanisms
- SB 100 (De Leon) – 60% RPS in 2030, 100% Carbon-Free Grid in 2045

Cal-CCA is also actively engaged at the California Energy Commission regarding the implementation of AB 1110 (Ting) – GHG accounting and reporting methodology.

### **Attachments:**

LEAN Energy US May 2018 Regulatory Report  
Cal-CCA Quarterly Update



To: LEAN Energy Clients:  
Coachella Valley Association of Governments/Desert Community Energy  
East Bay Community Energy  
Monterey Bay Community Power  
City of San Luis Obispo  
Valley Clean Energy Alliance  
Western Riverside Council of Governments/Western Community Energy

From: Shawn Marshall, Executive Director, LEAN Energy US

Date: May 4, 2018

Subject: Regulatory Update #22, April/May 2018

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Each month, LEAN focuses on regulatory activities likely to have broad impact on the Community Choice Aggregation (CCA) community and emergent CCA programs. This memo provides an update on key developments at the California Public Utilities Commission (CPUC) and California Energy Commission (CEC) in the past month.<sup>1</sup> Since this memo is progressive, using information from last month's memo, LEAN makes use of **yellow-shading** to generally note those items that are new to the report, and **green-shading** to note those items that may be of particular interest. As a general matter, the information contained at the beginning of a section provides historical information on the issue, and is repeated from month-to-month in order to provide context.

## **CCA-SPECIFIC ACTIVITY**

### **1. Final Resolution E-4907**

**Only limited activity on this matter occurred in April, as noted below in yellow-shading.**

On December 8, the CPUC issued [Draft Resolution E-4907](#), (DR) proposing a registration and implementation plan process for CCA programs, including requirements on Resource Adequacy (RA) forecasting. The DR would have, in effect, delayed until 2020 the launch of any CCA program that had not submitted an Implementation Plan as of December 8. In response to submitted comments, revisions were made to offer flexibility for CCA programs that wish to serve load in 2019, but had not submitted an Implementation Plan as of December 8, 2017.

On February 8, the Commission approved [Final Resolution E-4907](#). The Energy Division gave a [presentation](#) at the Commission Voting Meeting to explain the purpose, requirements and revisions to Resolution E-4907. In sum, the Resolution requires that all CCA programs meet the same forecasting and contracting process for RA as all other Load Serving Entities (LSEs) prior to serving new customers. Energy Division claims the Resolution serves two major purposes: (1) to ensure that CCA programs are incorporated into the annual RA process when they launch or expand (to help avoid cost-shifting); and (2) to satisfy an outstanding order in D. 05-12-041, which required a process on how to submit

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<sup>1</sup> This monthly memo is designed to provide LEAN's clients with a current snapshot of key regulatory activities related to CCA in order to help them make informed decisions about whether and how to engage in regulatory processes during their program formation and early operations. This monthly report is not a comprehensive inventory of regulatory and statutory requirements impacting operational CCAs. Regulatory and statutory compliance requires a more comprehensive inventory than the subset of activities described herein, and must be tailored to the specific circumstances of each CCA program.

implementation plans for CCAs and obtain registration for RA. Energy Division states publication of this process will provide needed clarity to prospective communities about how to submit implementation plans and obtain registration.

The Final Resolution grandfathers all CCA programs that submitted implementation plans prior to December 8, 2017. Additionally, the Resolution also includes the Energy Division's plan to process CCA implementation plans submitted by March 1, 2018, within 45 days (which is half the statutory mandate of 90 days.) For CCAs that weren't grandfathered under either of these options, and want to serve load in 2019, there is a waiver process with two options:

1. The CCA can negotiate with the investor-owned utility (IOU) to buy RA needed to serve their load.
2. If the CCA is not able to buy the RA from the IOU, the CCA can submit a letter to the CPUC, and the RA will be assigned at a CPUC determined price.

#### **Recent Activity:**

- March 12: the City and County of San Francisco (CCSF) filed an [Application for Rehearing \(A. 18-03-005\)](#).
  - March 27: Joint IOUs' filed a [Response](#).
- April 16: PG&E and King City Community Power file [AL 5275-E](#) on RA allocation under Resolution E-4907.
- April 18: Energy Division [approves](#) SVCE-PG&E advice letter on RA allocation under Resolution E-4907.

## **2. Petition for Modification of the CCA Code of Conduct**

No relevant activity occurred on this matter last month.

On January 30, 2018, the Joint Utilities filed a [Petition for Modification](#) of CPUC [Decision 12-12-036](#), which adopted the CCA Code of Conduct as required by Senate Bill (SB) 790 (2011). The Joint Utilities request that the CCA Code of Conduct be modified to eliminate the current limitation imposed on utilities to refrain from "lobbying" against CCA programs, which is broadly defined as communicating with public officials or the public for the purpose of convincing a government agency not to participate in or to withdraw from a CCA program. The Joint Utilities claim that the current restriction is inhibiting their ability to provide timely and effective information to local governments on CCA formation decisions. Responses to the Petition for Modification were filed on March 1. (See [CalCCA Response](#), [WRCOG-LACCE-DCE Response](#), [Other Responses](#).) On March 12, the Joint IOUs filed [Reply Comments](#) addressing other parties' responses.

## **3. SCE Submittal of Advice Letter 3781-E Proposing Substantive CCA Tariff Changes**

On April 11, 2018, SCE submitted an Advice Letter 3781-E, which contains certain [Changes](#) to its CCA tariff. The changes were included in an advice letter that addressed various tariff changes. Among other things, SCE has proposed that it not be involved in rebilling for CCA charges, notwithstanding SCE's role as the exclusive billing service provider for CCA customers. SCE also proposes to modify the scope of its non-disclosure agreement with prospective CCAs, and to limit information that is provided to prospective and operational CCAs. On May 1, [CCEA](#), [CPA-WRCOG](#), and [CC Partners](#) filed extensive protests arguing that SCE's proposals are unjustified and that SCE's proposals should be considered in a formal proceeding.

## **4. Announcement of "Green Book" – Changes to the Retail Choice Regulatory Framework**

As an outgrowth of the [CPUC Customer Choice Project](#), the CPUC will be conducting a webinar (see [presentation](#)) on May 3, 2018 to introduce the CPUC's draft report, entitled [California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market](#). This draft report is also being referred to as the "Green Book." As described by the CPUC, the Green Book is designed to initiate a policy conversation among a wide range of stakeholders and interests about the future of California's electricity market. This draft report will inform the next stage of the process to gather input before issuing a final paper (expected Summer 2018).

#### **Next Steps:**

- June 4: Public comments on the draft report due
- Mid-June: En Banc in Sacramento (yet to be scheduled)

## **CPUC REGULATORY CASE DEVELOPMENTS**

### **1. Power Charge Indifference Adjustment (PCIA) Rulemaking Proceeding**

**To Do:**

LEAN is monitoring developments in the [PCIA Rulemaking Proceeding](#).

**Background:**

As previously reported, the topics for consideration in the PCIA rulemaking include:

- Improving the transparency of the existing PCIA process;
- Revising the current PCIA methodology to increase stability and certainty;
- Reviewing specific issues related to inputs and calculations for the current PCIA methodology;
- Considering alternatives to the PCIA;
- SB 350 considerations on the treatment of bundled retail customers and departing load customers;
- Status of PCIA exemptions for California Alternate Rate for Energy (CARE) and Medical Baseline (MB) customers.

On September 25, a [Scoping Memo](#) established two Tracks of the PCIA Rulemaking proceeding. [Track 1](#) is addressing exemptions from the PCIA for customers participating in the CARE and MB programs (PCIA Exemption). On March 28, PG&E filed a [Motion](#) seeking approval of a settlement agreement regarding the PCIA Exemption, which will apply to CCA customers that receive service prior to the date PG&E first starts phasing-out the PCIA Exemption (likely 2019). Phase-out will occur over a 4-year period in equal increments (e.g., 25% PCIA in 2020, 50% PCIA in 2021, 75% PCIA in 2022, and 100% PCIA in 2023). Alternatively, SCE moved forward to briefing on Phase 1 issues, with Opening Briefs filed February 20 (See: [SCE](#), [CCEA](#), [CforAT](#), [ORA](#), [LACCE/DCE/WRCOG](#)) and Reply Briefs filed on March 13 (See [Reply Brief Folder](#).)

[Track 2](#) is considering alternatives to the current PCIA methodology, with initial emphasis placed on how to get proper access to PCIA data through a protective order. Direct testimony was filed April 2. ([CalCCA Testimony](#); [Joint IOUs](#); [Combined Folder](#) of all Testimony; [CalCCA Press Release](#); [CalCCA Testimony Fact Sheet](#).)

On March 2, an [Amended Scoping Memo](#) was issued establishing a new schedule for the proceeding (reflected below).

**Recent Activity:**

**Track 1 – PCIA Exemption**

- April 27: No responses were filed on PG&E’s joint motion for approval of settlement agreement.

**Track 2 – PCIA Successor**

- April 23: Rebuttal Testimony of [CalCCA](#) and [Joint IOUs](#). (See [Folder](#) of all Rebuttal Testimony.)
- April 24: Joint IOU [Request](#) for Oral Argument.

**Next Steps:**

**Track 1 – PCIA Exemption**

- May or June: Expected issuance of a Proposed Decision on the PG&E settlement and on contested matters litigated by SCE and parties.

## ***Track 2 – PCIA Successor***

- **May 7-11: Evidentiary Hearings.**
- June 1: Concurrent Opening Briefs/ Request for Final Oral Argument Filed and Served.
- June 15: Concurrent Reply Briefs.
- Late July 2018: Proposed Decision mailed for comment.

## **2. Integrated Resource Planning (IRP)**

### ***To Do:***

LEAN is monitoring [this proceeding](#) and considering forming a working group to address CCA IRP issues.

### ***Background:***

This rulemaking proceeding addressed the new IRP requirements associated with SB 350, as well as long-term procurement planning (LTPP) policies. On May 16, 2017, the Energy Division issued [their proposal](#) on the IRP planning process. As previously reported, the Energy Division proposed a prescriptive approach, with significant requirements on Community Choice Aggregators serving 700 GWh or more per year in electric load; Community Choice Aggregators serving less than 700 GWh per year will be subjected to fewer requirements.

On December 28, Assigned Commissioner (Randolph) issued a [Proposed Decision](#) (PD) setting requirements for CCA programs and other LSEs' IRPs and adopting a two-year planning cycle for the CPUC to consider IRP filings. (See [Initial Summary and Recommendation](#).) As written, the PD minimized the role of local CCA governing boards in approving IRPs and elevated the CPUC's role over such IRPs. On January 17, Parties filed Opening Comments on the PD ([CalCCA](#), [SCE](#) and [Folder](#) of all Opening Comments.) On January 22, Parties filed Reply Comments on the PD ([CalCCA comments](#)).

On February 8, the CPUC approved [D.18-02-018](#) (see [Redline PD](#)). Of note, the decision moves the first IRP submittal date from June 1 to August 1, 2018. The decision also acknowledges a certain degree of distinction and separation between the CPUC and local governing boards, but does not go as far as CalCCA had requested. The decision also clarified that any CCA that has an approved implementation plan as of the scheduled IRP filing date should be required to file an IRP, even if it is not yet serving load. The decision maintained the "Alternative" Plan approach for CCAs serving less than 700 GWh per year in load, but added a number of additional requirements for these IRP submittals (see [D.18-02-018](#) at 135). On February 28, several parties (including PG&E and Natural Resources Defense Council) jointly filed a [Petition for Modification](#) seeking to modify D.18-02-018 to authorize greenhouse gas-free procurement to replace Diablo Canyon. On March 30, [CalCCA](#) filed a response, requesting that the Petition for Modification be rejected. (See [Other Parties' Responses](#)).

### ***Recent Activity:***

- April 3: ALJ [Ruling](#) Seeking Comment on GHG Emissions Accounting Methods and Providing Updated GHG Benchmarks.
  - April 20: Comments of [CalCCA](#), [Joint IOUs](#), [Riverside CCA](#), [San Jacinto](#), [RMEA](#), and [CMUA](#).
  - April 30: Reply Comments of [CalCCA](#) and [Joint IOUs](#).
- April 9: PG&E and Other Parties' [Reply](#) to Responses to the Petition for Modification of [D.18-02-018](#).
- April 16: [Ruling](#) granting Valley Clean Energy Alliance (VCEA) Motion for Party Status and noting that new CCAs are not required to submit motions for party status before their August 1, 2018 IRP filing deadline.
- April 23: Informal Comments of [PG&E](#) and [SCE](#) to Draft Sources for [2019-2020 IRP Supply Side Resources](#).
- April 27: IRP Modeling Advisory Group Webinar. (See [Agenda](#) and [Slides](#)).
- April 30: CARB SB 350 IRP Workshop. (See [Notice](#).)

### ***Next Steps:***

- August 1: IRP filings by individual CCAs.

### 3. CCA Bond Requirements

**To Do:**

LEAN will continue to monitor [this proceeding](#).

**Background:**

This rulemaking proceeding was originally opened in 2003 to implement the CCA enabling statute (Assembly Bill (AB) 117). However, this rulemaking proceeding is now simply focused on the methodology for setting the CCA Bond, which is intended to cover the costs of involuntary re-entry fees of CCA customers to bundled IOU service.

**Recent Activity:**

- April 6: [Proposed Decision](#) establishing reentry fees and financial security requirements for CCAs. (See [Rev. 1](#), reflecting non-substantive changes.)
- April 26: Opening comments on PD (See [Joint Utilities](#) and [CalCCA](#)).

**Next Steps:**

- May 1: Reply comments on PD.
- May 10: Expected adoption of Final Decision.

### 4. Resource Adequacy (RA) Rulemaking

**To Do:**

LEAN will monitor developments in this [RA Rulemaking Proceeding](#).

**Background:**

The CPUC regularly considers RA-related matters in a rulemaking proceeding. This proceeding was instituted in September 2017, and on January 18, 2018, a [Scoping Memo](#) was issued. Among other things, RA-related issues associated with CCA load migration will be addressed in a decision by June 1, 2018.

On February 16, RA proposals were filed (See [Energy Division](#), [CCA Parties](#), [SCE](#), [PG&E](#) and [Folder](#) of all Proposals.) A workshop to discuss these proposals took place on February 22-23. (See [Agenda](#), [ED Presentation](#) and [Email Ruling](#) noting issues for comment.) On March 7, parties filed Opening Comments on the Track 1 Proposals and Workshop ([CCA Parties'](#), [PG&E](#), and [SCE](#); See [Folder](#) with all) and Reply Comments were filed March 16 ([CCA Parties'](#), [PG&E](#), and [SCE](#); See [Folder](#) with all reply comments).

**Recent Activity:**

- April 23: CAISO filed [Report](#) on local capacity and flexible capacity needs.
- April 24: Working Group meeting on RA Reforms (see [Working Group Questions](#)).
- April 27: CalCCA [Motion](#) for Leave to Submit RA-related Information to Staff Under Seal.

**Next Steps:**

- May 2018: Proposed Decision on Track 1 Proposals.
- July 10: Revised date for submission of Track 2 opening testimony.

## 5. Residential Rates, Default Time of Use (TOU), and Marketing Education and Outreach (ME&O)

### **To Do:**

LEAN will monitor developments in the [Residential Rate Rulemaking](#) and [Rate Design Window Applications](#).

### **Residential Rate TOU-Pilots**

On June 28, a [Draft Resolution](#) was issued on PG&E's *Pilot* Residential Rate TOU program. MCE and SCP are the only CCAs participating in PG&E's Pilot TOU program; all other CCAs are excluded from participation. On July 31, MCE and SCP submitted [comments](#) on the Draft Resolution, expressing concern about PG&E's lack of progress in providing a comparable bill-comparison tool for CCA customers. On August 10, a [Final Resolution](#) approved PG&E's Residential Rate TOU Pilot program. The resolution clarified that PG&E may recover costs necessary to provide CCA customers with rate comparisons for the default pilot entirely through distribution rates. However, the resolution declined to provide any direction regarding the appropriate method or cost recovery for creating a long-term rate comparison tool solution for CCA customers.

### **Residential Default TOU-ME&O**

On September 26, the CPUC submitted [Draft Resolution E-4882](#) addressing PG&E's ME&O on Residential *Default* TOU Rates. On October 30, [CCA parties](#) (MCE, SCP and SVCE) submitted a response to the Draft Resolution, arguing that CCA representatives should be involved in the development of marketing material. On December 14, the Commission approved PG&E's ME&O plan with [Final Resolution E-4882](#), which now recognizes the need for coordination with CCAs in ME&O efforts.

On December 14, a final decision ([D.17-12-023](#)) was issued in the residential rate rulemaking on statewide ME&O. This decision expands the existing Energy Upgrade California campaign and permits IOUs to switch customers to TOU rates in waves. (See [Redlined Version](#).)

On January 5, the Commission issued [Draft Resolution 4895](#), approving SCE's ME&O Plan for Residential *Default* TOU Rates; CCEA submitted [Comments](#) on the DR. On February 8, the Commission approved [Final Resolution E-4895](#). The resolution required SCE to file a Tier 2 advice letter to provide a proposal describing how it intends to engage with CCAs in its service territory regarding the development of default TOU ME&O materials.

### **Recent Activity:**

- March 30: PG&E [AL 5263-E](#), submitting CCA coordination plan pursuant to Resolution E-4882.
  - April 19: CCA Parties [Protest](#), requesting more coordination with CCAs.
  - April 26: PG&E [Reply](#), confirming that issues will be addressed in the consolidated proceeding.
- March 30: SCE [AL 3777-E](#), submitting CCA engagement plan pursuant to Resolution E-4895.
  - April 19: CCEA [Protest](#), requesting more coordination with CCAs.
  - April 26: SCE [Reply](#), confirming that issues will be addressed in the consolidated proceeding.

### **Default TOU- IOU Applications**

On December 20 and 21, PG&E and SCE filed their Rate Design Window (Default TOU) Applications ([PG&E Application and Testimony](#); [SCE Application and Testimony](#)). On January 22, parties filed Protests/Responses to the applications. (See CCA Parties' [Protest](#) to PG&E and East Bay Community Energy [Response](#) to PG&E; see CCEA [Protest](#) to SCE).

On January 25, ALJ Tsen issued a [Ruling](#) consolidating the three IOU Rate Design Window applications ([PG&E - A.17-12-011](#), [SCE - A.17-12-012](#), [SDG&E - A.17-12-013](#)). On February 14, a joint [Prehearing Conference Statement](#) was filed, and

a [Prehearing Conference](#) was held on February 21. On February 23, the CCA Parties' and CCEA filed a [Supplemental Prehearing Conference Statement](#), further arguing that the issue of cost allocation is within the scope of the proceeding.

On March 1, a [Scoping Memo](#) was issued for Phase 1, which addressed PG&E's and SCE's requests to delay roll-out until late-2020. Opening Comments on Phase 1 were filed March 12 ([PG&E](#), [SCE](#), [SDG&E](#), [ORA](#), [EDF](#), [CFC](#)) and Reply Comments were filed March 19 ([PG&E](#), [SCE](#), [SDG&E](#), [CforAT](#), [EDF](#), [CCA Parties](#), [UCAN](#)).

**Recent Activity:**

- April 10: Phase 2/3 [Scoping Memo](#), setting schedule for remainder of consolidated proceeding.
- April 20: Phase 1 [Proposed Decision](#), authorizing PG&E and SCE to begin transitioning eligible residential customers to TOU rates later than originally expected: now October 2020.

**Next Steps:**

- October 26: Intervenor Testimony for Phase IIB (most CCA related issues).
- December 7: Rebuttal Testimony for Phase IIB (most CCA related issues).

## 6. Renewables Portfolio Standard (RPS)-Procurement Plans

**To Do:**

A final decision was adopted in [this proceeding](#). No relevant activity occurred on this matter last month. LEAN will continue to monitor any developments.

**Background:**

This rulemaking proceeding addresses ongoing oversight of the RPS program, including review of procurement plans and reporting on RPS progress. The following CCA-related RPS Procurement Plans were submitted July 21, 2017:

- [Apple Valley Choice Energy](#)
- [Lancaster Choice Energy \(LCE\)](#)
- [Silicon Valley Clean Energy \(SVCE\)](#)
- [MCE](#)
- [Peninsula Clean Energy \(PCE\)](#)
- [Pico Rivera Innovative Municipal Energy \(PRIME\)](#)
- [Redwood Coast Energy Authority \(RCEA\)](#)
- [SCP](#)

On September 22, [Apple Valley Choice Energy](#), [PRIME](#), [SVCE](#) and [LCE](#) submitted Updated 2017 RPS Procurements Plans. On November 1, several CCAs submitted supplemental compliance documents. On November 14, a [Proposed Decision](#) was issued, approving all of the submitted CCA RPS procurement plans. On December 4, comments were filed on the PD by [PG&E](#), [SCE](#), and [CCA Parties](#) (LCE, MCE, RCEA, SVCE, SCP). On December 11, Reply Comments were filed. (See [PG&E](#) and [Summary of Reply Comments](#).) On December 12, the [Agenda Redline Decision](#) accepted CCA Parties' request on the submission date for new CCAs. On December 14, the CPUC adopted the Final Decision ([D.17-12-007](#)). On January 11, [PG&E](#), [Monterey Bay Community Power Authority](#) and [San Jacinto Power](#) filed 2017 RPS Procurement Plans, followed on January 31 by [Rancho Mirage](#). On March 2, [Valley Clean Energy Alliance](#) filed its 2017 RPS Procurement Plan.

## 7. Green Tariff Shared Renewables (Green Tariff or GTSR)

### To Do:

No relevant activity occurred on this matter last month. LEAN will monitor developments.

### Background:

The Green Tariff program was authorized in SB 43 (2013). The program allows the utilities an opportunity to offer optional Green Tariff rates for customers electing to receive a higher level of renewable energy. The CPUC approved the programs in D.15-01-051. In that decision, the CPUC set a termination date of January 1, 2019 and required the utilities to file advice letters to extend the programs. On December 22, PG&E filed [AL 5206-E](#) proposing modifications to its Green Tariff program, and SCE filed [AL 3722-E](#), proposing to terminate its Green Tariff program due to low subscription rates. (See PG&E's [2016 Annual GTSR Report](#) and SCE's [Annual GTSR Progress Report](#).)

On February 2, protests were filed on IOU advice letters. (SCE AL 3722-E: [Joint Parties](#), the [Joint Solar Interests](#), [Clean Coalition](#), and [ORA](#); PG&E AL 5206-E: [CCA Parties](#), [CCSF](#), [ORA](#), [SEIA](#) and [CCSA](#)). On February 9, the IOUs filed replies to the protests ([SCE](#) and [PG&E](#)). On February 21, the Annual Green Tariff program forum took place (See [Agenda](#) and [Presentation](#).)

### Recent Activity:

- March 15: PG&E [2017 Annual Progress GTSR Report](#) and SCE [Annual GTSR Progress Report](#).

### Next Steps:

- Disposition letter or draft resolution in response to PG&E and SCE advice letters.

## 8. SDG&E's Request to Establish a Marketing Affiliate (Advice Letter 2822-E) (CCA Code of Conduct)

### To Do:

No relevant activity occurred on this matter last month. LEAN will continue to monitor activity related to this matter.

### Background:

On January 27, 2017 SDG&E filed a revised compliance plan, [Advice Letter 3035](#), for its Independent Marketing Division (IMD). On February 16, 2017 LEAN joined with other parties in [protesting](#) this latest advice letter. On April 6, 2017 the Energy Division issued a [Disposition Letter](#) approving AL 3035. On April 17, 2017 the CalCCA sent a [letter](#) to the CPUC requesting full Commission review of the Disposition Letter, and reiterating an earlier request for an Order to Show Cause regarding lobbying activity that SDG&E/Sempra conducted before the Advice Letter was approved. CalCCA's request, however, does not suspend the effectiveness of the Energy Division's approval. CPUC staff indicated in a teleconference on July 24, 2017 that no formal action will be taken on the Order to Show Cause.

On a matter related to the CCA Code of Conduct, Cal Choice submitted a [Letter](#) to assigned Commissioners on September 25, 2017. The letter expressed concern for SCE's conduct in forming a coalition related to the PCIA. On September 28, SCE submitted a [Response](#).

### Next Steps:

- The CPUC's Energy Division will prepare a draft resolution addressing CalCCA's request for full Commission review of the disposition letter. **This request is long overdue.**
- Separately, the CPUC's Legal Division is preparing a decision responding to SDG&E's application for rehearing of



Resolution E-4874, which determined that SDG&E's IMD is also subject to the CPUC's affiliate transaction rules.

## 9. Tree Mortality Nonbypassable Charge (NBC)

### **To Do:**

LEAN will continue monitoring [this proceeding](#).

### **Background:**

On November 14, 2016, the Joint Utilities filed their proposal to establish a Tree Mortality NBC ([Testimony](#).) CalCCA filed a [Protest](#). On July 14, 2017 CalCCA filed a [motion](#) arguing that parties should be allowed to argue for different cost recovery treatment for costs that have been statutorily authorized, on the one hand, versus costs that have simply been authorized by the CPUC. On December 12, 2017, there was an Informal Workshop on BioRAM NBC Mechanism IOU/CCA proposals. (See [Agenda](#), [CalCCA](#) and [IOUs](#) Presentations.) An initial settlement teleconference took place on January 5. On March 14, 2018, a [Ruling](#) denied CalCCA's Motion to include consolidated cost recovery issue in scope of application

### **Recent Activity:**

- April 17: ALJ [Ruling](#) requesting comments on Energy Division [Staff Proposal](#) (which proposes to determine above-market costs by subtracting aggregate 2016 RPS PPA costs from BioRAM PPA costs.)

### **Next Steps:**

- May 11/May 18: Opening/Reply Comments on Staff Proposal.
- TBD: A Scoping Memo will be issued defining the scope of issues and procedural schedule.

## **CEC REGULATORY CASE DEVELOPMENTS**

### **1. Implementation of AB 1110 – Power Source Disclosure**

#### **To Do:**

LEAN is monitoring developments in this [CEC Proceeding](#). (See [OIR](#).)

#### **Background:**

This proceeding considers modifications to the Power Source Disclosure Program. Retail sellers, which includes CCAs, will be required to disclose both GHG emissions intensity of their respective electricity portfolios offered to customers and the CEC's calculation of GHG emissions intensity associated with all statewide sales. Retail sellers will also annually report other information to verify procurement claims and environmental claims made for the previous year. The CEC is required to adopt program guidelines by January 1, 2018. On June 27, 2017, CEC staff issued the [AB 1110 Implementation Proposal](#). Numerous parties have submitted comments on the proposal. On September 18, PCE submitted a fairly detailed set of [Comments](#). On January 17, 2018, the CEC released the [Revised AB 1110 Implementation Proposal](#) for Power Source Disclosure.

On February 1, 2018, there was a staff workshop on the updates to the Power Source Disclosure regulations (see [Notice](#), [Slides](#), and [Transcript](#)). On February 23, parties filed comments on the Revised Proposal (See [CalCCA Comments](#) and [Joint Utility](#) comments).

#### **Recent Activity:**

- April 10: [PG&E Comments](#) Following Technical Meeting.

**Next Steps:**

- CEC staff continues to work on the AB 1110 Implementation Proposal. AB 1110 set a January 1, 2018 CEC adoption timeframe, with reporting of GHG intensity occurring after December 31, 2018, though this adoption timeframe may be extended.

**CPUC/CEC – JOINT ACTIVITY**

**1. Environmental Justice (EJ) and Disadvantaged Communities (DAC) Issues**

**To Do:**

LEAN will monitor any developments related to the new DAC Advisory Group.

**Background:**

SB 350 requires that the CPUC and the CEC create a DAC Advisory Group (DACAG), which will assist the two Commissions in understanding how energy programs impact these communities. On July 31, the CPUC and the CEC provided notice of their [proposal](#) to establish the DACAG. (See [summary](#).) On November 1, the CPUC released a [Draft Resolution](#) and a [Solicitation Letter](#) proposing to establish a charter for the DACAG. On December 13/14, the CEC/CPUC approved the DACAG charter (see CPUC [Resolution](#)); the CEC subsequently [approved](#) 10 members of the DACAG. On April 4, the first [meeting](#) took place at the CEC. On a related note, on March 2, CCEA submitted a [Proposal](#) to provide CCA support services in the San Joaquin Valley.

**Next Steps:**

- April 6: Parties filed comments on CCEA’s San Joaquin proposal. (See [TURN](#), [Greenlining](#) and [Pilot Team](#)).

**CA Air Resources Board (CARB) ACTIVITY**

**1. Low Carbon Fuel Standard**

**To Do:**

LEAN will monitor key CCA-related developments in the California Air Resources Board’s (CARB) review of proposed regulations related to the Low Carbon Fuel Standard (LCFS). [CARB’s LCFS Webpage](#)

**Background:**

CARB is considering LCFS amendments that staff expect will be adopted in 2018. The proposed changes range from simple updates to improve the program’s overall effectiveness, to more significant proposals for improving California’s long-term ability to support the consumption of increasingly lower-Carbon Intensity fuel. (See [Current LCFS Regulations](#).) On February 20, CARB posted the [Draft Proposed Regulation Order](#). CCAs are participating in the proceeding to address various issues associated with the CCAs’ promotion of transportation electrification and electric vehicle efforts.

**Recent Activity:**

- April 23: Various parties submitted comments on the draft regulations:
  - [Public Comments Folder](#)
  - [Smart EV Charging Group \(Various CCAs, ChargePoint et al.\)](#) Comments.
- April 27: Public hearing to consider proposed amendments to the LCFS regulations. (See [Notice](#).)

**Next Steps:**

- Possible revision of proposed amendments to the LCFS regulations.

**California Community Choice Association (CalCCA) represents the interests of California’s community choice electricity providers in the legislature and at state regulatory agencies.**

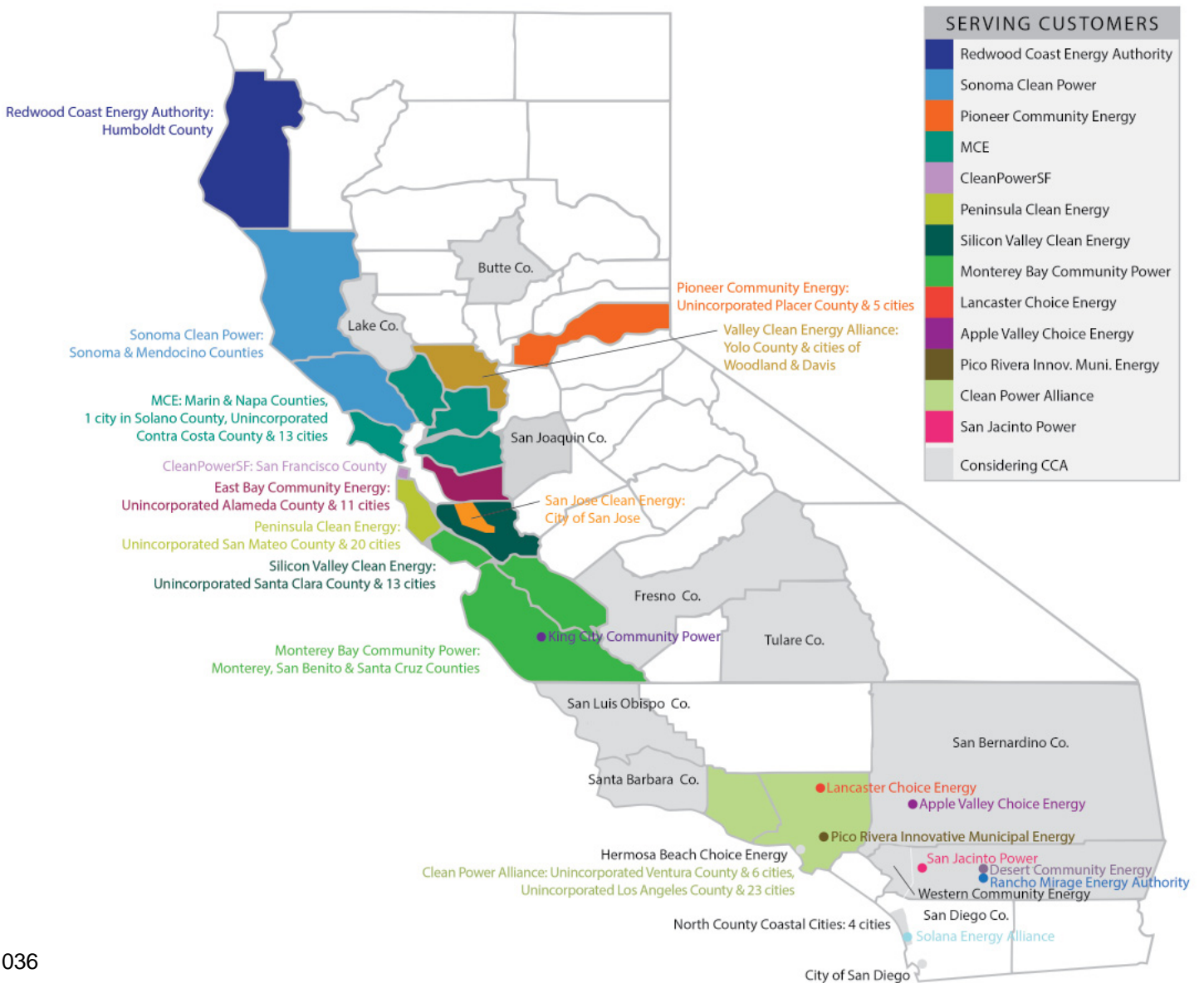
## 16 Operational Members

Apple Valley Choice Energy • CleanPowerSF • Clean Power Alliance • Desert Community Energy • East Bay Community Energy • Lancaster Choice Energy • MCE • Monterey Bay Community Power • Peninsula Clean Energy • Pico Rivera Innovative Municipal Energy • Pioneer Community Energy • Redwood Coast Energy Authority • San Jose Clean Energy • Silicon Valley Clean Energy • Sonoma Clean Power • Valley Clean Energy Alliance •

## 9 Affiliate Members

Central Coast Power • City of Corona • City of Hermosa Beach • City of Industry • North County Coastal Cities • San Jacinto Power • City of San Luis Obsipo • Solana Energy Alliance • Western Riverside Council of Governments •

### California Community Choice Aggregation Programs



## Apple Valley Choice Energy (AVCE)

**Launched in April 2017, AVCE serves ~28,000 customers in the Town of Apple Valley, San Bernardino County. AVCE offers CoreChoice 35% renewable and MoreChoice 50% renewable energy service.**

### AVCE Celebrated One-Year Anniversary with Continued Rate Savings

Before it's launch, the Apple Valley Town Council adopted a rate schedule to ensure sufficient revenue to cover operating expenses and provide for reserves. AVCE customers continue to receive a minimum of 3% savings on the energy generation portion of their bill. In addition, residents that are in the CARE program receive approximately 13% savings on the energy generation rates and Net Energy Metering customers benefit by receiving more than double the credits currently provided by Southern California Edison.

## CleanPowerSF

**Launched in 2016, CleanPowerSF serves ~82,000 customers in San Francisco. CleanPowerSF offers Green 40% renewable and SuperGreen 100% Green-e certified renewable energy service.**

### Citywide Enrollment & Education

In preparation to complete citywide enrollment by July 2019, CleanPowerSF is enrolling additional residential and commercial customers in July 2018 and April 2019. Outreach is underway to educate customers about the CleanPowerSF program.

## Clean Power Alliance (CPA)

**Launching in 2018, CPA will serve 31 communities including Agoura Hills, Alhambra, Arcadia, Beverly Hills, Calabasas, Camarillo, Carson, Claremont, Culver City, Downey, Hawaiian Gardens, Hawthorne, LA County, Malibu, Manhattan Beach, Moorpark, Ojai, Oxnard, Paramount, Redondo Beach, Rolling Hills Estates, Santa Monica, Sierra Madre, Simi Valley, South Pasadena, Temple City, Thousand Oaks, Ventura County, West Hollywood, and Whittier.**

### New Name Adopted

Los Angeles Community Choice Energy Authority adopted Clean Power Alliance of Southern California as its new legal name.

### Service Launched & Expanding Through 2019

Service in unincorporated LA County, Rolling Hills Estates, and South Pasadena began in February for municipal buildings and commercial building service is scheduled for June. Service to all other customers in its service area is scheduled for early 2019.

## East Bay Community Energy (EBCE)

**EBCE will serve 11 cities in Alameda County including Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, and Union City.**

### Service Launching June 2018

Service is launching to municipal and commercial customers in June 2018, and residential customers in November 2018. Net Energy Metering customers will begin service in 2019.

### Cleaner, Lower Cost Service Options

EBCE will offer Bright Choice 38% renewable, 85% carbon-free, at a 1.5% discount compared to PG&E and Brilliant 100 40% renewable, 100% carbon-free, at the same cost as PG&E. Brilliant 100 will be the default service for Albany and Hayward customers. Several cities have passed resolutions to opt up municipal accounts to Brilliant 100, including Albany, Emeryville, Hayward, and Piedmont.

## Lancaster Choice Energy (LCE)

**Launched in 2015, LCE serves ~55,000 customers in Lancaster, north Los Angeles County. LCE offers ClearChoice 35% renewable and SmartChoice 100% renewable energy service, with approximately half of its customers eligible for low-income energy programs. Lancaster is aiming to be the nation's first zero net energy city.**

### CPUC Certified LCE's Elect to Administer Energy Efficiency Program Plan

The CPUC has issued draft Resolution E-4917 approving a budget of \$1,174,996 for LCE's 3-year energy efficiency program.

- » The Small Commercial Direct Install Program will provide no- and low-cost retrofits to reduce demand and energy consumption for commercial customers with peak electric demand of 200 kW or less per month. LCE will provide a free on-site assessment to eligible customers and recommend measures such as LED lighting, fluorescent lighting, hi-bay lighting, refrigeration, LED signs, occupancy sensors, smart power strips, and communicating programmable thermostats.
- » The Residential Energy Advisor Program will provide free information on energy efficiency products, programs, and evaluation services which will include telephone administered home surveys to recommend upgrades or applicable programs. In-person audits and information about home upgrades, plug loads and appliances, income-qualified programs, financing programs, and other local government programs will also be provided.

## MCE

Launched in 2010, MCE serves ~470,000 customers in Marin County, Napa County, unincorporated Contra Costa County and the cities of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek. MCE offers Light Green 50% renewable and Deep Green 100% renewable energy service.

### 2017 Energy Efficiency Savings

Small businesses saved 1,453,000 kWh, 838 therms, and 270 kW in demand reduction through MCE's energy efficiency program.

### Service Launched to 9 New Contra Costa County Communities in April

MCE expanded its service area to include 9 additional communities in Contra Costa, adding approximately 200,000 customers.

## Monterey Bay Community Power (MBCP)

**MBCP offers service in Santa Cruz, Monterey, and San Benito Counties. Service to commercial customers launched in March 2018 and residential service is scheduled for July 2018.**

### Customer Rebates and Community Investment

In 2018, MBCP plans to provide \$4 Million in customer rebates and invest \$3 million in local GHG reducing programs while building reserves for financial stability.

MBchoice, the primary service for automatic enrollment, provides a 3% rebate on generation charges, annually in December.

- MBgreen+ directs the 3% rebate to invest in the build-out of new, local renewables.
- MBshare directs the 3% rebate to fund local low-income and/or nonprofit GHG reduction programs.
- MBprime provides 100% renewable electricity for one extra penny/kWh. Customers may keep their rebate or direct it to MBgreen+ or MBshare.

## Peninsula Clean Energy (PCE)

**Launched in October 2016, PCE serves ~290,000 customers in San Mateo County. PCE offers ECOplus 50% renewable and ECO100 100% renewable energy service.**

### Increasing GHG-Free Content 5% annually to 100% GHG-Free by 2021

Greenhouse gas-free content for ECOplus increased to 85% in 2018, while maintaining a 5% discount compared to PG&E.

### Communications Efforts for Hard to Reach Communities

PCE awarded grants to five local nonprofits to communicate with low-income and native Spanish and Chinese speakers about PCE energy discount programs.

### Municipalities Going 100% Renewable

The County of San Mateo, local transit agencies, and 15 of 20 cities have enrolled in ECO100 100% renewable energy service.

## Pico Rivera Municipal Energy (PRIME)

**Launched in September 2017, PRIME serves ~18,000 customers in the City of Pico Rivera, Los Angeles County. PRIME offers PRIME Power 50% renewable and PRIME Future 100% renewable energy service.**

## Pioneer Community Energy

**Launched in February 2018, Pioneer serves ~81,000 customers in unincorporated Placer County, Auburn, Colfax, Loomis, Lincoln, and Rocklin.**

### Average 9% Rate Savings for Residents and Businesses

## Rancho Mirage Energy Authority

**The City of Rancho Mirage will launch service on May 1 and offer Base Choice 35% renewable energy service.**

## Redwood Coast Energy Authority (RCEA)

**Launched in May 2017, RCEA serves ~62,000 customers in Humboldt County, Eureka, Arcata, Fortuna, Ferndale, Blue Lake, Rio Dell, and Trinidad. RCEA offers REpower 40% renewable and REpower+ 100% renewable energy service.**

### Local Power Generation

RCEA is exploring an offshore wind energy project on the coast of Humboldt County and is also partnering with Schatz Energy Research Center/Humboldt State University, the County of Humboldt, and PG&E to build a \$9 million microgrid, featuring a 9-acre 2.25 MW solar array and 8 MWh of energy storage at Humboldt's regional airport. The project is expected to provide wholesale electricity to RCEA, as well as emergency resiliency and energy savings.

## Electric Vehicle (EV) Program

RCEA operates 14 public EV charging sites that have provided 11, 281 sessions, saving 113,680 lbs of CO2 emissions since 2011. There are 908 EV drivers registered in Humboldt County. All RCEA's EV charging meters are opted up to 100% renewable energy.

## Community Advisory Committee

RCEA's Community Advisory Committee is expanding to include up to 15 members to provide decision-making support and input to the RCEA Board while engaging with the community.

### San Jacinto Power (SJP)

**Launched in April 2018, San Jacinto Power serves ~15,000 customers in City of San Jacinto, Riverside County serves. SJP offers PrimePower 35% renewable and EverGreen 100% renewable energy service.**

### San Jose Clean Energy (SJCE)

**Launching in September 2018, SJCE will serve the City of San Jose, the 10th largest city in the US and the 3rd largest City in California**

### Silicon Valley Clean Energy (SVCE)

**Launched in April 2017, SVCE serves ~242,000 customers in Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale, and the unincorporated parts of Santa Clara County. SVCE offers GreenStart 50% renewable and GreenPrime 100% renewable energy service.**

## Lower Rates

SVCE's Board of Directors set electric generation rates effective April 1, 2018, saving average residential customers \$40 annually.

### Solana Energy Alliance (SEA)

**Launching service on June 1, 2018, SEA will be the first CCA in San Diego County. SEA will offer options for customers to upgrade to a 100 percent renewable energy program called SEA Green. Customers with solar panels can join the SEA net energy metering program to get credit for electricity their systems return to the grid.**

### Sonoma Clean Power (SCP)

**Launched in 2014, SCP serves ~221,000 customers in Sonoma and Mendocino counties. SCP offers CleanStart 42% renewable/90% carbon-free and EverGreen 100% local, renewable energy service.**

## Awarded California Energy Commission (CEC) Grant

The CEC's EPIC Grant, which offers just over \$13 million in grant funding, could lead to a doubling of energy efficiency savings in existing buildings over a three-year period. The bulk of the budget will go towards building out a physical Energy Marketplace, which would be a storefront partnership offering a regulated marketplace for energy products, training, and contractor referral.

## Wildfire Recovery Efforts

SCP staff continue to support the County of Sonoma, City of Santa Rosa, Sonoma County Transportation Authority, Association of Bay Area Governments, and the Governor's Office to form a Renewal Enterprise District (RED) to reduce the cost and development risk of new housing by pooling public financing for infrastructure, and seeking greater regulatory certainty for projects that are climate-friendly, and built in priority areas (e.g., transit-friendly, walkable, previously-developed). SCP is also launching the Advanced Energy Rebuild program (in conjunction with PG&E and the Bay Area Air Quality Management District) in early May to promote rebuilding homes destroyed in the wildfires to a high standard of energy efficiency, and to make going carbon free easy.

## Long-Term Renewable Power Supply Contracts

SCP received 81 offers for long-term (10 years or longer) Category 1 RPS-eligible renewable resources ranging from wind, solar, and geothermal all over the Western Interconnect. SCP is entering Power Purchasing Agreements with three developers for Northern California projects including 20 MWs of solar, 80 MWs of wind, and a 50 MW solar project with 5 MWs of energy storage to begin generating from 2020 through mid-2023.

### Valley Clean Energy (VCE) Alliance

**Launching in June 2018, VCE will serve customers within the cities of Woodland, Davis, and unincorporated areas of Yolo County.**

## Sacramento Municipal Utility District Agreement

SMUD will provide technical and energy services on a contract basis to VCE, including data management and call center services, wholesale energy services, credit support services, and up to five years of business operations support. VCE maintains full program control/autonomy and operational flexibility while taking advantage of SMUD's extensive energy sector experience.

## Energy Choice

VCE will offer LightGreen 42% renewable at a 2.5% discount compared to PG&E, and UltraGreen 100% renewable energy at a slightly higher rate.

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 8

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**TO:** Valley Clean Energy Alliance Board of Directors  
**FROM:** Mitch Sears, Interim General Manager, VCEA  
**SUBJECT:** Customer Enrollment Update (Information)  
**DATE:** May 10, 2018

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### **RECOMMENDATION**

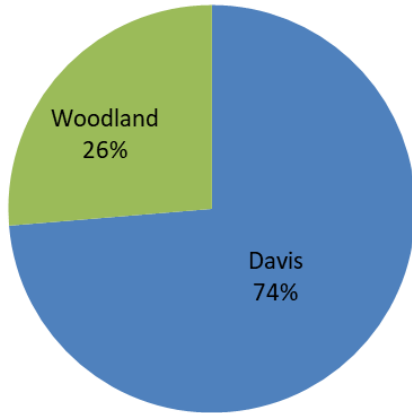
Receive, review and approve the attached Customer Enrollment update provided by SMUD.



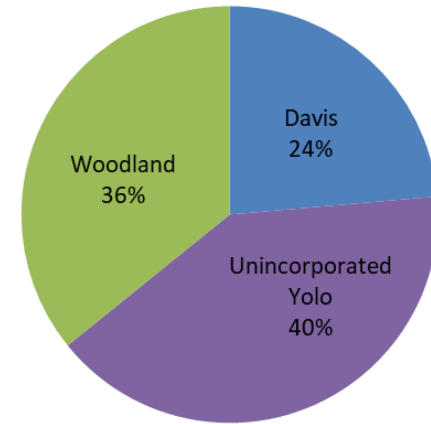
# VCE Enrollment Activity Update

Status Date: 5/1/18

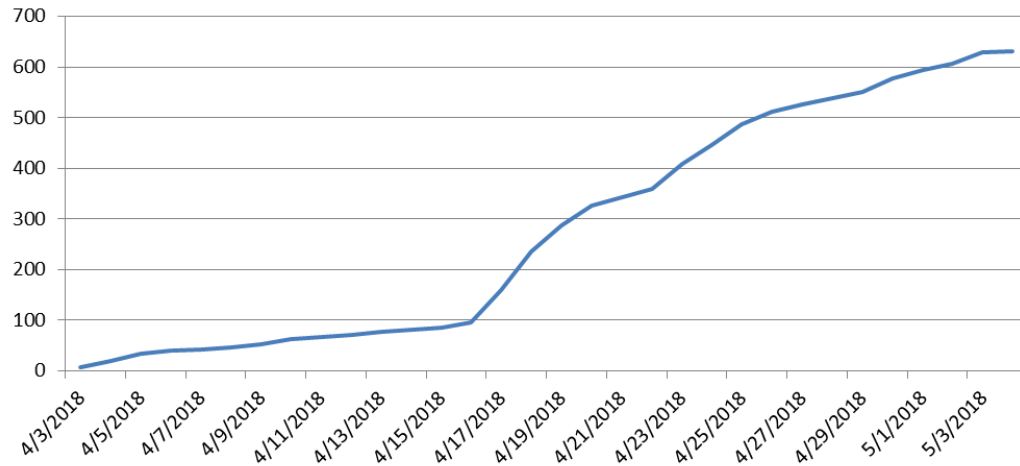
## 19 Opt Ups



## 631 Opt Outs 1% of customers



## Cumulative Opt Outs



	Eligible	Opt-Out	% Opt Out
Residential	56,182	585	1.0%
Non-Residential	8,615	46	0.5%
<b>Total</b>	<b>64,797</b>	<b>631</b>	<b>1.0%</b>

Opt Out Channel	
CSR	27%
IVR	33%
Web	40%

**VALLEY CLEAN ENERGY ALLIANCE**

**Consent Agenda – Item 9**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager  
Gary Lawson, Sacramento Municipal Utility District (SMUD)

**SUBJECT:** Final Tariff Sheets with 2.5% Rate Discount

**DATE:** May 10, 2018

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**RECOMMENDATION**

Staff recommends the Board adopt a resolution that approves the final tariff sheets, which reflect a discount of 2.5% from PG&E's generation rates.

**BACKGROUND**

On March 22, 2018 the Board adopted a resolution that approved a 2.5% rate discount from PG&E's generation rates placed into effect March 1, 2018, net of PCIA and Franchise Fees. The adopted discount was a change from the recommended 2% discount. The tariff sheets presented at the March Board meeting reflected the 2% discount. The tariff sheets included in Attachment A have been updated to the approved 2.5% discount.

**REQUESTED ACTION**

Adopt a resolution that approves the Tariff Sheets as shown in Attachment A.

**VCE LightGreen Residential Rates**  
(effective 6/1/2018)

**E1, EM, ES, ESR, ET, Basic Residential**

All Electric Usage \$ 0.07110 /kWh

**E-TOU-A, Residential Time-of-Use**

**Summer**

Peak \$ 0.15173 /kWh

Off-Peak \$ 0.07805 /kWh

**Winter**

Peak \$ 0.06657 /kWh

Off-Peak \$ 0.05264 /kWh

**E-TOU-B, Residential Time-of-Use**

**Summer**

Peak \$ 0.17306 /kWh

Off-Peak \$ 0.07258 /kWh

**Winter**

Peak \$ 0.06889 /kWh

Off-Peak \$ 0.05056 /kWh

**E-TOU-C3, Residential Time-of-Use**

**Summer**

Peak \$ 0.12828 /kWh

Off-Peak \$ 0.06642 /kWh

**Winter**

Peak \$ 0.07323 /kWh

Off-Peak \$ 0.05633 /kWh

**E-TOUPP, Rate 1, Residential Time-of-Use Pilot Project**

**Summer**

Peak \$ 0.16129 /kWh

Off-Peak \$ 0.06081 /kWh

**Winter**

Peak \$ 0.05713 /kWh

Off-Peak \$ 0.03880 /kWh

**E-TOUPP, Rate 2, Residential Time-of-Use Pilot Project**

**Summer**

Peak \$ 0.17748 /kWh

Part-Peak \$ 0.11811 /kWh

Off-Peak \$ 0.04749 /kWh

**Winter**

Peak \$ 0.05624 /kWh

Off-Peak \$ 0.03671 /kWh

**E-TOUPP, Rate 3, Residential Time-of-Use Pilot Project**

**Summer**

Peak	\$ 0.16158 /kWh
Off-Peak	\$ 0.06109 /kWh

**Winter**

Peak	\$ 0.06155 /kWh
Off-Peak	\$ 0.04307 /kWh

**Spring**

Peak	\$ 0.04938 /kWh
Off-Peak	\$ 0.03736 /kWh
Super-Off-Peak	\$ 0.01158 /kWh

**E-6, EM-TOU, Residential Time-of-Use**

**Summer**

Peak	\$ 0.19779 /kWh
Part-Peak	\$ 0.08776 /kWh
Off-Peak	\$ 0.04285 /kWh

**Winter**

Part-Peak	\$ 0.06778 /kWh
Off-Peak	\$ 0.05543 /kWh

**EV, Residential Rates for Electric Vehicle Owners**

**Summer**

Peak	\$ 0.20656 /kWh
Part-Peak	\$ 0.08193 /kWh
Off-Peak	\$ 0.02426 /kWh

**Winter**

Peak	\$ 0.05589 /kWh
Part-Peak	\$ 0.02216 /kWh
Off-Peak	\$ 0.02642 /kWh

**VCE LightGreen Commercial Rates**  
(effective 6/1/2018)

**A1, Small General Services**

Summer	\$ 0.09728 /kWh
Winter	\$ 0.05904 /kWh

**A1X, Small General Services with Time-of-Use**

**Summer**

Peak	\$ 0.11106 /kWh
Part-Peak	\$ 0.08801 /kWh
Off-Peak	\$ 0.06134 /kWh

**Winter**

Part-Peak	\$ 0.08782 /kWh
Off-Peak	\$ 0.06742 /kWh

**A-6, Small General Services with Time-of-Use**

**Summer**

Peak	\$ 0.34272 /kWh
Part-Peak	\$ 0.10913 /kWh
Off-Peak	\$ 0.05230 /kWh

**Winter**

Part-Peak	\$ 0.07712 /kWh
Off-Peak	\$ 0.06007 /kWh

**A-10-P, Medium General Services**

Summer	\$ 0.07787 /kWh
Winter	\$ 0.05507 /kWh

**Demand Charges**

Max Demand Summer	\$ 4.58 /kW
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**A-10-S, Medium General Services**

Summer	\$ 0.08756 /kWh
Winter	\$ 0.06125 /kWh

**Demand Charges**

Max Demand Summer	\$ 5.27 /kW
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**A-10-T, Medium General Services**

Summer	\$ 0.06829 /kWh
Winter	\$ 0.04850 /kWh

**Demand Charges**

Max Demand Summer	\$ 3.60 /kW
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**A-10-X-P, Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.12850 /kWh
Part-Peak	\$ 0.07920 /kWh
Off-Peak	\$ 0.05324 /kWh

**Winter**

Part-Peak	\$ 0.06584 /kWh
Off-Peak	\$ 0.05036 /kWh

**Demand Charges**

Max Demand Summer	\$ 4.58 /kW
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**A-10-X-S, Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.14009 /kWh
Part-Peak	\$ 0.08634 /kWh
Off-Peak	\$ 0.05897 /kWh

**Winter**

Part-Peak	\$ 0.07080 /kWh
Off-Peak	\$ 0.05415 /kWh

**Demand Charges**

Max Demand Summer	\$ 5.27 /kW
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**A-10-X-T, Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.11462 /kWh
Part-Peak	\$ 0.06892 /kWh
Off-Peak	\$ 0.04425 /kWh

**Winter**

Part-Peak	\$ 0.05743 /kWh
Off-Peak	\$ 0.04321 /kWh

**Demand Charges**

Max Demand Summer	\$ 3.60 /kW
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**E-19-P, Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.10267 /kWh
Part-Peak	\$ 0.06167 /kWh
Off-Peak	\$ 0.03532 /kWh

**Winter**

Part-Peak	\$ 0.05614 /kWh
Off-Peak	\$ 0.04183 /kWh

**Demand Charges**

Max Peak Demand Summer	\$ 12.06 /kW
Max Part-Peak Demand Summer	\$ 2.93 /kW

**E-19-S, Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.11257 /kWh
Part-Peak	\$ 0.06926 /kWh
Off-Peak	\$ 0.04057 /kWh

**Winter**

Part-Peak	\$ 0.06332 /kWh
Off-Peak	\$ 0.04769 /kWh

**Demand Charges**

Max Peak Demand Summer	\$ 13.51 /kW
Max Part-Peak Demand Summer	\$ 3.33 /kW

**E-19-T, Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.06704 /kWh
Part-Peak	\$ 0.05312 /kWh
Off-Peak	\$ 0.03471 /kWh

**Winter**

Part-Peak	\$ 0.05531 /kWh
Off-Peak	\$ 0.04116 /kWh

**Demand Charges**

Max Peak Demand Summer	\$ 13.71 /kW
Max Part-Peak Demand Summer	\$ 3.44 /kW

**E-19-P (Option R), Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.24936 /kWh
Part-Peak	\$ 0.09528 /kWh
Off-Peak	\$ 0.03532 /kWh

**Winter**

Part-Peak	\$ 0.05614 /kWh
Off-Peak	\$ 0.04183 /kWh

**E-19-S (Option R), Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.26206 /kWh
Part-Peak	\$ 0.10404 /kWh
Off-Peak	\$ 0.04057 /kWh

**Winter**

Part-Peak	\$ 0.06332 /kWh
Off-Peak	\$ 0.04769 /kWh

**E-19-T (Option R), Medium General Services with Time-of-Use**

**Summer**

Peak	\$ 0.24829 /kWh
Part-Peak	\$ 0.09588 /kWh
Off-Peak	\$ 0.03471 /kWh

**Winter**

Part-Peak	\$ 0.05531 /kWh
Off-Peak	\$ 0.04116 /kWh

**E-20-P, Large General Services with Time-of-Use**

**Summer**

Peak	\$ 0.10802 /kWh
Part-Peak	\$ 0.06463 /kWh
Off-Peak	\$ 0.03795 /kWh

**Winter**

Part-Peak	\$ 0.05892 /kWh
Off-Peak	\$ 0.04450 /kWh

**Demand Charges**

Max Peak Demand Summer	\$ 14.35 /kW
Max Part-Peak Demand Summer	\$ 3.39 /kW

**E-20-S, Large General Services with Time-of-Use**

**Summer**

Peak	\$ 0.10381 /kWh
Part-Peak	\$ 0.06445 /kWh
Off-Peak	\$ 0.03744 /kWh

**Winter**

Part-Peak	\$ 0.05874 /kWh
Off-Peak	\$ 0.04410 /kWh

**Demand Charges**

Max Peak Demand Summer	\$ 13.07 /kW
Max Part-Peak Demand Summer	\$ 3.23 /kW

**E-20-T, Large General Services with Time-of-Use**

**Summer**

Peak	\$ 0.06550 /kWh
Part-Peak	\$ 0.05243 /kWh
Off-Peak	\$ 0.03512 /kWh

**Winter**

Part-Peak	\$ 0.05449 /kWh
Off-Peak	\$ 0.04119 /kWh

**Demand Charges**

Max Peak Demand Summer	\$ 16.98 /kW
Max Part-Peak Demand Summer	\$ 4.05 /kW



**E-20-P (Option R), Large General Services with Time-of-Use**

**Summer**

Peak	\$ 0.25579 /kWh
Part-Peak	\$ 0.09713 /kWh
Off-Peak	\$ 0.03795 /kWh

**Winter**

Part-Peak	\$ 0.05892 /kWh
Off-Peak	\$ 0.04450 /kWh

**E-20-S (Option R), Large General Services with Time-of-Use**

**Summer**

Peak	\$ 0.23768 /kWh
Part-Peak	\$ 0.09682 /kWh
Off-Peak	\$ 0.03744 /kWh

**Winter**

Part-Peak	\$ 0.05874 /kWh
Off-Peak	\$ 0.04410 /kWh

**E-20-T (Option R), Large General Services with Time-of-Use**

**Summer**

Peak	\$ 0.24892 /kWh
Part-Peak	\$ 0.09127 /kWh
Off-Peak	\$ 0.03512 /kWh

**Winter**

Part-Peak	\$ 0.05449 /kWh
Off-Peak	\$ 0.04119 /kWh

**E-37, Oil & Gas**

**Summer**

Peak	\$ 0.12990 /kWh
Off-Peak	\$ 0.02697 /kWh

**Winter**

Part-Peak	\$ 0.04842 /kWh
Off-Peak	\$ 0.01810 /kWh

**Demand Charges**

Max Demand Summer	\$ 4.75 /kW
Max Peak Demand Summer	\$ 5.95 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 1.53 /kW
Transmission Voltage Discount - Max Demand Summer	\$ 2.66 /kW

**LS-1, LS-2, LS-3, OL-1, Street & Hwy. Lighting**

All Electric Usage	\$ 0.07884 /kWh
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**TC-1, Traffic Control Service**

All Electric Usage	\$ 0.08616 /kWh
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**S-TOU-P, Standby Service**

**Summer**

Peak	\$ 0.09427 /kWh
Part-Peak	\$ 0.07734 /kWh
Off-Peak	\$ 0.05518 /kWh

**Winter**

Part-Peak	\$ 0.08004 /kWh
Off-Peak	\$ 0.06287 /kWh

**Reservation Charges**

Reservation Charge	\$ 0.41 /kW
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**S-TOU-S, Standby Service**

**Summer**

Peak	\$ 0.09427 /kWh
Part-Peak	\$ 0.07734 /kWh
Off-Peak	\$ 0.05518 /kWh

**Winter**

Part-Peak	\$ 0.08004 /kWh
Off-Peak	\$ 0.06287 /kWh

**Reservation Charges**

Reservation Charge	\$ 0.41 /kW
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**S-TOU-T, Standby Service**

**Summer**

Peak	\$ 0.07716 /kWh
Part-Peak	\$ 0.06309 /kWh
Off-Peak	\$ 0.04449 /kWh

**Winter**

Part-Peak	\$ 0.06531 /kWh
Off-Peak	\$ 0.05102 /kWh

**Reservation Charges**

Reservation Charge	\$ 0.34 /kW
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**VCE LightGreen Agricultural Rates**  
(effective 6/1/2018)

**AG1-A, Agriculture**

Summer	\$ 0.08086 /kWh
Winter	\$ 0.05987 /kWh

**Demand & Connected Load Charges**

Connected Load Summer	\$ 1.45 /kW
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**AG1-B, Agriculture**

Summer	\$ 0.08402 /kWh
Winter	\$ 0.05995 /kWh

**Demand & Connected Load Charges**

Max Demand Summer	\$ 2.18 /kW
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**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 0.83 /kW
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**AG4-A, Time-of-Use Agriculture**

**Summer**

Peak	\$ 0.14448 /kWh
Off-Peak	\$ 0.04807 /kWh

**Winter**

Part-Peak	\$ 0.05245 /kWh
Off-Peak	\$ 0.04096 /kWh

**Demand & Connected Load Charges**

Connected Load Summer	\$ 1.44 /kW
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**AG4-B, Time-of-Use Agriculture**

**Summer**

Peak	\$ 0.10476 /kWh
Off-Peak	\$ 0.05025 /kWh

**Winter**

Part-Peak	\$ 0.04837 /kWh
Off-Peak	\$ 0.03741 /kWh

**Demand & Connected Load Charges**

Max Demand Summer	\$ 2.55 /kW
Max Peak Demand Summer	\$ 2.71 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 0.65 /kW
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**AG4-C, Time-of-Use Agriculture**

**Summer**

Peak	\$ 0.12477 /kWh
Part-Peak	\$ 0.05971 /kWh
Off-Peak	\$ 0.03608 /kWh

**Winter**

Part-Peak	\$ 0.04279 /kWh
Off-Peak	\$ 0.03264 /kWh

**Demand & Connected Load Charges**

Max Peak Demand Summer	\$ 6.29 /kW
Max Part-Peak Demand Summer	\$ 1.07 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Peak Demand Summer	\$ 1.12 /kW
Transmission Voltage Discount - Max Peak Demand Summer	\$ 2.06 /kW

**AG5-A,D, Time-of-Use Large Agriculture**

**Summer**

Peak	\$ 0.13360 /kWh
Off-Peak	\$ 0.05334 /kWh

**Winter**

Part-Peak	\$ 0.05705 /kWh
Off-Peak	\$ 0.04495 /kWh

**Demand & Connected Load Charges**

Connected Load Summer	\$ 3.95 /kW
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**AG5-B, E, Time-of-Use Large Agriculture**

**Summer**

Peak	\$ 0.12990 /kWh
Off-Peak	\$ 0.02697 /kWh

**Winter**

Part-Peak	\$ 0.04842 /kWh
Off-Peak	\$ 0.01810 /kWh

**Demand & Connected Load Charges**

Max Demand Summer	\$ 4.75 /kW
Max Peak Demand Summer	\$ 5.95 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 1.53 /kW
Transmission Voltage Discount - Max Demand Summer	\$ 2.66 /kW

**AG5-C, F, Time-of-Use Large Agriculture**

**Summer**

Peak	\$ 0.10337 /kWh
Part-Peak	\$ 0.04906 /kWh
Off-Peak	\$ 0.02884 /kWh

**Winter**

Part-Peak	\$ 0.03489 /kWh
Off-Peak	\$ 0.02571 /kWh

**Demand & Connected Load Charges**

Max Peak Demand Summer	\$ 11.03 /kW
Max Part-Peak Demand Summer	\$ 2.08 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Peak Demand Summer	\$ 2.33 /kW
Transmission Voltage Discount - Max Peak Demand Summer	\$ 4.36 /kW

**AG-ICE, Agricultural Internal Combustion Engine Conversion Incentive**

**Summer**

Peak	\$ 0.11484 /kWh
Part-Peak	\$ 0.07534 /kWh
Off-Peak	\$ 0.00711 /kWh

**Winter**

Part-Peak	\$ 0.07893 /kWh
Off-Peak	\$ 0.00711 /kWh

**Demand & Connected Load Charges**

Max Demand Summer	\$ 3.31 /kW
Max Peak Demand Summer	\$ 3.53 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 0.79 /kW
Transmission Voltage Discount - Max Demand Summer	\$ 1.44 /kW

**AG-R-A, D, Split-Week Time-of-Use Agricultural Power**

**Summer**

Peak	\$ 0.26021 /kWh
Off-Peak	\$ 0.04672 /kWh

**Winter**

Part-Peak	\$ 0.05432 /kWh
Off-Peak	\$ 0.04250 /kWh

**Demand & Connected Load Charges**

Connected Load Summer	\$ 1.40 /kW
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**AG-R-B, E, Split-Week Time-of-Use Agricultural Power**

**Summer**

Peak	\$ 0.23255 /kWh
Off-Peak	\$ 0.04618 /kWh

**Winter**

Part-Peak	\$ 0.04029 /kWh
Off-Peak	\$ 0.03058 /kWh

**Demand & Connected Load Charges**

Max Demand Summer	\$ 2.08 /kW
Max Peak Demand Summer	\$ 2.33 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 0.54 /kW
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**AG-V-A, D, Short-Peak Time-of-Use Agricultural Power**

**Summer**

Peak	\$ 0.22454 /kWh
Off-Peak	\$ 0.04381 /kWh

**Winter**

Part-Peak	\$ 0.05269 /kWh
Off-Peak	\$ 0.04111 /kWh

**Demand & Connected Load Charges**

Connected Load Summer	\$ 1.46 /kW
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**AG-V-B, E, Short-Peak Time-of-Use Agricultural Power**

**Summer**

Peak	\$ 0.20542 /kWh
Off-Peak	\$ 0.04424 /kWh

**Winter**

Part-Peak	\$ 0.04054 /kWh
Off-Peak	\$ 0.03078 /kWh

**Demand & Connected Load Charges**

Max Demand Summer	\$ 1.90 /kW
Max Peak Demand Summer	\$ 2.45 /kW

**Voltage Discounts**

Primary Voltage Discount - Max Demand Summer	\$ 0.57 /kW
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VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2018- \_\_\_\_\_

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE ADOPTING THE FINAL  
CUSTOMER RATE DISCOUNT AND RATE TABLE

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

WHEREAS, VCEA rates will be set at a 2.5% discount from the 2018 generation PG&E rates; and

WHEREAS, in the event PG&E’s generation rates change mid-year, the Interim General Manager will have the authority to approve any new rates at an amount 2.5% below PG&E’s generation rate for that new tariff, net of PCIA and Franchise Fees.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance hereby adopts the Final Customer Rate Discount and Rate Table (Exhibit A).

ADOPTED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
VCEA Board Chair

\_\_\_\_\_  
VCEA Board Secretary

Approved as to form:

\_\_\_\_\_  
Interim VCEA Counsel



**VALLEY CLEAN ENERGY ALLIANCE**

**Consent Agenda – Item 10**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager  
Gary Lawson, Sacramento Municipal Utility District (SMUD)

**SUBJECT:** Data Privacy Policy Revision

**DATE:** May 10, 2018

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**RECOMMENDATION**

Staff recommends the Board adopt a resolution that approves the attached revision to the VCEA Data Policy.

**BACKGROUND**

On January 18, 2018 the Board approved the VCEA Customer and Data Policies. Staff has determined that a sentence in the original Data Policy implies that customer data can be removed from the CCA’s data management system. The nature of the CCA data transaction with PG&E is such that data for all customers within the CCA service territory is updated on a weekly basis with customer data supplied from PG&E, as part of the CPUC-approved process. VCEA is not able to exclude individual customers from this process. The customer data is protected per the originally approved data policy. However to avoid confusion regarding customer data storage, VCEA recommends the revised policy language shown in redline in Attachment A.

Following Board approval, the redline changes will be accepted and the updated policy will be posted to VCEA’s website.

**REQUESTED ACTION**

Adopt a resolution that approves the revised Data Policy as shown in Attachment A.

**ATTACHMENT A**



**DRAFT**

**Valley Clean Energy Alliance  
Data Policy**

~~4/54/16~~/2018

## Table of Contents

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Table of Contents.....	i
1 Privacy Policy.....	1
2 Security Breach Policy.....	4

## 1 Privacy Policy

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### ***Notice of accessing, collecting, storing, using and disclosing energy usage information***

Valley Clean Energy Alliance (VCEA) is committed to protecting your privacy, and as such we comply with the California Public Utilities Commission's (CPUC) "Rules Regarding Privacy and Security Protections for Energy Usage Data" (found here: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M026/K531/26531585.PDF>).

### ***Data we collect and how we use it***

We collect from Pacific Gas & Electric (PG&E) the following information regarding electricity customers within our jurisdictional territory: name, address, phone number, email address, account information, and electric usage information (collected from the customer's meter). This personal information is used only for core VCEA business, for example planning for and providing electricity, customer service, generating charges for your bill, and VCEA service improvement. Your personal data is only kept for as long as is necessary for business purposes.

As you use the VCEA web site, we collect information automatically sent to us by your browser, as well as information about your usage of the site. The links that are clicked on, the pages that are viewed, and time spent on the site are some of the usage statistics and information used in composing web site analytics and reports that help us measure the usefulness of our site. One of the pieces of data automatically sent to us is your IP address. Your IP address is an internet protocol address number automatically assigned to you when you're using the internet. It is logged by our servers and is used to provide web-related services for you, and analytics to VCEA. We do not associate your IP address with personal customer data that we receive from PG&E.

### ***General security protections***

As required by the CPUC, VCEA uses appropriate administrative, technical and physical safeguards to protect your information from unauthorized access, including: reasonable employee training, independent audits and annual reporting activities.

### ***De-identified information***

De-identified or aggregated information is not subject to privacy restrictions, and VCEA may use or share such information when the data is sufficiently de-identified or aggregated to the point where it is no longer personally identifiable.

### ***Individual choice and access***

VCEA will provide to you, upon request, access to your personal information collected by VCEA, which we can update or correct with your input.

VCEA only collects the minimum information needed to provide services to our customers. ~~# you do not wish us to collect and store your information, we may not be able to deliver the associated service(s).~~

## ***Children's privacy***

We do not monitor or track the ages of the visitors to our website, but we realize that children under the age of 18 may be interested in the information offered on our website. We ask that parents monitor their children's use of our website and prohibit them from submitting personal information to our website.

## ***California Do not track disclosures***

Your browser may have a "Do not track" setting, but unfortunately there is not yet a common understanding of how to interpret this signal, so VCEA's website does not currently respond to browser "Do not track" signals.

## ***Cookies***

The VCEA website uses cookies to enhance our customers' web browsing experience. Cookies are small text files placed temporarily on your computer by a web server. VCEA does not collect personal data from cookies, as they are only used to directly provide a customer-friendly web experience.

## ***Google Analytics and web service providers***

VCEA website may utilize web-based third party service providers to collect and analyze web usage and traffic. These third parties are listed below with a description of why and how VCEA uses their services. They have their own privacy policies and may collect personal information in accordance with their own data collection policies and practices.

VCEA uses Google Analytics to improve our web-based service offerings, and in order to do that Google Analytics collects your device's IP address (rather than your name or other identifying information), and we do not combine the information collected through Google Analytics with any other information you or PG&E may have provided to us. Google cookies may be used to collect web site usage information such as how often users visit this site, what pages they visit, and what other sites they visited prior to coming to this site. Learn more about how we and Google use this information at <http://www.google.com/policies/privacy/partners/>.

Hotjar provides VCEA with a different kind of analytics than Google, but collects similar information. Hotjar cookies may be used, but VCEA does not combine the information collected through Hotjar with any other information you or PG&E may have provided to us. Learn more about Hotjar and their privacy practices at <https://www.hotjar.com/privacy>.

## ***Third parties***

In order to provide the services to which you have subscribed, VCEA may utilize third party service providers. VCEA holds these third parties to the same high privacy standards we have

set for ourselves. We only share with these entities the minimum amount of information necessary to provide the services we require of them, and they are not permitted to use the shared information for any other purpose.








In rare circumstances, VCEA may be forced to share your identifiable information with other third parties in accordance with CPUC rules and orders, as well as state and federal law. We may also need to do this during situations involving an imminent threat to life or property. Other than for these rare circumstances, VCEA will not release personal information about you to any other person or business for any secondary purposes without your written consent.

**Effective date and updates**

The effective date of this policy is [ENTER DATE]. A reminder notice of this policy will be provided on an annual basis to customers via an on-bill message guiding customers to the most updated version on our website at [LINK HERE]. We will communicate any changes through a prominently posted notice on our website and through the aforementioned annual notice to customers. Previous versions of this policy can be found at [LINK HERE].

**Accountability**

Customers having any questions or concerns regarding the collection, storage, use, or distribution of customer information, or who wish to view, inquire about, or dispute any customer information held by us or limit the collection, use, or disclosure of such information, may contact [ENTER PERSON AND CONTACT INFO HERE].

Type of Data Collected		General Data Practices		Data Sharing	
	<b>contact:</b> name, mailing address, email, or phone number		<b>data retention:</b> explicitly stated duration of retention for personal data collected		<b>affiliates:</b> affiliates and subsidiaries bound by the same privacy practices
	<b>computer:</b> IP address, browser type, or operating system		<b>user control:</b> users allowed to access and correct personal information		<b>contractors:</b> third party contractors bound by the same privacy practices
	<b>interactive:</b> browsing behavior or search history				

## 2 Security Breach Policy

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### ***Purpose***

This Security Breach Policy (“Policy”) has been developed to provide for a consistent response to security breach incidents involving VCEA sensitive and confidential data. The goal of this Policy is to ensure that VCEA responds appropriately to security breaches and ensures that the appropriate communications are taking place when necessary.

### ***Scope***

This document is applicable to all directors, officers, and employees of VCEA and any other individual or entity acting for or on behalf of VCEA, whether operating inside or outside of the United States (collectively “Covered Persons”). Third parties, including but not limited to contractors, consultants, agents, intermediaries, and joint-venture partners, must be informed about this policy and agree to comply with its tenets.

### ***Definitions***

Covered Information: any usage information obtained through the use of the capabilities of Advanced Metering Infrastructure when associated with any information that can reasonably be used to identify an individual, family, household, residence, or non-residential customer, except that covered information does not include usage information from which identifying information has been removed such that an individual, family, household or residence, or non-residential customer cannot reasonably be identified.

### ***Data quality & security***

VCEA is committed to protecting the confidentiality, integrity, and availability of Covered Information. VCEA ensures, to the extent practicable, that collected information is accurate, relevant, timely, and complete in order to maintain as high a level of data quality as possible.

VCEA implements reasonable administrative, technical, and physical safeguards to protect Covered Information from unauthorized access, destruction, use, modification, or disclosure.

### ***Security systems and monitoring***

VCEA uses reasonable administrative, technical and physical safeguards and procedures, as well as state of the art security systems as detailed in the system security plan, to monitor its information systems for anomalies and security events that may indicate an incident or breach.

VCEA requires third party service providers to deploy industry standard security controls and perform adequate security status monitoring of the environment and systems used to support VCEA.



## ***Incident handling***

When a security incident is believed to have been discovered, support staff will contact their supervisors and the contract manager (if applicable) in order to make management aware as soon as possible. Management will appoint an incident commander, who will be responsible for officially declaring an incident and directing the response (Incident Commander).

Upon determination that an unauthorized person obtained access to or compromised VCEA data or systems, the Incident Commander may direct staff to take the following actions, considering the nature of the event and the presence of any exigent circumstances:

- Assess the scope and character of the incident
- Document the details of the incident and VCEA's handling of the incident
- Begin an incident handling log
- Direct the acquisition, securing, and preservation of evidence
- Contain the incident
- Eradicate the cause of the incident
- Restore the integrity of the system/recover affected systems
- Mitigate the ability for the incident to reoccur/remediate any associated security vulnerabilities

## ***Notification of breach***

Once VCEA has identified the type and scope of the information compromised or accessed by an unauthorized person, VCEA will notify the appropriate parties as described in the following sections.

### ***VCEA Customers***

Due to the nature of VCEA's work with its Customers, it is possible that PII related to a customer may be breached. If this occurs, VCEA will assess the need to contact the affected Customer or Customers. However, as VCEA does not collect the data elements that require mandatory breach notification in the state of California, it is not anticipated that notification will be required by law. Final determinations regarding mandatory breach notifications will be made by VCEA Legal Counsel.

### ***Law enforcement***

If VCEA feels that the information is likely to be misused, or if it is believed to otherwise be a benefit by doing so, VCEA will contact local law enforcement, report the incident, and ask for a copy of the report. VCEA may also contact the local office of the Federal Bureau of Investigations (FBI).

If a law enforcement investigation is opened, VCEA will consult with the applicable agency or agencies regarding the timing and content of any required notifications to avoid compromising or impeding the investigation.

If law enforcement informs VCEA that notification would jeopardize its ability to conduct an investigation and requests that VCEA delay notification, such notice from law enforcement will be in writing and VCEA will delay notification for the period requested by law enforcement. If VCEA determines that the delay is patently unreasonable, VCEA will notify law enforcement that the applicable state agencies and individuals will be notified within a reasonable time frame.

## **CPUC**

In the event of a breach affecting the Covered Information of more than 1,000 customers, VCEA will send a notification of the breach to the Executive Director of the CPUC within two weeks of the detection of a breach or within one week of notification by a third party of such a breach. VCEA will also send notification of a breach to the Executive Director of the CPUC if specifically requested by the CPUC.

## ***Evaluation and response***

Once the incident has been confirmed to be resolved, the Incident Commander will also ensure the following actions take place:

- Report the findings and actions taken in response
- Conduct a lessons learned session to determine if response was appropriate and if additional changes are needed
- Recommend policy updates if necessary

## ***Notification language***

The text of all notifications will be approved by VCEA management.

Notifications will contain all information and data elements that are required by law and will be distributed as prescribed by the same.

## ***Accountability and auditing***

VCEA will file an annual report with the CPUC's Executive Director within 120 days of the end of the calendar year to notify the CPUC of all required notifications. The report will detail the number of demands for disclosure of customer data pursuant to legal process or situations of imminent threat to life or property. The report will also contain a description of all security breaches in the calendar year that affected Covered Information, the number of authorized third parties accessing Covered Information, as well as any known violations of or instances of non-compliance to CPUC rules or contractual provisions experienced in the calendar year, with a detailed description of each instance.

VCEA will make available to the CPUC upon request or audit:

- Privacy notices provided to customers
- Internal privacy and data security policies

- The categories of agents, contractors, and other third parties to which VCEA discloses customer information for a primary purpose (VCEA does not disclose customer information for secondary purposes)

VCEA will provide training on an annual basis to all employees with access to Covered Information. Training will cover topics such as privacy, information security and data quality.

VCEA will conduct an independent audit of its data privacy and security practices every three years or whenever required by the CPUC. The audit will monitor compliance with data privacy and security commitments, and VCEA will report the findings to the CPUC.

## VALLEY CLEAN ENERGY ALLIANCE

### Staff Report – Item 11

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager  
Lisa Limcaco, Director of Finance & Internal Operations  
Chad Rinde, Asst. Chief Financial Officer, Yolo County

**SUBJECT:** Approval of Lock Box Control Agreement and Reserve Account Control Agreement with SMUD and River City Bank

**DATE:** May 10, 2018

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#### RECOMMENDATION

Staff recommends the Board adopt a resolution that approves the Lock Box Control Agreement and Reserve Account Control Agreement with SMUD and River City Bank.

#### BACKGROUND AND ANALYSIS

On October 12, 2017 the VCE Board approved a Professional Services Agreement with the Sacramento Municipal Utility District (SMUD) to provide launch and operational services for VCE. The action include the approval of Task Order 1 for technical and energy services, and Task Order 2 for data management/ call center services. On November 18, 2017, the VCE Board approved Task Order 3 for wholesale energy services. One of the services provided by SMUD in Task Order 3 was Energy Power Credit Support Services. Establishment of the Lock Box Pledge Account and Reserve Account were conditions precedent for SMUD to provide Credit Support Services.

#### Lock Box Pledge Account

VCE agreed to set up a Lock Box Pledge Account and establish the related revenue deposit arrangements. However, SMUD would not immediately require VCE to have PG&E deposit revenue payments directly to the Lock Box Pledge Account. As long as VCE pays for power supply charges according to the payment timelines in Task Order 3, SMUD would not call for PG&E to deposit revenues into the Lock Box Pledge Account. VCE agreed to execute and deliver a deposit account control agreement, substantially in the form attached as Appendix “C” (the “Lock Box Control Agreement”) included in Task Order 3.

### Reserve Account

VCE agreed to establish a Reserve Account for the purpose of security for the Power Supply purchase commitments made by SMUD on VCE's behalf. SMUD requires that VCE fund the Reserve Account in the amount of \$1.00 for each MWh of wholesale energy procured in SMUD's name and delivered to VCE, the first of such Reserve Account deposits beginning when power payments to SMUD commence. VCE agreed to execute and deliver a deposit account control agreement, substantially in the form attached as Appendix "D" (the "Reserve Account Control Agreement") included in Task Order 3.

VCE's staff and legal team participated in the review of the attached Lock Box Control Agreement and Reserve Account Control Agreement. VCE's legal counsel has reviewed and approved the documents as to form.

### **CONCLUSION**

Staff is recommending the VCE Board pass the attached resolution authorizing the Board Chair, in consultation with VCE staff and Legal Counsel, to approve and sign the Lock Box Control Agreement and the Reserve Account Control Agreement, in substantially the same form as attached.

### Attachments

1. Resolution
2. Lock Box Control Agreement
3. Reserve Account Control Agreement

LOCK BOX CONTROL AGREEMENT

Date: The \_\_\_ day of \_\_\_\_\_, 2018  
Debtor: Valley Clean Energy Alliance  
("VCEA")

Secured Party: Sacramento Municipal Utility District  
("SMUD")

Notice Addresses are for both VCEA and SMUD are as stated in Appendix 1, of the Professional Services Agreement between VCEA and SMUD.

Depository  
Institution: River City Bank  
Address: 2485 Natomas Park Drive, Ste. 400  
Sacramento, CA 95833  
Facsimile: (916) 567-2780  
Attention: \_\_\_\_\_

1. **Definitions.** In this Agreement:

- (a) "Article 9" means Article 9 of the Uniform Commercial Code as enacted in California.
- (b) "Control" means control of a deposit account, as defined in Article 9.
- (c) "Debtor" means each and all of the persons or entities shown above as Debtor. All agreements of the Debtor in this Agreement are joint, several, and joint and several.
- (d) "Depository Institution" means the Depository Institution shown above.
- (e) "Secured Party" means the Secured Party shown above.

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(f) "Security" is defined in Article 8 of the Uniform Commercial Code.

2. **Agreement of the Parties.** VCEA, SMUD and the Depository Institution agree to all of the provisions in this Agreement.
3. **Security Interest.** VCEA has given SMUD a first priority security interest in, and has pledged and assigned to SMUD, the following property (the "Collateral"):

VCEA's existing account with the Depository Institution identified below, and all amendments, extensions, renewals and replacements of that account (collectively, the "Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

Account number \_\_\_\_\_ with the Depository Institution.

The security interest, pledge and assignment are called the "Security Interest." VCEA and SMUD hereby notify the Depository Institution of the Security Interest, and the Depository Institution agrees that it has been notified of the Security Interest.

VCEA and SMUD agree and acknowledge that VCEA maintains accounts other than the Account with the Depository Institution (including without limitation an operating account and a debt service reserve account) and that this Agreement applies only to the Account. SMUD expressly disclaims any security interest in such other accounts. SMUD also agrees and acknowledges that the Depository Institution has a right of setoff in one or more of those other accounts and that nothing in this Agreement has any effect on such setoff right.

4. **Control.** If the Collateral is one or more deposit accounts under Article 9, by signing this Agreement VCEA, SMUD, and the Depository Institution are giving SMUD Control over the Collateral (subject to Section 5 below), and are perfecting the Security Interest in the Collateral by Control. Whether or not the Collateral is a deposit account under Article 9, the Depository Institution will comply with all instructions and other directions originated by SMUD. This means that the Depository Institution will comply with all orders, notices, requests and other instructions of SMUD relating to the Collateral, including but not limited to orders, notices, requests and other instructions to withdraw or transfer any Collateral, and to pay or transfer any Collateral to SMUD in the manner provided herein. The

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Depository Institution will promptly mark its records to register SMUD's Security Interest in the Collateral. SMUD and VCEA agree that the Collateral will be dispersed as follows: 1) SMUD will retain all monies due and payable to SMUD, 2) SMUD will fund the Reserve Account, 3) SMUD will retain \$275,000, which will be applied as a credit toward the current month's services and 4) the remaining Collateral will be transferred back to VCEA's operating account, in which SMUD has no Security Interest and in which the Depository Institution has a right of setoff.

5. **Rights of VCEA and Others.** Until the Depository Institution receives SMUD's notice that VCEA's rights in the Account are suspended (the "Shifting Control Notice"), the Depository Institution will comply with all notices, requests and other instructions from VCEA for disposition of funds in the Account. This includes but is not limited to orders, notices, requests or instructions to withdraw or transfer any of the Collateral, and to pay or transfer any of the Collateral to VCEA or any other person or entity, but not to redeem or terminate the Account. SMUD acknowledges and agrees that until the Depository Institution receives the Shifting Control Notice, VCEA may transfer funds from the Account, including to other VCEA accounts at the Depository Institution in which the Depository Institution has a right of setoff. After the delivery by SMUD of the Shifting Control Notice to the Depository Institution, unless SMUD agrees in writing: (a) the Depository Institution will not permit VCEA or any other person or entity except SMUD to withdraw or transfer any of the Collateral, (b) the Depository Institution will not comply with any order, notice, request or other instruction from VCEA or any other person or entity except SMUD relating to any of the Collateral, and (c) the Depository Institution will not pay or transfer any of the Collateral to VCEA or any other person or entity except SMUD, or to any other account except the Account. At all times after the Depository Institution receives the Shifting Control Notice, unless SMUD agrees or unless SMUD withdraws the Shifting Control Notice, the Depository Institution will not honor any check or other item drawn by VCEA on the Account or any other withdrawal or transfer by VCEA from the Account, except to SMUD. The form of Shifting Control Notice is attached hereto as Schedule A. The Depository Institution has no duty or liability to SMUD unless and until the Depository Institution receives the Shifting Control Notice.

6. **Representations and Agreements.** VCEA and the Depository Institution represent to SMUD, and agree that:

(a) Upon the Depository Institution's receipt of the Shifting Control Notice in accordance with this Agreement, no person or entity except SMUD will have Control over any of the Collateral. As of the date of this Agreement, neither VCEA nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except

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SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral, other than the security interest in favor of the Depository Institution pursuant to the Credit Agreement and related documents between the Depository Institution and VCEA. Neither VCEA nor, upon receipt of the Shifting Control Notice, the Depository Institution will permit any person or entity except SMUD to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCEA nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless SMUD otherwise requests or agrees in writing, VCEA is and will remain the sole account holder of the Account.

- (b) As of the date of this Agreement, no person or entity (except VCEA, SMUD, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. VCEA and the Depository Institution will immediately notify SMUD if any person or entity (other than VCEA, the Secured Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.
- (c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and will not give, any Security for any of the Collateral to VCEA or any other person or entity.
- (d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. SMUD is not personally liable to the Depository Institution for any fees, return checks, or other return items. VCEA and SMUD shall indemnify and hold the Depository Institution

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harmless from and against any and all cost, liability, damages, claims, suits and expenses (including reasonable attorneys' fees) arising from the Account, this Agreement and/or the Depository Institution's performance of its duties under this Agreement, except to the extent caused by the negligence or willful misconduct of the Depository Institution.

- (e) The Depository Institution is a bank, as defined in Article 9. The State of California is the Depository Institution's jurisdiction for purposes of Article 9.
  
- (f) VCEA hereby instructs the Depository Institution, and the Depository Institution hereby agrees, to furnish to SMUD statements of the Account to enable SMUD to monitor activity in the Account, all as customarily provided to customers of the Depository Institution at the times such statements are normally provided to customers of the Depository Institution, through the normal method of transmission, at VCEA's expense. Additionally, VCEA hereby instructs the Depository Institution, and the Depository Institution agrees, to make available to SMUD and VCEA copies of all daily debit and credit advices of the Account and any other item reasonably requested by SMUD. If the Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to VCEA, the Depository Institution shall make a reasonable effort to give notice to SMUD and VCEA of such legal process.

7. **Rights of Depository Institution.** The Depository Institution does not have to pay uncollected funds. The Depository Institution does not have to make funds available before it is required to do so under federal law. The Depository Institution is entitled to comply with all applicable laws, regulations, rules, court orders, and other legal process.

8. **Tax Reporting.** Until SMUD notifies the Depository Institution to use a different name and number, the Depository Institution will make all reports relating to the Collateral to all federal, state and local tax authorities under the name and tax identification number of VCEA.

9. **Waiver, Changes, and Cancellation.** Nothing in this Agreement can be waived, changed, or cancelled, except by a writing executed by VCEA, SMUD, and the Depository Institution, and except that this Agreement may be cancelled by a writing signed by SMUD and sent to the Depository Institution in which SMUD releases the Depository Institution from any further obligation to comply with instructions and other directions originated by SMUD with respect to all of the

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Collateral. Except under the previous sentence, nothing in this Agreement will be affected by any act or omission by any person or entity.

10. **Notices.** All notices, orders, requests, and other instructions and communications to any party under this Agreement will be delivered, mailed, emailed or faxed to such party's address, email address or fax number stated above, or to the other address or fax number that such party may designate in a written notice that complies with this sentence.
11. **Successors.** This Agreement binds and benefits the parties and each of heirs, representatives, successors and assigns.
12. **Specific Performance.** This Agreement may be enforced in an action for specific performance.
13. **Governing Law.** This Agreement is governed by the laws of the state specified in Section 6(e) above.
14. **Counterparts.** This Agreement may be signed in counterparts, and all counterparts together are the same Agreement. Executed as of the date first above written.

Valley Clean Energy Authority

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

Sacramento Municipal Utility  
District

\_\_\_\_\_  
By: Arlen Orchard  
Title: CEO and General  
Manager

Depository Institution  
River City Bank

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

RESERVE ACCOUNT CONTROL  
AGREEMENT

Date: The \_\_\_ day of \_\_\_\_\_, 2018  
Debtor: Valley Clean Energy Alliance (“VCEA”)  
Address: 604 2<sup>nd</sup> Street  
Davis, CA 95616  
Fax No.: \_\_\_\_\_

Secured Party: Sacramento Municipal Utility District (“SMUD”)

Address:

Depository  
Institution: River City Bank  
2485 Natomas Park Drive, Ste. 400  
Sacramento, CA 95833  
Attention: \_\_\_\_\_  
Fax No.: (916) 567-2780

**1. Definitions.** In this Agreement:

- (a) “Article 9” means Article 9 of the Uniform Commercial Code as enacted in California.
- (b) “Control” means control of a deposit account, as defined in Article 9.
- (c) “Debtor” means each and all of the persons or entities shown above as Debtor. All agreements of VCEA in this Agreement are joint, several, and joint and several.
- (d) “Depository Institution” means the Depository Institution shown above.
- (e) “Secured Party” means the Secured Party shown above.
- (f) “Security” is defined in Article 8 of the Uniform Commercial Code.

2. **Agreement of the Parties.** VCEA, SMUD and the Depository Institution agree to all of the provisions in this Agreement.
3. **Security Interest.** VCEA has given SMUD a first priority security interest in, and has pledged and assigned to SMUD, the following property (the “Collateral”):

VCEA’s existing account with the Depository Institution identified below into which VCEA will be depositing funds SMUD utilizes to purchase power on behalf of VCEA, and all amendments, extensions, renewals and replacements of the accounts (collectively, the “Account”), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

Account number \_\_\_\_\_ with the Depository Institution.

The security interest, pledge and assignment are called the “Security Interest.” VCEA and SMUD hereby notify the Depository Institution of the Security Interest, and the Depository Institution agrees that it has been notified of the Security Interest.

4. **Control.** If the Collateral is one or more deposit accounts under Article 9, by signing this Agreement VCEA, SMUD, and the Depository Institution are giving SMUD Control over the Collateral, and are perfecting the Security Interest in the Collateral by Control. Whether or not the Collateral is a deposit account under Article 9, the Depository Institution will comply with all instructions and other directions originated by SMUD directing disposition of the funds in the Account without any further consent by VCEA. This means that the Depository Institution will comply with all orders, notices, requests and other instructions of SMUD relating to the Collateral, including but not limited to orders, notices, requests and other instructions to withdraw or transfer any Collateral, and to pay or transfer any Collateral to SMUD or any other person or entity. The Depository Institution will promptly mark its records to register SMUD’s Security Interest in the Collateral.
5. **Rights of VCEA and Others.** The Depository Institution will comply with all notices, requests and other instructions from SMUD for disposition of funds in the Account. This includes but is not limited to orders, notices, requests or instructions to withdraw or transfer any of the Collateral, and to pay or transfer any of the Collateral to any other person or entity. Unless SMUD agrees in writing: (a) the Depository Institution will not permit VCEA or any other person or entity except SMUD to withdraw or transfer any of the Collateral, (b) the Depository Institution

will not comply with any order, notice, request or other instruction from VCEA or any other person or entity except SMUD relating to any of the Collateral, and (c) the Depository Institution will not pay or transfer any of the Collateral to VCEA or any other person or entity except SMUD, or to any other account except the Account. The Depository Institution will not honor any check or other item drawn by VCEA on the Account or any other withdrawal or transfer by VCEA from the Account, except to SMUD.

6. **Representations and Agreements.** VCEA and the Depository Institution represent to SMUD, and agree that:

- (a) No person or entity except SMUD has Control over any of the Collateral. Neither VCEA nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral, other than a security interest in favor of the Depository Institution pursuant to the Credit Agreement and related documents between the Depository Institution and VCEA. Neither VCEA nor the Depository Institution will permit any person or entity except SMUD to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCEA nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless SMUD otherwise requests or agrees in writing, VCEA is and will remain the sole account holder of the Account.
- (b) As of the date of this Agreement, no person or entity (except VCEA, SMUD, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. VCEA and the Depository Institution will immediately notify SMUD if any person or entity (other than VCEA, the Secured Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.
- (c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and

will not give, any Security for any of the Collateral to VCEA or any other person or entity.

- (d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. SMUD is not personally liable to the Depository Institution for any fees, return checks, or other return items. VCEA and SMUD shall indemnify and hold the Depository Institution harmless from and against any and all cost, liability, damages, claims, suits and expenses (including reasonable attorneys' fees) arising from the Account, this Agreement and/or the Depository Institution's performance of its duties under this Agreement, except to the extent caused by the negligence or willful misconduct of the Depository Institution.
- (e) The Depository Institution is a bank, as defined in Article 9. The State of California is the Depository Institution's jurisdiction for purposes of Article 9.
- (f) VCEA hereby instructs the Depository Institution, and the Depository Institution hereby agrees, to furnish to SMUD statements of the Account as well as online access to enable SMUD to monitor activity in the Account, all as customarily provided to customers of the Depository Institution at the times such statements and access are normally provided to customers of Depository Institution, through the normal method of transmission, at VCEA's expense. Additionally, VCEA hereby instructs the Depository Institution, and the Depository Institution agrees, to make available to SMUD and VCEA copies of all daily debit and credit advices of the Account and any other item reasonably requested by SMUD. If the Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to VCEA, the Depository Institution shall make a reasonable effort to give notice to SMUD and VCEA of such legal process.

7. **Rights of Depository Institution.** The Depository Institution does not have to pay uncollected funds. The Depository Institution does not have to make funds available before it is required to do so under federal law. The Depository Institution



is entitled to comply with all applicable laws, regulations, rules, court orders, and other legal process.

8. **Tax Reporting.** Until SMUD notifies the Depository Institution to use a different name and number, the Depository Institution will make all reports relating to the Collateral to all federal, state and local tax authorities under the name and tax identification number of VCEA.
9. **Waiver, Changes, and Cancellation.** Nothing in this Agreement can be waived, changed, or cancelled, except by a writing executed by VCEA, SMUD, and the Depository Institution, and except that this Agreement may be cancelled by a writing signed by SMUD and sent to the Depository Institution in which SMUD releases the Depository Institution from any further obligation to comply with instructions and other directions originated by SMUD with respect to all of the Collateral. Except under the previous sentence, nothing in this Agreement will be affected by any act or omission by any person or entity.
10. **Notices.** All notices, orders, requests, and other instructions and communications to any party under this Agreement will be delivered, mailed, emailed or faxed to such party's address, email address, or to the other address that such party may designate in a written notice that complies with this sentence.
11. **Successors.** This Agreement binds and benefits the parties and each of heirs, representatives, successors and assigns.
12. **Specific Performance.** This Agreement may be enforced in an action for specific performance.
13. **Governing Law.** This Agreement is governed by the laws of the state specified in Section 6(e) above.
14. **Counterparts.** This Agreement may be signed in counterparts, and all counterparts together are the same Agreement. Executed as of the date first above written.

Valley Clean Energy Alliance

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

Sacramento Municipal Utility  
District

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By: Arlen Orchard  
CEO and General Manager

Depository Institution  
River City Bank

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

**RESOLUTION \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE  
AUTHORIZING THE EXECUTION AND DELIVERY OF THE LOCK BOX CONTROL AGREEMENT AND  
RESERVE ACCOUNT CONTROL AGREEMENT WITH SMUD AND RIVER CITY BANK**

**WHEREAS**, Valley Clean Energy Alliance (“VCEA”), is a public agency formed in January 2017 under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., between the County of Yolo and the City of Davis to provide Community Choice Energy (CCE) programs within the member agencies, and in June 2017, the City of Woodland also joined VCEA adding to the overall VCEA service territory;

**WHEREAS**, On November 17, 2017, the VCEA Board approved Task Order 3 for SMUD to provide Wholesale Energy Services to VCEA; and

**WHEREAS**, Task Order 3 included a Lock Box Control Agreement and Reserve Account Control Agreement (“Agreements”) to be executed at a later date between SMUD, VCEA and a Depository Institution; and

**WHEREAS**, VCEA has reviewed the terms of the Agreements with slight revisions from River City Bank.

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance resolves as follows: The VCEA Interim General Manager, in consultation with VCEA Legal Counsel, is hereby authorized to approve and execute on behalf of VCEA the Agreements in substantial conformance under the terms set forth in this Resolution.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the Valley Clean Energy Alliance, California, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
\_\_\_\_\_, Chair

ATTEST: \_\_\_\_\_  
\_\_\_\_\_, Secretary

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 12

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Chad Rinde, Asst. Chief Financial Officer, Yolo County  
Lisa Licaco, Finance and Operations Director, VCEA  
Mitch Sears, Interim General Manager, VCEA

**SUBJECT:** Financial Update – March 31, 2018

**DATE:** May 10, 2018

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### RECOMMENDATIONS:

1. Accept financial report on VCEA agency cash flows since inception and incurred member agency obligations through March 31, 2018.

### BACKGROUND & DISCUSSION:

Financial Reports were prepared to demonstrate the VCEA cash position, obligations, and performance through March 31, 2018.

In Attachment A, the VCEA as of March 31, 2018 has \$1,173,876 in Cash in Treasury which are funds deposited and held by the Yolo County Treasurer in a fund restricted for VCEA. The VCEA has begun to incur obligations from Member agencies and SMUD and owes as of March 31, 2018 \$458,912 and \$447,442 respectively for a grand total of \$906,354. The repayments to the member agencies are deferred by the co-operation agreements until after the VCEA is revenue positive. The SMUD repayments are deferred until October, 2018.

In April, 2018 subsequent to this report, VCEA staff opened the required accounts at River City Bank. VCEA also made a \$500,000 deposit the California Independent System Operator (CalISO) in order to be able to engage in power procurement activities. This significant transaction will appear on the next financial report. In May, 2018 VCEA staff will complete transition of funds from the County Treasury to the River City Bank Accounts.

**Attachments:**

Cash Flow, Obligation Schedule, and Chart through March 31, 2018

**Valley Clean Energy Alliance**

Cash Flows

Through March 31, 2018

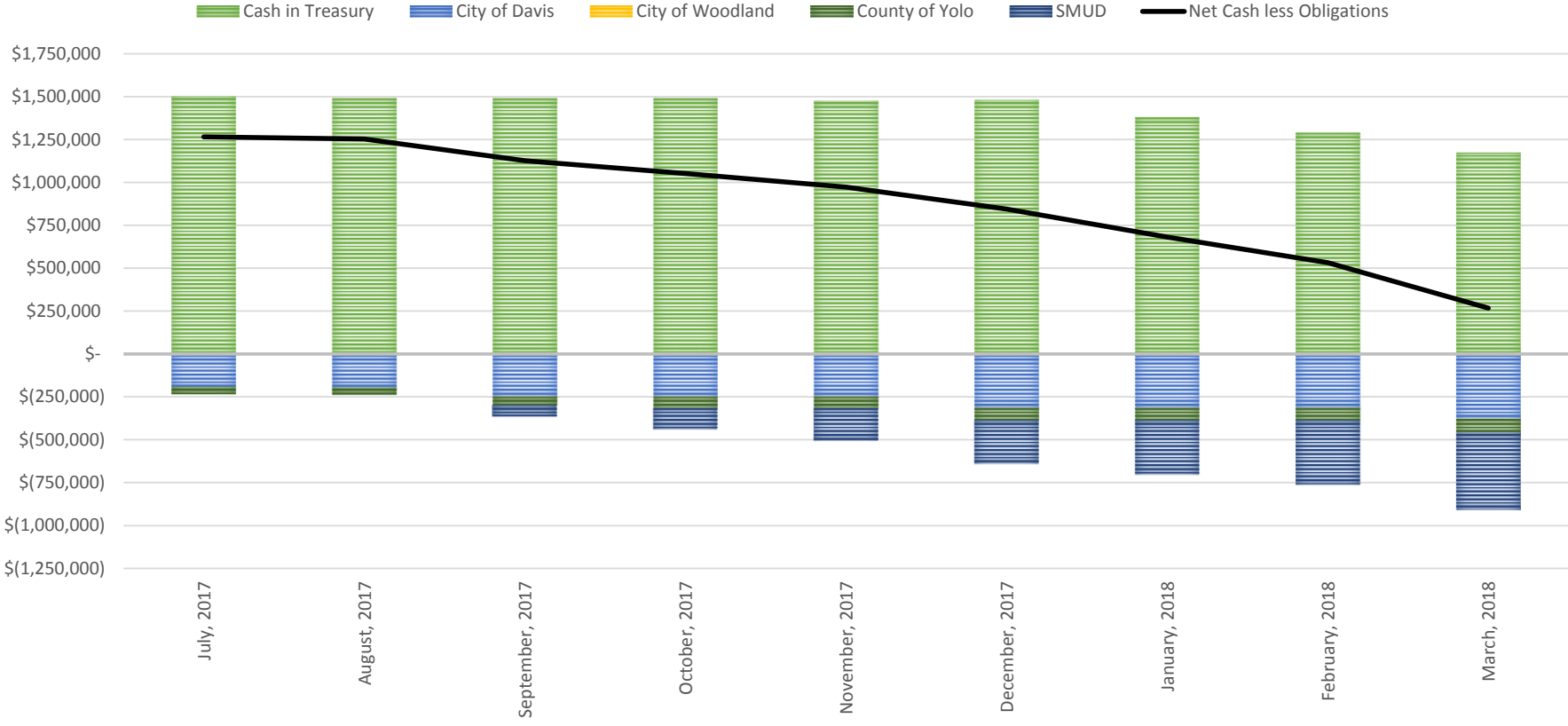
	2017						2018		
	July	August	September	October	November	December	January	February	March
<b>Cash in Treasury - Beginning of Month</b>	<b>\$ 1,002,936</b>	<b>\$ 1,499,979</b>	<b>\$ 1,490,551</b>	<b>\$ 1,490,551</b>	<b>\$ 1,476,007</b>	<b>\$ 1,480,392</b>	<b>\$ 1,380,392</b>	<b>\$ 1,290,033</b>	<b>\$ 1,173,876</b>
<b>Cash Inflows:</b>									
City of Davis Contribution	-	-	-	-	-	-	-	-	-
City of Woodland Contribution	500,000	-	-	-	-	-	-	-	-
County of Yolo Contribution	-	-	-	-	-	-	-	-	-
Interest Earnings:	-	-	-	-	4,385	-	4,666	-	-
<b>Total Inflows</b>	<b>500,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4,385</b>	<b>-</b>	<b>4,666</b>	<b>-</b>	<b>-</b>
<b>Cash Outflows:</b>									
<b>Vendors:</b>									
CirclePoint	-	-	-	2,215	-	-	64,081	82,880	-
Ruud Media	-	960	-	-	-	-	-	-	-
Lean Energy	2,957	8,232	-	-	-	-	26,632	27,664	-
Don Dame	-	-	-	12,329	-	-	-	5,613	-
Kim Floyd	-	-	-	-	-	-	4,312	-	-
CPUC	-	-	-	-	-	100,000	-	-	-
<b>Internal:</b>									
Food - CEO Recruitment	-	-	-	-	-	-	-	-	-
Training - CCA Conference	-	236	-	-	-	-	-	-	-
<b>Total Outflows</b>	<b>2,957</b>	<b>9,428</b>	<b>-</b>	<b>14,544</b>	<b>-</b>	<b>100,000</b>	<b>95,025</b>	<b>116,157</b>	<b>-</b>
<b>Cash in Treasury - End of Month</b>	<b>\$ 1,499,979</b>	<b>\$ 1,490,551</b>	<b>\$ 1,490,551</b>	<b>\$ 1,476,007</b>	<b>\$ 1,480,392</b>	<b>\$ 1,380,392</b>	<b>\$ 1,290,033</b>	<b>\$ 1,173,876</b>	<b>\$ 1,173,876</b>

**Valley Clean Energy Alliance**  
Obligations Incurred  
Through March 31, 2018

	2017						2018		
	July	August	September	October	November	December	January	February	March
<b>Member Agency Obligations:</b>									
<b>City of Davis:</b>									
Obligation - Beginning of Month	\$ 188,967	\$ 191,592	\$ 194,043	\$ 249,281	\$ 249,281	\$ 249,281	\$ 313,692	\$ 313,692	\$ 313,692
Increases	2,625	2,451	55,238	-	-	64,411	-	-	62,051
Decreases	-	-	-	-	-	-	-	-	-
Obligation - End of Month	191,592	194,043	249,281	249,281	249,281	313,692	313,692	313,692	375,743
<b>City of Woodland:</b>									
Obligation - Beginning of Month	-	-	-	217	217	217	343	343	343
Increases	-	-	217	-	-	126	-	-	224
Decreases	-	-	-	-	-	-	-	-	-
Obligation - End of Month	-	-	217	217	217	343	343	343	567
<b>County of Yolo:</b>									
Obligation - Beginning of Month	42,627	42,627	42,627	65,588	65,588	65,588	72,521	72,521	72,521
Increases	-	-	22,961	-	-	6,933	-	-	10,081
Decreases	-	-	-	-	-	-	-	-	-
Obligation - End of Month	42,627	42,627	65,588	65,588	65,588	72,521	72,521	72,521	82,602
<b>Vendor Obligations:</b>									
<b>SMUD:</b>									
Obligation - Beginning of Month	-	-	-	65,945	123,123	188,423	249,278	312,163	371,298
Increases	-	-	65,945	57,178	65,300	60,855	62,885	59,135	76,145
Decreases	-	-	-	-	-	-	-	-	-
Obligation - End of Month	-	-	65,945	123,123	188,423	249,278	312,163	371,298	447,442
<b>Total Obligations:</b>									
<b>Total Obligation - End of Month</b>	<b>\$ 234,219</b>	<b>\$ 236,670</b>	<b>\$ 381,031</b>	<b>\$ 438,209</b>	<b>\$ 503,509</b>	<b>\$ 635,833</b>	<b>\$ 698,718</b>	<b>\$ 757,853</b>	<b>\$ 906,354</b>

Note (\*) Costs about only reflect Member Agency invoices that have been billed. Generally member agency invoices are

# VCEA CASH AND DEBT OBLIGATIONS THROUGH MARCH 31, 2018





**VALLEY CLEAN ENERGY ALLIANCE**

**Staff Report – Item 13**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager

**SUBJECT:** Transmittal of Community Advisory Committee Report – April 26, 2018 meeting summary

**DATE:** May 10, 2018

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This report transmits the Community Advisory Committee's Report regarding its April 26, 2018 meeting of their Integrated Resource Plan Workshop.

**Attachment**

1. CAC Report

To: VCEA Board of Directors  
From: VCEA CAC  
CC: Mitch Sears

Subject: May 10, 2018 CAC Update

On April 26, VCEA staff and five CAC members participated in an Integrated Resource Plan (IRP) workshop organized to consider inputs/guidance regarding:

1. Electricity demand, supply and cost;
2. Resource preferences; and
3. A three-year action plan to guide resource procurement, long term contracting and customer-facing programs.

Dr. Olof Bystrom is leading efforts to meet an August 1 CPUC IRP filing deadline. He presented slides summarizing pertinent planning assumptions and forecasts. With the help of SMUD and VCEA colleagues, he answered questions posed by CAC members and members of the public. After the presentation, Dr. Bystrom facilitated a discussion of IRP related concerns and issues.

A detailed meeting summary is available and will be discussed at the next regular CAC meeting. CAC member questions, comments and suggestions identified numerous and diverse issues, including:

1. Achieving feasible acceleration (e.g. relative to renewable and local renewable percentages) while maintaining rate stability and minimizing long term enterprise risk.
2. Consideration of both quantitative factors (e.g. cost) and “subjective” factors (e.g. rate equity, environmental stewardship, local economic costs and benefits, and long- term energy resilience). More specifically, the need for procurement criteria related to environmental impacts. (A representative of Defenders of Wildlife in attendance offered assistance in meeting this need.)
3. Establishing targets and metrics consistent with the board approved vision
4. Potential opportunities to consider member jurisdiction differences in balancing portfolio, rate and program choices.

Dr. Bystrom wrapped up the meeting by summarizing the CAC’s general guidance on some key IRP related topics, i.e.:

1. Impacts of long term climate change on demand and resource availability is not factored into the report and IRP forecast. This may be an area of future studies.
2. Energy Efficiency and Demand Management are important features of the jurisdictions’ climate action plans. Impacts are not modeled explicitly but captured in the demand forecast - more can perhaps be done on this in the future (and when cash flow for programs start to materialize).
3. Land use impact and other criteria for procurement of resources under long term contract may be an important area for CAC to provide guidance on, leading up to future solicitations for contracts.

4. Although cost is not the only factor affecting future resource supply, it is important to remain competitive with PG&E rates.

**VALLEY CLEAN ENERGY ALLIANCE**

**Staff Report – Item 14**

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager  
Lisa Limcaco, Director of Finance & Internal Operations  
Chad Rinde, Asst. Chief Financial Officer, Yolo County

**SUBJECT:** Approval of Credit Agreement with River City Bank

**DATE:** May 10, 2018

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**RECOMMENDATION**

Staff recommends the Board adopt a resolution that approves the Credit Agreement with River City Bank based on the previous approval of Subordination Agreements by the Davis and Woodland City Councils and the Yolo County Board of Supervisors.

**BACKGROUND AND ANALYSIS**

At the December 14, 2017 Board meeting, the Board adopted a resolution to select River City Bank as the credit and banking services vendor for VCE and authorized the Interim General Manager to execute a letter of intent and enter into negotiations for final contracts with River City Bank for VCE credit facilities. On March 7, 2018, the Interim General Manager executed a term sheet for up to \$11,000,000 in total credit facilities for VCE with River City Bank.

Summary of the Credit Agreement

Revolving Line of Credit (RLOC)

- Up to \$11,000,000 RLOC for the sole purpose of providing working capital to fund power purchases during seasonal differences in cash flow and reserves as needed to support power purchases.
- Monthly interest payments due on outstanding RLOC balance at a variable rate of interest equal to the One-Month LIBOR plus 1.75% per annum, subject to a floor of 1.75% per annum. If all of the \$11M were drawn, the monthly payment would be approximately \$33,400, subject to the variable rates.
- Availability of RLOC expires 1 year from execution of agreement (with an option to extend the line for another 6 months for total of 18 months).
- The fees and expenses of the loan are estimated to be \$30,000 and will be paid with proceeds of the line of credit/directly by VCE.

### Conversion of RLOC

- At the expiration of the RLOC, any outstanding balance can be converted to an amortizing Term Loan which matures up to 5 years from conversion date.

### Term Loan

- Up to 60 equal monthly principal payments plus interest on outstanding balance at a fixed rate of interest equal to the 3 year Treasury Constant Maturity Rate plus 2.00% per annum at the time of conversion.
- Required annual Debt service coverage ratio of 1.25:1.

### Other Requirements

- Establish Debt Service Reserve Account of \$1,100,000 which can be funded by RLOC and River City Bank has 1<sup>st</sup> Lien position on this account.
- JPA member loans subordinate to this Credit Agreement.
- Various other loan covenants.

All financial factors associated with the RLOC and subsequent Term Loan have been factored into and are accounted for by the VCE financial model.

The JPA members will consider the Subordination Agreement at their respective member agency meetings in April (City of Davis and Yolo County), and May 2018 (City of Woodland).

VCE's financial and management staff, supported by legal counsel with expertise in financial agreements provided by the office of VCE's General Co-Counsel (BBK), participated in the development and review of the Credit Agreement and associated documents. BBK legal counsel has reviewed and approved the documents as to form.

Staff is recommending the Board approve the Credit agreement with River City Bank as summarized above, and authorize the Interim General Manager to execute the Credit Agreement.

### **Attachments**

1. Resolution
2. Credit Agreement

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**CREDIT AGREEMENT**

**Dated as of May \_\_\_, 2018**

**by and between**

**VALLEY CLEAN ENERGY ALLIANCE,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “*Agreement*”) is entered into as of May \_\_\_, 2018, by and between **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

### W I T N E S S E T H:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a credit facility which includes a revolving line of credit upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

#### SECTION 1. DEFINITIONS AND INTERPRETATION.

*Section 1.1. Definitions.* All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them on **Exhibit A**.

#### *Section 1.2. Other Interpretive Provisions.*

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to “dollars” or “\$” refer to United States dollars.

### *Section 1.3. Accounting Principles.*

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

## SECTION 2. THE REVOLVING LINE OF CREDIT.

*Section 2.1. Revolving Credit.* Subject to the terms and conditions hereof, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the sole purpose of providing working capital to fund (a) power purchases during seasonal differences in cash flow and (b) reserves as needed to support Power Purchase Agreements in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment at any time prior to the Revolving Credit Termination Date. The Revolving Credit will be disbursed in one or more advances (each, an “*Advance*” and, collectively, the “*Advances*”), provided that the conditions precedent to Advances specified in Section 8 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

*Section 2.2. Advances.* Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that



Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

*Section 2.3. Promissory Note.* The Revolving Credit will be evidenced by a **Revolving Credit Promissory Note** (the “*Promissory Note*”) made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**.

*Section 2.4. Repayment.*

(a) *Revolving Credit Termination Date.* All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the Promissory Note. This is a revolving credit and any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date. Provided no Default or Event of Default has occurred or is occurring, Borrower may request a one-time extension of the Revolving Credit Termination Date for a period of six (6) months by providing a written request to Lender no later than thirty (30) days prior to the Revolving Credit Termination Date. The extension request may be approved or rejected by Lender in its sole discretion. If approved, Lender shall notify Borrower in writing of the extended Revolving Credit Termination Date not later than ten (10) days prior to the initial Revolving Credit Termination Date. Provided no Default or Event of Default has occurred or is occurring, Borrower may also exercise a one-time option to convert the outstanding Advances under the Revolving Credit to a term loan as provided below.

(b) *Conversion of Revolving Advances to a Term Loan.* No later than thirty (30) days prior to the Revolving Credit Termination Date (as may be extended pursuant to Section 2.4(a)), Borrower may notify Lender of its intent to exercise its option to convert, as of a date not later than the Revolving Credit Termination Date, the outstanding Advances under the Revolving Credit to a term loan (the “*Term Loan*”) payable in installments of up to sixty (60) equal monthly principal payments plus interest payable monthly in arrears at the Term Loan Rate. The Term Loan shall be governed by the terms and conditions of this Agreement and evidenced by a single promissory note (the “*Term Note*”) made, executed and delivered by Borrower in the form (with appropriate insertions) attached hereto as **Exhibit C**.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

*Section 3.1. Interest Payments.*

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date beginning with the first Payment Date immediately following the initial Advance with all subsequent interest payments due and payable on each Payment Date thereafter. Interest on the Advances will be payable monthly in arrears on each Payment Date. Interest on any installment of principal will be due on a Payment Date provided however, that any principal amount that is not paid when due (whether by lapse of time, acceleration or otherwise) will be due and payable on demand. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

*Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates.* All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

*Section 3.3. Prepayments.*

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Termination Date, as the case may be.

(b) Mandatory Prepayment. Borrower will, upon demand, prepay Advances at any time and to the extent that the outstanding principal amount of all Advances exceeds the Revolving Credit Commitment.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

*Section 3.4. Place and Application of Payments and Collections.* All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank  
Loan Center  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

*Section 3.5. Notations.* All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of any Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

#### SECTION 4. FEES.

*Section 4.1.* Upon execution of this Agreement, Borrower shall pay to Lender fees for this Agreement as follows:

(a) Loan Fee. A Loan Fee in an amount equal to .25% of the Revolving Credit Commitment (\$27,500.00).

(b) Documentation Fee. A Documentation Fee in an amount equal to \$2,500.00 for the Revolving Credit Commitment.

(c) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other costs and fees incurred by Lender associated with the origination and documentation of this Agreement including the reasonable fees and expenses of legal counsel retained by Lender.

#### SECTION 5. CONVERSION OF REVOLVING CREDIT ADVANCES TO TERM NOTE.

*Section 5.1. Term Loan.* Provided no Default or Event of Default has occurred or is continuing, Borrower shall have an option to convert outstanding Advances under the Revolving Credit to a Term Loan as provided in Section 2.4(b) herein. The Term Loan will accrue interest at the Applicable Rate from and including the date on which the outstanding Advances are converted to a Term Loan and will be evidenced by the Term Note. Borrower's right to convert outstanding Advances under the Revolving Credit to a Term Loan shall be subject to the execution and delivery of such additional documentation from Borrower and any subordinated creditors as Lender may reasonably require.

SECTION 6. COLLATERAL – REVOLVING CREDIT COMMITMENT.

*Section 6.1. Debt Service Reserve Account.* As a condition to Lender’s obligation to make any Advances under the Revolving Credit Commitment, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the “*Debt Service Reserve Account*”), with a balance of not less than \$1,100,000.00 at any time. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

*Section 6.2. Assignment of Debt Service Reserve Account.* As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in the Debt Service Reserve Account and (i) all replacements, substitutions or proceeds thereof, (ii) all instruments and documents now or hereafter evidencing the Debt Service Reserve Account, (iii) all powers, options, rights, privileges and immunities pertaining to the Debt Service Reserve Account, including the right to make withdrawals therefrom, and (iv) all interest, income, profits and proceeds of the foregoing. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than \$1,100,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including without limitation, interest) then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys’ fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit Account in the form of **Exhibit D** attached entered into as of the date hereof between Borrower and Lender shall be cumulative.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

*Section 7.1. Organization and Qualification; Authority; Consents.* Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and

adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any Power Purchase Agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

*Section 7.2. Legal Effect.* This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

*Section 7.3. Subsidiaries.* Borrower has no Subsidiaries.

*Section 7.4. Use of Proceeds.* Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

*Section 7.5. Financial Reports.* Effective with the delivery to Lender of the financial statements required by Section 9.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

*Section 7.6. Full Disclosure.* The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue

statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

*Section 7.7. Litigation.* There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

*Section 7.8. Good Title.* Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

*Section 7.9. Members.* Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

*Section 7.10. Compliance with Laws.* Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 7.11. Other Agreements.* Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 7.12. No Default.* No Default or Event of Default has occurred or is continuing.

## SECTION 8. CONDITIONS PRECEDENT.

The obligation of Lender to make any Advance is subject to the following conditions precedent:

*Section 8.1. All Advances.* As of the time of the making of each Advance (including the initial Advance unless otherwise specified):

(a) each of the representations and warranties set forth in Section 7 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 7.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 9.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Notes, the Assignment of Deposit Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

*Section 8.2. Initial Advances under the Revolving Credit.*

(a) At or prior to the making of the first Advance under the Revolving Credit Commitment, the following conditions precedent must also be satisfied:

(1) Lender shall have received properly completed and executed originals of the following in form and substance satisfactory to Lender:

- (i) this Agreement;
- (ii) a favorable written legal opinion from Borrower's counsel;
- (iii) the Request for Advance in the form of **Exhibit E**;
- (iv) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- (v) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- (vi) evidence of Borrower's good standing in the state of California;
- (vii) payment by Borrower of the Loan Fee and all other amounts required to be paid by Borrower pursuant to Sections 4.1 and 11.4(a) of this Agreement;
- (viii) a schedule substantially in the form of **Schedule 1** listing all of Borrower's outstanding Indebtedness for Borrowed Money;
- (ix) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;
- (x) copies of subordinated debt instruments or other evidence of the indebtedness due or to become due from Borrower to the City of Davis, the City of Woodland and/or Yolo County;

- (xi) subordination agreements in favor of Lender in the form attached as **Exhibit F**, executed by each of the City of Davis, the City of Woodland and Yolo County;
- (xii) evidence of operating approval from the CPUC;
- (xiii) summary of the terms of the agreement(s) between Borrower and SMUD pursuant to which SMUD purchases power from third parties on behalf of Borrower (“*Power Purchase Agreements*”);
- (xiv) reserve account control or similar agreement executed by each of Borrower, Lender and SMUD;
- (xv) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require; and
- (xvi) evidence of Liability Insurance in form and substance satisfactory to Lender.

(2) the Launch Date shall have been established and the initial Advance (other than the advance to fund the Debt Service Reserve Account) under the Revolving Credit requested no earlier than four (4) months prior to the Launch Date;

(3) the Debt Service Reserve Account shall have been established and funded with Lender;

(4) the Advance is either a) the Debt Service Reserve Advance, b) an Advance to make a Power Purchase Payment or c) a Working Capital Advance as provided in Section 8.2(b) below; and

(5) any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

(b) *Permitted Revolving Credit Advances.* In addition to the above-listed conditions precedent, the following terms shall apply to the Advances permitted under the Revolving Credit:

(1) Debt Service Reserve Advance. The Debt Service Reserve Advance shall be in an amount equal to One Million, One Hundred Thousand and no/100 Dollars (\$1,100,000) and will be the first Advance under the Revolving Credit. The proceeds from the Debt Service Reserve Advance shall be deposited into the Debt Service Reserve Account.

(2) PPA Advance. PPA Advances may be requested for the sole purpose of funding reserves in connection with a Power Purchase Agreement. Each PPA Advance shall be requested in substantially the form of **Exhibit E**.



(3) Working Capital Advance. Working Capital Advances may be requested for the sole purpose of bridging seasonal gaps between payment obligations due under the Power Purchase Agreements and reductions in cash flow due to lower billing rates in winter months. Working Capital Advances are to fund power purchases only. Each Working Capital Advance shall be requested in substantially the form of **Exhibit E**.

(4) Pre-Launch Advances. Advances prior to the Launch Date shall be capped at Four Million Dollars (\$4,000,000), of which Five Hundred Thousand Dollars (\$500,000) shall be made by Lender to Borrower to reimburse Borrower for the required deposit made by Borrower to Cal-ISO prior to the execution of this Agreement.

## SECTION 9. COVENANTS.

Borrower agrees that, so long as any credit is available to or in use by Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by Lender:

*Section 9.1. Maintenance of Business.* Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

*Section 9.2. Financial Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

(a) as soon as available, and in any event within thirty (30) days after the close of each month, an unaudited balance sheet of Borrower as of the last day of the period then ended and statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred twenty (120) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of the last day of the Fiscal Year End and CPA-audited statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;

(c) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(d) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(e) promptly upon request, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 9.2 shall be accompanied by a written certificate signed by the Director of Finance of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

*Section 9.3. Maintenance of Debt Service Reserve Account.* Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 6.

*Section 9.4. Exclusive Depository Relationship.* Borrower shall maintain an exclusive business banking deposit account relationship with Lender for so long as any amounts under this Agreement or any Note remain outstanding. In the event that this condition is not satisfied, as determined by Lender, the Applicable Rate (or the Default Rate, if applicable) and any commissions charge on any outstanding Note will immediately increase by an additional 2.00 percentage points.

*Section 9.5. Debt Service Coverage Ratio.* If the Revolving Credit is converted to the Term Loan, Borrower shall maintain a minimum Debt Service Coverage Ratio ("DSCR") not at any time less than 1.25:1.00, measured annually as of each Fiscal Year End beginning with the first June 30 following conversion to the Term Loan. DSCR is calculated as EBIDA divided by Debt Service.

"EBIDA" is hereby defined as earnings before depreciation, amortization and interest expense, for the twelve (12) month period ending the most recent fiscal year end.

"Debt Service" is hereby defined as interest expense during the calculated period plus current maturities of long term debt reported at the beginning of the calculated period.

*Section 9.6. Unrestricted Tangible Net Assets.* Borrower shall maintain minimum Unrestricted Tangible Net Assets not at any time less than Two Million and 00/100 Dollars (\$2,000,000), measured annually as of June 30, 2019.

"Unrestricted Tangible Net Assets" is defined as total assets less temporarily and permanently restricted assets, less any intangible assets, less total liabilities.

*Section 9.7. Positive Change in Net Assets.* Borrower will show a minimum positive change in Net Assets of no less than One and 00/100 Dollars (\$1.00), measured annually for the twelve month period beginning the first day after Fiscal Year End 2018 through the Fiscal Year End 2019.

“Net Assets” is defined as total assets less total liabilities.

*Section 9.8. Minimum Profitability Requirements.* Borrower shall maintain the following minimum “Profitability”(defined as revenue minus expenses) for the periods described below:

<b>Calculated Period</b>	<b>Minimum Profitability Requirement</b>
07/01/2018 – 09/30/2018	\$1,700,000
07/01/2018 – 12/31/2018	\$2,900,000
07/01/2018 – 03/31/2019	\$3,000,000
07/01/2018 – 06/30/2019	\$6,100,000
07/01/2019 – 09/30/2019	\$2,500,000

*Section 9.9. Inspection.* Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

*Section 9.10. Liens.* Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker’s compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics’, workmen’s, materialmen’s, landlords’, carriers’, or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are

being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$200,000 at any one time outstanding;

(d) the Liens identified on **Schedule 1** hereto;

(e) the Liens pursuant to an approved Power Purchase Agreement; and

(f) the Liens established by the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (f) of this Section 9.10 are collectively referred to in this Agreement as the “*Permitted Liens*.”

*Section 9.11. Investments, Acquisitions, Loans, Advances and Guaranties.* Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

*Section 9.12. Compliance with Laws.* Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

*Section 9.13. Contracts With Members.* Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

*Section 9.14. Notices of Claims and Litigation.* Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower’s financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

*Section 9.15. Other Agreements.* Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

*Section 9.16. Performance.* Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

*Section 9.17. Compliance Certificates.* Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

*Section 9.18. Fiscal Year.* Borrower shall not change its fiscal year without the prior written consent of Lender.

*Section 9.19. Indebtedness for Borrowed Money.* As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money, except as set forth on **Schedule 1**. Except as disclosed on **Schedule 1**, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

*Section 9.20. No Payments on Subordinated Amounts.* So long as any Obligations remain outstanding, Borrower shall not, without the prior written consent of Lender, make any payment on or any distribution with respect to Indebtedness for Borrowed Money to any JPA Member.

## SECTION 10. EVENTS OF DEFAULT AND REMEDIES.

*Section 10.1. Events of Default.* Any one or more of the following will constitute an "Event of Default" hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under the Notes, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars (\$1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired; or

(g) Borrower (i) takes any steps to effect a Winding-Up, or (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due; or

(h) any custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, whether by court order, by operation of law or otherwise, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due.

*Section 10.2. Non-Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in clauses (a) through (g) of Section 10.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

*Section 10.3. Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in Section 10.1(h), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

## SECTION 11. MISCELLANEOUS.

*Section 11.1. Holidays.* If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

*Section 11.2. No Waiver, Cumulative Remedies.* No delay or failure on the part of Lender or on the part of the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 11, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

*Section 11.3. Amendments, Etc.* No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

### *Section 11.4. Costs and Expenses.*

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 4.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

*Section 11.5. Indemnity.* Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "*Indemnified Person*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "*Indemnified Liabilities*"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 11.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 11.5 shall be paid within thirty (30) days after demand.

*Section 11.6. Right of Set Off.* To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings,



or some other account) other than the Lockbox Account. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

*Section 11.7. Survival of Representations.* All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

*Section 11.8. Notices.* Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Valley Clean Energy Alliance  
604 2<sup>nd</sup> Street  
Davis, CA 95616  
Attention: General Manager

To Lender at:

River City Bank  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833  
Telephone: (916) 567-2700  
Telecopy: (916) 567-2780  
Attention: Alice Harris  
Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy or email is transmitted to the telecopier number or email address specified in this Section and a confirmation of such telecopy or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 11.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

*Section 11.9. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

*Section 11.10. Severability of Provisions.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*Section 11.11. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

*Section 11.12. Assignments, Binding Nature, Governing Law, Etc.* This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

*Section 11.13. Submission to Jurisdiction; Waiver of Jury Trial.* Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

*Section 11.14. Time is of the Essence.* Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

*Section 11.15. Consent to Loan Participation.* Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any

limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

*Section 11.16. No Recourse Against Constituent Members of Borrower.* Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

**[remainder of page intentionally left blank]**

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

Executed and delivered in Sacramento, California, as of the first date written above.

Valley Clean Energy Alliance

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

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

Its: \_\_\_\_\_

RIVER CITY BANK

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

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

Its: \_\_\_\_\_

## EXHIBIT A

### Definitions

“*Advance*” and “*Advances*” is defined in Section 2.1.

“*Agreement*” means this Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“*Applicable Rate*” means (i) for the Revolving Credit, a variable rate of interest equal to the One-Month LIBOR plus 1.75% per annum, subject to a floor of 1.75% per annum, and (ii) for the Term Loan, a fixed rate of interest equal to the 3 year Treasury Constant Maturity Rate plus 2.00% per annum at the time of conversion. The Applicable Rate is subject to increase as provided in Section 9.4.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 8.2(a)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“*Borrower*” is defined in the introductory paragraph.

“*Business Day*” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“*CPUC*” means the California Public Utilities Commission.

“*CAL ISO*” means California ISO, the independent grid operator.

“*Capital Lease*” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligation*” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“*Debt Service*” is defined in Section 9.5.

“*Debt Service Reserve Account*” is defined in Section 6.1.

“*Debtor Relief Laws*” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Default Rate*” means the Applicable Rate plus five percent (5.0%).

“*Dollars and \$*” mean lawful money of the United States.

“*EBIDA*” is defined in Section 9.5.

“*Event of Default*” is defined in Section 10.1.

“*Fiscal Year End*” means June 30.

“*GAAP*” means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Indebtedness for Borrowed Money*” means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

“*Indemnified Liabilities*” is defined in Section 11.5.

“*Indemnified Person*” is defined in Section 11.5.

“*Initial Rate Set Date*” means the date of issuance of the Promissory Note at which time Lender will determine the One-Month LIBOR which shall be in effect until the next Rate Change Date.

“*JPA Members*” mean the City of Woodland, the City of Davis and the County of Yolo.

“*Joint Powers Agreement*” means the Joint Powers Agreement of Borrower effective as of October 25, 2016, and as amended from time to time.

“*Launch Date*” means the earlier of June 4, 2018 and the date on which Borrower begins revenue generation.

“*Lender*” is defined in the introductory paragraph.

“*Lien*” means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

“*Loan Documents*” means this Agreement, the Notes, the Assignment of Debt Service Reserve Account, the Subordination Agreement and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Revolving Credit.

“*Loan Fee*” means one-quarter of one percent (0.25%) of the Revolving Credit Commitment.

“*Maintenance and Operation Costs*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and a consulting engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“*Maturity Date*” means, for any Note, the date so specified in such Note as the Maturity Date.

“*Net Assets*” is defined in Section 9.7.

“*Notes*” refers collectively to the Promissory Note and, if applicable, the Term Note.

“*Obligations*” means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or

otherwise, including without limitation all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower thereunder.

*"One-Month LIBOR"* means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the One-Month LIBOR rate as posted on Bankrate.com (or, if such rate becomes unavailable to Lender, a substitute rate based on an index selected by Lender in its sole discretion) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

*"Payment Date"* means, other than the Termination Date or any Maturity Date, the first day of each calendar month.

*"Permitted Liens"* is defined in Section 9.10.

*"Person"* means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

*"Property"* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

*"Power Purchase Agreements"* is defined in Section 8.2(a)(i)(xiii).

*"Power Purchase Payment"* means a payment due by Borrower to SMUD pursuant to agreements between Borrower and SMUD relating to Power Purchase Agreements.

*"Profitability"* is defined in Section 9.8.

*"Promissory Note"* is defined in Section 2.3.

*"Rate Change Date"* means the first calendar day of each calendar month.

*"Related Parties"* means, with respect to any Person, such Person's affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's affiliates.

*"Responsible Officer"* means the Chief Executive Officer.

*"Revolving Credit"* is defined in Section 2.1.

*"Revolving Credit Commitment"* means, at any time of determination, an amount equal to \$11,000,000.00 less the aggregate principal amount of Advances made by Lender under the Revolving Credit.



*“Revolving Credit Termination Date”* means the date that is twelve (12) months from the date of this Agreement, subject to one six-month extension as provided in Section 2.4(a).

*“Subordination Agreement”* means a subordination agreement substantially in the form of Exhibit E executed by each member of the Joint Power Authority (“JPA”) which has loaned or otherwise advanced Borrower money affirming the subordination of the loans totaling \$1,500,000 between the JPA Members and Borrower.

*“System”* means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

*“Term Loan”* means the conversion of outstanding Revolving Line of Credit Advances as provided in Section 2.4(b).

*“Term Note”* is defined in Section 2.4(b).

*“UCC”* means the Uniform Commercial Code as enacted in the State of California.

*“Unrestricted Tangible Net Assets”* is defined in Section 9.6.

*“Winding-Up”* means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.

## EXHIBIT B

### REVOLVING CREDIT PROMISSORY NOTE

\$11,000,000.00

Date: \_\_\_\_\_

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of ELEVEN MILLION and /100 DOLLARS (\$11,000,000.00), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April \_\_, 2018, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on the latter of (a) the first Payment Date after the date of each Advance, or (b) \_\_\_\_\_, 2018, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date. Under Section 5 of the Credit Agreement and subject to the conditions set forth therein, no later than 30 days prior to the Revolving Credit Termination Date, Borrower may request that any Advances outstanding under this Note be converted into a Term Loan evidenced by a Term Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

**Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.**

VALLEY CLEAN ENERGY ALLIANCE

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

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

Its: \_\_\_\_\_

## EXHIBIT C

### TERM NOTE

\$ \_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of \_\_\_\_\_/100 DOLLARS (\$ \_\_\_\_\_), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April \_\_\_, 2018, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Term Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Under Section 2.4(b) of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that unpaid Advances under the Revolving Credit be converted to a Term Loan. This Note evidences a Term Loan made to Borrower as of \_\_\_\_\_ [date] in the original principal amount of \$ \_\_\_\_\_, and will bear interest from the date hereof. Borrower agrees to repay this Note by making sixty (60) equal monthly payments of principal hereunder in the amount of \$ \_\_\_\_\_ each, plus all accrued but unpaid interest on the unpaid principal balance of this Note as of each Payment Date, beginning on the first Payment Date after the date of this Note, with all subsequent payments due and payable on each Payment Date thereafter as provided in the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on \_\_\_\_\_ [date – not to exceed 60 months].

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 10.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement any rights of Lender under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

**Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.**

VALLEY CLEAN ENERGY ALLIANCE

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

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

Its: \_\_\_\_\_

## EXHIBIT D

### ASSIGNMENT OF DEPOSIT ACCOUNT

**Grantor:** Valley Clean Energy Alliance  
23 Russell Blvd.  
Davis, CA 95616

**Lender:** RIVER CITY BANK  
Business Banking Group  
2485 Natomas Park Drive  
Sacramento, CA 95833

**THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated April \_\_\_, 2018 is made and executed among Valley Clean Energy Alliance ("Grantor") and RIVER CITY BANK ("Lender").**

**ASSIGNMENT.** For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit account(s) described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

**COLLATERAL DESCRIPTION.** The word "Collateral" means the following described deposit account(s) ("Account"):

**A deposit account from Grantor with Lender with reference number \_\_\_\_\_, and all amendments, extensions, renewals, replacements of the accounts (all called the "Debt Service Reserve Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Debt Service Reserve Account, and all proceeds. The Debt Service Reserve Account will at all times maintain the following minimum account balance:**

**Minimum Required Balance:** \$1,100,000.00

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account) other than the Lockbox Account (as defined in the Credit Agreement). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

**GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL.** With respect to the Collateral, Grantor represents and promises to Lender that:

**Ownership.** Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

**Right to Grant Security Interest.** Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

**No Prior Assignment.** Grantor has not previously granted a security interest in the Collateral to any other creditor.

**No Further Transfer.** Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

**No Defaults.** There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

**Proceeds.** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

**Validity; Binding Effect.** This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

**Financing Statements.** Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Collateral. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. Grantor will promptly notify Lender of any change to Grantor's name or its jurisdiction of organization.

**LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL.** While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there is no longer any Indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

**LENDER'S EXPENDITURES.** If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the applicable rate charged under the Note (as selected by Lender in its sole discretion) from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of such Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

**LIMITATIONS ON OBLIGATIONS OF LENDER.** Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

**DEFAULT.** Any Default or Event of Default under the Credit Agreement shall constitute an Event of Default under this Agreement.

**RIGHTS AND REMEDIES ON DEFAULT.** Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

**Accelerate Indebtedness.** Lender may declare all Indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

**Application of Account Proceeds.** Lender may take directly all funds in the Account and apply them to the Indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the Indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the Indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the Indebtedness. Lender also shall have all the rights of a secured party under the California Uniform Commercial Code ("Code"), even if the Account is not otherwise subject to the Code concerning security interests, and the parties to this

Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

**Transfer Title.** Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

**Other Rights and Remedies.** Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Code, at law, in equity, or otherwise.

**Deficiency Judgment.** If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement.

**Remedies Cumulative.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and any election by Lender to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

**Amendments.** This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of California.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Sacramento County, State of California.

**Joint and Several Liability.** All obligations of Borrower and Grantor, if they are different, under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Grantor signing below is responsible for all obligations in this Agreement.

**Preference Payments.** Any monies Lender pays because of an asserted preference claim in Borrower's or Grantor's bankruptcy will become a part of the Indebtedness and, at Lender's option, shall be payable by Borrower and Grantor as provided in this Agreement.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the



granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Notices.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

**Waiver of Co-Obligor's Rights.** If more than one person is obligated for the Indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Code:

**Account.** The word "Account" means the deposit account(s) described in the "Collateral Description" section.

**Agreement.** The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

**Borrower.** The word "Borrower" means Valley Clean Energy Alliance and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Credit Agreement.** The words "Credit Agreement" mean the Credit Agreement dated as of April \_\_\_, 2018 between Borrower and Lender, as amended or modified from time to time.

**Default.** The word "Default" means the Default set forth in this Agreement in the section titled "Default".

**Event of Default.** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**Grantor.** The word "Grantor" means Valley Clean Energy Alliance.

**Indebtedness.** The word "Indebtedness" means all indebtedness of Borrower under the Credit Agreement, the Note or any of the Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or any of the Related Documents.

**Lender.** The word "Lender" means RIVER CITY BANK, its successors and assigns.

**Note.** The word "Note" means any and all Notes (as defined in the Credit Agreement) executed by Borrower in connection with a Revolving Credit or the Term Loan (as defined in the Credit Agreement), together with all renewals, extensions, modifications, consolidations and replacements of such Notes.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**GRANTOR HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED APRIL \_\_\_, 2018.**

**GRANTOR:**

**VALLEY CLEAN ENERGY ALLIANCE**

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

**Its** \_\_\_\_\_

**EXHIBIT E**

**REQUEST FOR ADVANCE**

**\$11,000,000 REVOLVING CREDIT**

**BORROWER: VALLEY CLEAN ENERGY ALLIANCE, HEREBY REQUESTS AN ADVANCE UNDER THE \$11,000,000 REVOLVING CREDIT NOTE IN ACCORDANCE WITH THE CREDIT AGREEMENT.**

**ADVANCE DATE:** \_\_\_\_\_

**AMOUNT OF REQUESTED ADVANCE:** \$ \_\_\_\_\_

**PURPOSE OF ADVANCE:**

- \_\_\_ - **THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE POWER PURCHASE AGREEMENT.**
- \_\_\_ - **THIS IS A WORKING CAPITAL ADVANCE TO COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING \_\_\_\_\_, 201\_\_\_. YOU ARE AUTHORIZED TO DEPOSIT LOAN PROCEEDS INTO CHECKING ACCOUNT: 885413324**
- \_\_\_ - **ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT**
- \_\_\_ - **YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:**

**COMPANY NAME:** \_\_\_\_\_ -

**WIRE INSTRUCTIONS:**

**BANK NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**ROUTING NUMBER:** \_\_\_\_\_

**ACCOUNT NUMBER:** \_\_\_\_\_

**OTHER REFERENCE:** \_\_\_\_\_

**BORROWER CERTIFICATION:**

**BORROWER HEREBY CERTIFIES THAT:**

- (I) **AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL ADVANCES SHALL NOT EXCEED THE REVOLVING COMMITMENTS THEN IN EFFECT;**

- (II) AS OF THE ADVANCE DATE, THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH ADVANCE DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND
- (III) AS OF THE ADVANCE DATE, NO EVENT HAS OCCURRED AND IS CONTINUING OR WOULD RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY THAT WOULD CONSTITUTE AN EVENT OF DEFAULT OR A DEFAULT.
- (IV) THIS ADVANCE IS BEING USED FOR THE PURPOSE INTENDED AS PROVIDED IN THE CREDIT AGREEMENT AND NO PORTION OF THIS ADVANCE IS BEING USED TO FUND OPERATING LOSSES.

VALLEY CLEAN ENERGY ALLIANCE

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

ITS: \_\_\_\_\_

## Exhibit F

### Form of Subordination Agreement

#### SUBORDINATION AGREEMENT

River City Bank (the “*Lender*”) and the other parties signatories hereto (each, a “*Subordinated Creditor*” and collectively, the “*Subordinated Creditors*”), agree, effective April \_\_\_, 2018, as follows:

##### Section 1. Background and Purpose.

1.1 The Lender is making a loan to Valley Clean Energy Alliance, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “*Obligor*”), pursuant to that certain Credit Agreement dated as of the date hereof (as modified, amended, restated or replaced from time to time, the “*Senior Loan Agreement*”). The loan is evidenced by a Revolving Credit Promissory Note in the original principal balance of \$11,000,000, and may be converted to a term loan evidenced by a Term Note (such notes are referred to herein individually and collectively as the “*Senior Note*”), as provided in the Senior Loan Agreement. The Obligor is currently indebted to the Subordinated Creditors as set forth on Schedule 1 attached hereto and incorporated herein (as the same may be amended, modified or refinanced, “*Subordinated Debt*”). The Lender and the Subordinated Creditors desire to enter into this Agreement to effectuate the subordination of the Subordinated Debt to the Senior Debt (as defined below). Capitalized terms used, but not otherwise defined, in this Subordination Agreement shall have the meanings ascribed to them in the Senior Loan Agreement.

##### Section 2. Subordination.

2.1 Each Subordinated Creditor hereby irrevocably subordinates, in accordance with the terms hereof, the payment and performance of the Subordinated Debt by the Obligor to it, to the prior payment and performance in full of all of the obligations specified in the Senior Loan Agreement and the Senior Note (collectively, the “*Senior Debt*”). Each Subordinated Creditor acknowledges that it has been represented by counsel in connection with the transactions that are the subject of this Subordination Agreement. This Subordination Agreement shall be effective as to a Subordinated Creditor when such Subordinated Creditor signs this Subordination Agreement and execution by all Subordinated Creditors is not a condition to such effectiveness.

2.2 Under no circumstances will the Senior Debt be deemed to have been paid in full unless and until such time as, and when used in this Subordination Agreement with respect to the Senior Debt, the words “paid in full,” “payment in full,” and similar phrases shall mean that, the Lender has received payment, in immediately available funds, of 100% of all

outstanding Senior Debt, and all of the Lender's obligations to extend credit under the Senior Loan Agreement have terminated.

2.3 The Subordinated Debt is subordinated in right of payment to the Senior Debt in accordance with this Agreement. Each Subordinated Creditor agrees to make appropriate entries in its books and records and stamp all Subordinated Debt documents evidencing the Subordinated Debt with the following legend:

“The indebtedness evidenced by this instrument is subordinated to the prior payment in full of the Senior Debt (as defined in the Subordination Agreement hereinafter referred to) pursuant to, and to the extent provided in, the Subordination Agreement effective as of April \_\_\_\_, 2018 by the maker hereof and payee named herein in favor of River City Bank.”

### Section 3. Payments.

3.1 Until the payment in full of the Senior Debt, without the prior written consent of the Lender (which consent the Lender may refuse to give for any or no reason), under no circumstances will any Subordinated Creditor, directly or indirectly, take any action to enforce payment of or to collect the whole or any part of the Subordinated Debt or enforce any of the rights and remedies available to the Subordinated Creditor, other than in the manner and to the extent permitted by Section 4 hereof, or ask, demand, take or receive any collateral, mortgages or other security from the Obligor in respect of the Subordinated Debt. Any amounts paid by the Obligor to a Subordinated Creditor in violation of the terms of this Subordination Agreement shall be held by such Subordinated Creditor in trust and promptly paid over to the Lender for application to the Senior Debt in accordance with the Senior Loan Agreement.

3.2 Notwithstanding anything to the contrary contained in this Subordination Agreement, each Subordinated Creditor agrees that it will not, without the Lender's prior written consent (which the Lender may refuse to give for any or no reason), directly or indirectly permit the modification or amendment of any of the terms or provisions, as they exist on the date hereof, of the note reflecting the Subordinated Debt (“*Subordinated Note*”), to the extent that any such modification or amendment would (a) result in any increase in the amount of the Subordinated Debt, (b) increase the amount, or accelerate the due date, of any payment or distribution in respect of the Subordinated Debt.

### Section 4. Allowable Payments.

4.1 Subject to other applicable provisions of this Subordination Agreement, including, without limitation, those contained in Section 5 hereof, without the Lender's prior written consent, the Obligor may not make, and a Subordinated Creditor may not accept from the Obligor, any payment in respect of the Subordinated Debt.

4.2 Notwithstanding anything to the contrary in this Subordination Agreement, the Obligor may set-off against amounts payable in respect of Subordinated Debt under the circumstances set forth or referenced in any documentation of such Subordinated Debt.

Section 5. Readjustment. Each Subordinated Creditor further agrees that, upon any distribution of the assets or readjustment of the indebtedness of the Obligor, whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors, or any other action or proceeding involving the readjustment of all or any of the Subordinated Debt, or the application of the property of the Obligor to the payment or liquidation thereof, the Lender, in any such instance, shall be entitled to receive payment in full of the Senior Debt prior to the payment of all or any part of the Subordinated Debt.

Section 6. Bankruptcy Issues. To the extent that the Obligor makes a payment to the Lender, which payment(s) (or any part thereof) subsequently are voided, invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to a trustee, receiver, or any other person or entity pursuant to Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 *et seq.*) (the “*Bankruptcy Code*”), any other bankruptcy act, state or federal law, common law or equitable cause (“*Insolvency Law*”), then, to the extent any such payment(s) or proceeds are repaid by the Lender, the Senior Debt (or the part that was intended to be satisfied) will be revived for all purposes of this Subordination Agreement and will continue in full force and effect, as if such payment or proceeds had not been received by the Lender.

Section 7. Waivers. Each Subordinated Creditor hereby waives until the Senior Debt is paid in full any and all rights at law or in equity to subrogation, reimbursement or set off or any other rights which such Subordinated Creditor may have or hereafter acquire against the Obligor in connection with or as a result of such Subordinated Creditor’s execution, delivery and/or performance of this Subordination Agreement.

Section 8. Attorney-In-Fact. Each Subordinated Creditor irrevocably appoints the Lender as its attorney-in-fact, with full power of substitution, in either the Lender’s name or such Subordinated Creditor’s name, to do the following (but the Lender shall have no obligation to do so): (a) endorse and collect all checks, drafts, other payment orders and instruments representing or included in, any payment, dividend or distribution relating to, the Subordinated Debt or any Collateral securing the Subordinated Debt; (b) take any action to enforce, collect or compromise any of the Subordinated Debt; (c) exercise any other right, remedy, privilege or option of such Subordinated Creditor pertaining to any Subordinated Debt or Subordinated Debt documents; (d) take any actions or institute any proceedings that the Lender determines to be necessary or appropriate to collect or preserve the Subordinated Debt or any Collateral for the Subordinated Debt; (e) execute in the name of or otherwise authenticate on behalf of such Subordinated Creditor any record reasonably believed necessary or appropriate by the Lender for compliance with laws, rules or regulations applicable to any Subordinated Debt or any Collateral for the Subordinated Debt, or in connection with exercising the Lender’s rights under this Agreement; and (f) execute and file claims, proofs of claim or other documents, and to take any other action regarding all or any part of the Subordinated Debt necessary or appropriate to insure payment to and receipt by the Lender of all payments, dividends and other distributions on account of the Subordinated Debt, instruments evidencing the Subordinated Debt, or any Collateral for the Subordinated Debt. This appointment is irrevocable and coupled with an interest and shall survive the dissolution or disability of such Subordinated Creditor. Notwithstanding the foregoing, the Lender shall not be liable to any Subordinated Creditor for any failure (i) to prove the existence, amount, or circumstances of the Subordinated Debt; (ii) to exercise any right

related to the Subordinated Debt; or (iii) to collect any sums payable on or distributions attributable to, the Subordinated Debt.

Section 9. Representations and Warranties. Each Subordinated Creditor represents and warrants to the Lender as follows: (a) the execution, delivery and performance of this Agreement and each of the Subordinated Debt documents now outstanding (true and complete copies of which have been furnished to the Lender) have been duly authorized by all necessary action, are within the power and authority of the Subordinated Creditor and do not and will not (i) contravene the articles, charter, bylaws, partnership agreement, operating agreement, regulations or other organic documents, if any, establishing or governing such Subordinated Creditor, any applicable law or governmental regulation or any contractual restriction binding on or affecting such Subordinated Creditor or any of their respective properties, (ii) result in or require the creation of any lien upon or with respect to any of such Subordinated Creditor's properties or (iii) violate the rights of any person or entity; (b) this Agreement and each of the Subordinated Debt documents are legal, valid and binding obligations of such Subordinated Creditor, enforceable against such Subordinated Creditor in accordance with their respective terms except as limited by bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights and by general equitable principles; (c) there exists no default, event of default, or event which with the passage of time, the giving of notice or both may result in a default or event of default under the Subordinated Debt or any Subordinated Debt documents or any event or occurrence that gives a Subordinated Creditor the right to terminate a commitment, refuse to make an advance, accelerate a maturity with or without notice or the passage of time; and (d) if such Subordinated Creditor is an entity, that entity is and will remain duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation and in good standing in the jurisdictions in which it is doing business. Each Subordinated Creditor further represents and warrants to the Lender as follows: (A) such Subordinated Creditor owns and holds the Subordinated Debt now outstanding free and clear of any lien that has not been disclosed in writing by such Subordinated Creditor to the Lender; (B) such Subordinated Creditor is now solvent, the execution, delivery and performance of this Agreement will benefit such Subordinated Creditor directly or indirectly and such Subordinated Creditor has and will receive fair and reasonably equivalent value for the obligations undertaken in this Agreement; (C) such Subordinated Creditor has (1) without reliance on the Lender or any information received from the Lender and based upon the documents and information such Subordinated Creditor deems appropriate, made an independent investigation of the transactions contemplated by this Agreement and the Borrower, the Borrower's business, assets, operations, prospects and condition, financial or otherwise, and any circumstances that may bear upon those transactions, the Borrower or the obligations and risks undertaken in this Agreement with respect to the Senior Debt; (2) adequate means to obtain from the Borrower on a continuing basis information concerning the Senior Debt and the Lender has no duty to provide to such Subordinated Creditor any information; (3) full and complete access by and through the Borrower to the Lender's loan documents; (4) not relied and will not rely upon any representations or warranties of the Lender not embodied in this Agreement or any acts taken by the Lender (including but not limited to any review by the Lender of the affairs of the Borrower) prior to or after the date of this Agreement; (D) such Subordinated Creditor is the sole holder of the Subordinated Debt with full power to make the subordinations set forth in this Agreement; and (E) such Subordinated Creditor has not made or permitted any assignment or transfer, as security or otherwise, of the Subordinated Debt, any Subordinated Debt documents or



of any of the Collateral securing the Subordinated Debt, and such Subordinated Creditor shall not do so except in favor of the Lender as long as this Agreement remains in effect.

Section 10. Successors and Assigns. This Subordination Agreement immediately shall be binding on each Subordinated Creditor and on its heirs, representatives and assigns, and shall inure to the benefit of the Lender and its successors and assigns. Whenever reference is made in this Subordination Agreement to the Obligor, such term shall include any successor or assign of the Obligor, including, without limitation, a receiver, trustee, or debtor or debtor-in-possession under the Bankruptcy Code.

Section 11. Notices. Any notice required or permitted hereunder shall be given in writing by personal delivery, by overnight delivery through a recognized courier service, by certified U.S. mail, or by telecopier (fax) (i) as to a Subordinated Creditor, by giving such notice to such Subordinated Creditor at the address set forth below such Subordinated Creditor's signature hereon, and (ii) as to the Lender, by giving such notice to the Lender at the address set forth below its signature hereon. All such notices shall be deemed to have been received on the date given, except that any such notice given by overnight delivery will be deemed to have been received on the next business day after such notice was delivered to such a carrier for delivery, and any such notice given by certified U.S. mail will be deemed to have been received three days after such notice was deposited in the U.S. mails, postage prepaid.

Section 12. Governing Law. THIS SUBORDINATION AGREEMENT SHALL BE GOVERNED BY CALIFORNIA LAW (WITHOUT REGARD TO ANY JURISDICTION'S CONFLICT OF LAWS PRINCIPLES). EACH SUBORDINATED CREDITOR AND THE LENDER EACH WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS SUBORDINATION AGREEMENT. This is a "Subordination Agreement" within the meaning of Section 510(a) of the Bankruptcy Code and shall be interpreted and construed accordingly in any proceeding under the Bankruptcy Code.

Section 13. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

*[Remainder of this Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the undersigned has caused this Subordination Agreement to be executed as of the Effective Date.

**City of Davis**

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

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

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

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**City of Woodland**

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

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

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

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

**County of Yolo**

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

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

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

Address for notice and service of process:

\_\_\_\_\_  
\_\_\_\_\_

*(Signature Blocks Continue on Following Page)*

**RIVER CITY BANK, as Lender**

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

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

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

Address for notice and service of process:

River City Bank  
2485 Natomas Park Drive, Suite 100  
Sacramento, CA 95833

Attention: \_\_\_\_\_

Fax: (916) \_\_\_\_\_

**Schedule 1**  
**Subordinated Funding Costs**

<u>JPA Member</u>	<u>Amount</u>
City of Davis	\$ 500,000
City of Woodland	\$ 500,000
County of Yolo	<u>\$ 500,000</u>
Total	\$1,500,000

ACKNOWLEDGMENT

Valley Clean Energy Alliance, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the "Company"), acknowledges receipt of a copy of the Subordination Agreement by and between River City Bank (the "Lender"), and the cities, towns and counties parties thereto (each a "Subordinated Creditor"), dated as of April \_\_\_\_, 2018 (as amended from time to time, the "Subordination Agreement"), and agrees that: (a) it will not: (i) except to the extent permitted by the Subordination Agreement, pay any of the Subordinated Debt until the payment in full of the Senior Debt, (ii) provide any security or collateral for any of Subordinated Debt until the payment in full of the Senior Debt, or (iii) take or omit from taking any action that would cause a breach of the Subordination Agreement; (b) neither the Company nor any of its successors or assignees, by operation of law or otherwise, is a party to the Subordination Agreement, and neither the Company nor any of its successors or assignees will have: (i) any right in, or to enforcement of, the Subordination Agreement as against the Lender or a Subordinated Creditor, (ii) any claim of damage if the Lender or a Subordinated Creditor defaults under the Subordination Agreement, or (iii) any right to object to any amendment, modification, or supplement to, or any restatement or replacement of, the Subordination Agreement that is agreed upon by a Subordinated Creditor and the Lender; and (c) none of the provisions of the Subordination Agreement limit or impair the Lender's rights against the Company or its successors and assigns or any of their respective obligations, indebtedness, or liabilities to the Lender under the Senior Loan Agreement, any related documents, or otherwise.

All capitalized terms used in this Acknowledgment that are defined in the Subordination Agreement and not otherwise defined in this Acknowledgment have the meanings specified in the Subordination Agreement.

IN WITNESS WHEREOF, the Company has executed and delivered this Acknowledgement to the Lender as of the Effective Date.

**Valley Clean Energy Alliance**

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

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

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

## EXHIBIT G

### DOCUMENT SUMMARY AND NOTICE OF FINAL AGREEMENT

Borrower has been provided with the following documents issued in connection with the loan evidenced by a Revolving Credit Promissory Note in the original principal balance of \$11,000,000 (the “*Note*”):

Credit Agreement with Exhibits

A – Definitions

B – Form of Revolving Note

C – Form of Term Note

D – Form of Assignment of Deposit Account

E – Form of Request for Advance (RLOC)

F – Form of Subordination Agreement

G – Form of Document Summary and Notice of Final Agreement

And Schedules

1 – Indebtedness for Borrowed Money

Assignment of Deposit Account Agreement

Disbursement Request and Authorization

#### **BORROWER REPRESENTS AND WARRANTIES:**

- 1) IT HAS READ, UNDERSTOOD AND AGREES WITH THE TERMS OF EACH DOCUMENT LISTED ABOVE AND THIS AGREEMENT;
- 2) IT CONFIRMS THAT THERE ARE NO CONFLICTS BETWEEN THE TERMS OF THE DOCUMENTS AND ITS UNDERSTANDING OF THE TRANSACTION;
- 3) THE WRITTEN DOCUMENTS ISSUED IN CONNECTION WITH THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
- 4) THE WRITTEN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.
- 5) IT HAS HAD AN OPPORTUNITY TO DISCUSS THE LOAN TRANSACTION WITH ITS COUNSEL.

#### **BORROWER:**

Valley Clean Energy Alliance

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

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

Its: \_\_\_\_\_

**Borrower:** Valley Clean Energy Alliance  
23 Russell Blvd.  
Davis, CA 95616

**Lender:** RIVER CITY BANK  
2485 Natomas Park Drive  
Sacramento, CA 95833

## DISBURSEMENT REQUEST AND AUTHORIZATION

**SPECIFIC PURPOSE.** The specific purpose of this loan is to provide working capital and power purchases during times of regular and seasonal cash flow differences.

**DISBURSEMENT INSTRUCTIONS.** Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$11,000,000.00 as follows:

**Other Disbursements:**

\$1,100,000 initial advance to  
fund Debt Service Reserve  
Account

\$4,000,000 amount available Pre-  
Launch to support power  
purchases

\$5,900,000 amounts available  
following Launch date for use in  
accordance with the Credit  
Agreement

**CHARGES PAID IN CASH.** Borrower has paid or will pay in cash as agreed the following charges: \$37,700 in fees and estimated and expenses described below:

\$27,500.00 Loan Fee  
\$2,500.00 Documentation Fee  
\$7,500.00 Estimated Legal Fees  
\$200.00 Estimated Secretary of State and UCC Search Fees

**AUTOMATIC PAYMENTS.** Borrower authorizes Lender to make payments due and payable under the Loan through automatic debit from Borrower's checking account with Lender with the following account number: **8855413325**

**BORROWER:**  
Valley Clean Energy Alliance

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

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

Its: \_\_\_\_\_



**RESOLUTION \_\_\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE  
AUTHORIZING THE EXECUTION AND DELIVERY OF A CREDIT AGREEMENT  
WITH RIVER CITY BANK**

**WHEREAS**, Valley Clean Energy Alliance (“VCEA”), is a public agency formed in January 2017 under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., between the County of Yolo and the City of Davis to provide Community Choice Energy (CCE) programs within the member agencies, and in June 2017, the City of Woodland also joined VCEA adding to the overall VCEA service territory;

**WHEREAS**, VCEA initially received loans from each member agency of \$500,000, together with co-operative agreements for member agencies to provide contracted staff and supplies during the implementation period, which will continue to June, 2018 when VCEA will begin providing CCE programs; and

**WHEREAS**, VCEA solicited competitive bids for banking and credit services and has selected River City Bank to lend VCEA up to \$11 million as a line of credit to fund power purchases as part of administrating CCE programs, which has a term of 18-months at variable rates and is convertible to a five year term loan with a fixed interest rate; and

**WHEREAS**, River City Bank (the “Bank”) has prepared and presented a Credit Agreement (the “Agreement”) to be between VCEA, as borrower, and the Bank, as lender; and

**WHEREAS**, VCEA has reviewed the terms of the Agreement and desires to fund the administration of the CCE programs in furtherance of its governmental purpose.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of the Valley Clean Energy Alliance as follows:

**Section 1. Findings and Determinations.** The Board hereby finds and determines that the above stated recitals are true and correct.

**Section 2. Approval of Agreement.** The form of Agreement presented at this meeting is hereby approved and the Board Chair and the Interim General Manager are each individually hereby authorized to accept, for and in the name of VCEA, such Agreement with such changes therein as the officer executing the same may approve, in consultation with VCEA’s legal counsel, such approval to be conclusively evidenced by the execution and delivery thereof. This approval is subject to receipt of the executed City of Woodland Subordination Agreement which subordinates the City of Woodland’s loan to VCEA to the River City Bank line of credit given to VCEA.

**Section 3. Official Actions.** The Board Chair, the Interim General Manager, the Treasurer and any and all other officers of VCEA are hereby authorized and directed, for and in the name and on behalf of VCEA, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in connection with the delivery of the Agreement.

**Section 4. Effective Date.** This Resolution shall take effect from and after the date of its passage and adoption.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the Valley Clean Energy Alliance, California, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Lucas Frerichs, Board Chair

ATTEST: \_\_\_\_\_  
\_\_\_\_\_, Board Secretary

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 15

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To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager  
Shawn Marshall, LEAN Energy

Subject: Approval of Master Power Purchase Agreement between SMUD and VCEA for the recontracting of renewable and clean power to VCEA for regulatory compliance purposes.

Date: May 10, 2018

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### **Recommendation**

Approve attached Master Power Purchase Agreement (MPPA) between VCEA and its wholesale energy services provider, Sacramento Municipal Utility District (SMUD), to enable the appropriate transfer of the title to renewable and clean power procured by SMUD for VCEA's regulatory compliance purposes.

### **Background**

In September and October 2017, the VCEA Board approved the professional services contract with SMUD that includes a defined set of operational services to be provided by SMUD over a five-year term. Task Order 3 of the professional services contract defines the provision of wholesale energy and power services that SMUD will undertake on behalf of VCEA. A key component of Task Order 3 relates to the various steps required for power contracting, which SMUD is currently doing on VCEA's behalf. In order to properly comply with various regulatory reporting requirements, it is necessary to ensure that legal title to the renewable power and clean power is transferred (or "recontracted") to VCEA for any requisite compliance purposes.

### **Analysis & Discussion**

The attached MPPA, as drafted, serves to enable transactions between SMUD and VCEA for purposes of providing adequate and necessary documentation for VCEA's compliance with regulatory showings requiring VCEA to demonstrate ownership of power, including but not limited to California Public Utilities Commission Renewables Portfolio Standard (RPS) compliance reporting. The Agreement is based on an industry-standard power purchase contract provided by the Western States Power Pool (WSPP) which is used by many entities to transact power in the Western System Coordinating Council area. The Agreement will serve as the contract mechanism by which renewable and clean power ownership will be transferred from SMUD to VCEA. This Agreement by itself is an enabling agreement and provides standard terms and conditions for subsequent "confirmations" or "confirms" that will be written covering the ownership transfer of each renewable power transaction between SMUD and

VCEA. These confirmations will be executed by the General Manager under existing delegation authority, and under additional future Board delegation and authorization, as required, for any upcoming VCEA renewable and clean power purchases.

The Agreement has been reviewed by VCEA staff and consultants as well as VCEA's legal counsel for regulatory and energy matters, Keyes & Fox. The Agreement contains specific language indicating in the event of any conflicting terms between the Agreement and the MPPA, the terms of the MPPA shall apply. The Agreement will not expose VCEA to additional costs or operational risk.

Attachments

1. Resolution
2. WSPP Power Purchase Agreement between SMUD and VCEA

VALLEY CLEAN ENERGY ALLIANCE  
RESOLUTION NO. 2018- \_\_\_\_\_

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING A MASTER POWER PURCHASE AGREEMENT (MPPA) BETWEEN SMUD AND VCEA FOR THE RECONTRACTING OF RENEWABLE AND CLEAN POWER TO VCEA FOR REGULATORY COMPLIANCE PURPOSES.

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

WHEREAS, on August 31, 2017, the VCEA Board considered a proposal by the Sacramento Municipal Utilities District (“SMUD”) to provide program launch and operational services and subsequently directed VCEA staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board; and

WHEREAS, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCEA to provide a range of CCA operational services; and

WHEREAS, On November 16, 2017 the VCEA Board approved Task Order 3 to provide Wholesale Energy Services consistent with the SMUD proposal and VCEA Board direction; and

WHEREAS, as a component of the services provided in Task Order 3, SMUD has begun power contracting on VCEA’s behalf including procurement of renewable and clean energy sources; and

WHEREAS, in order to comply with California Public Utility Commission reporting requirements including, among others, the State’s Renewable Portfolio Standard, VCEA must demonstrate clear title to its renewable and clean power sources, thus necessitating a legal mechanism for the transfer of power contracts to VCEA’s ownership; and

WHEREAS, the MPPA, as drafted, serves to enable transactions between SMUD and VCEA for purposes of providing adequate and necessary documentation for VCEA’s regulatory compliance requiring VCEA to demonstrate ownership of power; and

WHEREAS, The MPPA is based on an industry-standard power purchase contract provided by the Western States Power Pool (WSPP) which is used by many entities to transact power in the Western System Coordinating Council area; and

WHEREAS, The MPPA is an enabling agreement and provides standard terms and conditions for subsequent “confirmations” or “confirms” that will be written covering the ownership transfer of

each renewable power transaction between SMUD and VCEA. These confirmations will be executed by the General Manager under existing delegation of authority, and under additional future Board delegation and authorization, as required, for any upcoming VCEA renewable and clean power purchases.

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

1. VCEA Interim General Manager, in consultation with VCEA Legal Counsel, is hereby directed to finalize the Master Power Purchase Agreement with SMUD, for signature by the VCEA Board Chair.
2. The Chair of the Board is hereby authorized to approve and execute on behalf of VCEA the Master Power Purchase Agreement in substantial conformance with the attached Master Power Purchase Agreement under the terms set forth in this Resolution.

ADOPTED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Lucas Frerichs, Chair

\_\_\_\_\_  
Secretary

Approved as to form:

\_\_\_\_\_  
Interim VCEA Counsel

EXHIBIT A - Master Power Purchase Agreement between VCEA and SMUD

EXHIBIT A

Master Power Purchase Agreement

**MASTER POWER PURCHASE AGREEMENT**

**BETWEEN**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT (SMUD)  
AND VALLEY CLEAN ENERGY ALLIANCE (VCEA)**



**TABLE OF CONTENTS**

1. PARTIES
2. RECITALS
3. AGREEMENT
4. DEFINITIONS
5. TERM, TERMINATION AND WITHDRAWAL
6. SERVICE SCHEDULES
7. ADMINISTRATION
8. [RESERVED]
9. PAYMENTS
10. UNCONTROLLABLE FORCES
11. WAIVERS
12. NOTICES
13. EFFECT OF APPROVALS
14. TRANSFER OF INTEREST IN AGREEMENT
15. SEVERABILITY
16. CONTROL AREA
17. RELATIONSHIP OF PARTIES
18. NO DEDICATION OF FACILITIES
19. NO RETAIL SERVICES
20. THIRD PARTY BENEFICIARIES
21. LIABILITY AND DAMAGES
22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND CONFIRMATIONS

SMUD/VCEA Master Power Purchase Agreement

23. OTHER AGREEMENTS
  24. GOVERNING LAW
  25. JUDGMENTS AND DETERMINATIONS
  26. COMPLETE AGREEMENT
  27. CREDITWORTHINESS
  28. NETTING
  29. TAXES
  30. CONFIDENTIALITY
  31. [RESERVED]
  32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS
  33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES
  34. DISPUTE RESOLUTION
  35. FORWARD CONTRACTS
  36. TRADE OPTION EXEMPTION
  37. ADDITIONAL REPRESENTATIONS AND WARRANTIES
  38. FLOATING PRICES
  39. AMENDMENT
  40. EXECUTION BY COUNTERPARTS
  41. WITNESS
- EXHIBIT A: NETTING
- EXHIBIT B: [RESERVED]
- EXHIBIT C: SAMPLE FORM FOR CONFIRMATION

SERVICE SCHEDULES

- A. ECONOMY ENERGY SERVICE
- B. UNIT COMMITMENT SERVICE
- C. FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE
- D. OPERATING RESERVE – SPINNING AND OPERATING RESERVE – SUPPLEMENTAL
- E. ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER
- R. RENEWABLE ENERGY CERTIFICATE TRANSACTIONS WITH AND WITHOUT ENERGY

**1. PARTIES:**

The Parties to this Master Power Purchase Agreement (hereinafter referred to as "Agreement") are the Sacramento Municipal Utility District (SMUD) and Valley Clean Energy Alliance (VCEA), hereinafter sometimes referred to individually as "Party" and collectively as "Parties."

**2. RECITALS**

- 2.1 This Agreement is modeled after the Western Systems Power Pool (WSPP) master agreement and serves as a master agreement to facilitate transaction confirmations of capacity and/or energy between the Parties.
- 2.2 SMUD is a member of WSPP, and procures capacity and/or energy under the WSPP master agreement, both for its own utility purposes and for the purposes of VCEA.
- 2.2 This Agreement contains certain provisions that may not be applicable to VCEA/SMUD back-to-back transactions, but are included nevertheless for consistency with the obligations that may apply to SMUD's purchases from Originating Suppliers under the WSPP master agreement.
- 2.3 Under the Master Professional Services Agreement dated October 25, 2017, and Task Order 3 dated December 21, 2017 between VCEA and SMUD ("CCA Agreement"), and any amendments to those agreements, SMUD shall provide wholesale energy services, including the purchase of capacity and/or energy to serve VCEA's customers. The purchase of this capacity and/or energy is done contractually between SMUD and Originating Suppliers.

## SMUD/VCEA Master Power Purchase Agreement

- 2.4 Under the CCA Agreement, VCEA shall reimburse SMUD for the costs of such capacity and/or energy, and this Agreement is not intended to change or amend any obligations under the CCA Agreement.
- 2.5 This Agreement serves to enable confirmation of renewable and or other clean power transactions between SMUD and VCEA to provide adequate documentation to demonstrate VCEA's ownership and control of various renewable and or clean power resources to facilitate compliance with regulatory submittals requiring VCEA to demonstrate ownership of such power supplies, including but not limited to California Public Utilities Commission Renewables Portfolio Standard compliance reporting.
- 2.6 The intent of this Agreement is to be used only with regard to renewable and clean power transactions and only when demonstration of VCEA ownership and control of such resources is required for regulatory compliance purposes. This Agreement is not intended to be used to undertake or memorialize other conventional power transactions/activities undertaken or performed pursuant to the SMUD/VCEA CCA Agreement and Task Order 3 to the CCA Agreement.
- 2.7 Both Parties to this Agreement acknowledge and understand that any transactions and corresponding Confirmations under this Agreement are subject to the mutual agreement of the Parties.

### **3. AGREEMENT:**

In consideration of the mutual covenants and promises herein set forth, the Parties agree as follows:

**4. DEFINITIONS:**

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified:

Agreement: This Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Broker: An entity or person that arranges trades or brings together Purchasers and Sellers without taking title to the power.

Business Day(s): Any day other than a Saturday or Sunday or a national (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where both the Seller and the Purchaser have their principal place of business in the United States, Canadian holidays shall not apply. Similarly, where both the Seller and the Purchaser have their principal places of business in Canada, Canadian holidays shall apply and United States holidays shall not apply. In situations where one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall apply.

California ISO: The California Independent System Operator Corporation or any successor organization.

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32 or Electronic Platform Confirmations.

## SMUD/VCEA Master Power Purchase Agreement

Contract Price: The price agreed to between the Seller and the Purchaser for a transaction under the Agreement and Confirmation.

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Control Area: An electric system capable of regulating its generation in order to maintain its interchange schedule with other electric systems and to contribute its frequency bias obligation to the interconnection as specified in the North American Electric Reliability Council (NERC) Operating Guidelines.

Costs: As defined in Section 22.3 of this Agreement.

Damages Settlement Transaction: A transaction where, after non-performance under a Confirmation, the Parties enter into a second transaction for the purpose of finally settling damages incurred by the Performing Party due to non-performance of such Confirmation.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

Economy Energy Service: Non-firm energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange energy that is subject to immediate interruption upon notification, in accordance with the Agreement, including Service Schedule A, and any applicable Confirmation.

Electric Utility: An entity or lawful association which (i) is a public utility, Independent Power Producer, or Power Marketer regulated under applicable state law or the Federal Power Act, or (ii) is exempted from such regulation under the Federal Power Act because it is the United States, a State or any political subdivision thereof or an agency of any of the foregoing, or a Rural Utilities Service cooperative, or (iii) is a public utility, Independent Power Producer, or Power Marketer located in Canada or Mexico that is similarly regulated.

Electronic Platform Confirmation: agreed terms and conditions of a transaction, which agreement (a) was made through electronic entry of information and terms on, and in a manner that complies with the procedures of, the applicable electronic trading platform or exchange, (b) includes, at a minimum, the Standard Confirmation Provisions, and (c) is available to either Party for retrieval from the applicable electronic trading platform or exchange in printable or electronic form.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.



Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

Firm Capacity/Energy Sale or Exchange Service: Firm capacity and/or energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange for a specified period available capacity with or without associated energy which may include a Physically-Settled Option and a capacity transaction in accordance with the Agreement, including Service Schedule C, and any applicable Confirmation.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

Hub: An electronic communication center that functions as a central point to electronically receive and assemble data for offers to buy or sell power or transmission service from each Party and make that data electronically available concurrently to all Parties.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

## SMUD/VCEA Master Power Purchase Agreement

Independent Power Producer: An entity which is a non-traditional public utility that produces and sells electricity but which does not have a retail service franchise.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Originating Supplier: Any third Party that SMUD contracts with in order to provide capacity and/or energy to VCEA as part of the wholesale energy services under the CCA Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

Physically-Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to

sell an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation.

Premium: The amount paid by the Purchaser of a Physically-Settled Option to the Seller of such option by the date agreed to by the Parties in the Confirmation.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

Qualifying Facility: A facility which is a qualifying small power production facility or a qualifying cogeneration facility as these terms are defined in Federal Power Act Sections 3(17)(A), 3(17)(C), 3(18)(A), and 3(18)(B); which meets the requirements set forth in 18 C.F.R. §§ 292.203-292.209; or a facility in Canada or Mexico that complies with similar requirements.

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy,

as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Retail Entity: A retail aggregator or supplier or retail customer; provided, however, only those Retail Entities eligible for transmission service under the FERC's pro forma open access transmission tariff are eligible to become members of the WSPP.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type, option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

Successor in Operation: The successor entity which takes over the wholesale electric trading operations of the first entity either through a merger or restructuring. A Successor in Operation shall not include an entity which merely acquires power sales contracts from the first entity either through a purchase or other means without taking over the wholesale electric trading operations of the first entity.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under which the Seller has agreed to sell and the Purchaser has agreed to buy from a specified unit(s) for a specified period, in accordance with the Agreement, including Service Schedule B, and any applicable Confirmation.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

WSPP Homepage: WSPP's internet web site, [www.wspp.org](http://www.wspp.org).

## **5. TERM, TERMINATION AND WITHDRAWAL:**

5.1 This Agreement shall remain in effect until the termination or expiration of the CCA Agreement between VCEA and SMUD.

5.2 As of the effective date of any termination or expiration of the CCA Agreement, each Party shall have no further rights or obligations under this Agreement, except with respect to each then outstanding Confirmation, and all outstanding rights and obligations arising under any such Confirmation and this Agreement shall remain in full force and effect as if the termination had not occurred.

5.3 Except as provided for in Section 5.2, after termination, all rights to services provided under this Agreement shall cease, and no Party shall claim or assert any continuing right to such services thereunder. Except as provided in Section 5.2, no Party shall be required to provide services based in whole or in part on the

existence of this Agreement or on the provision of services under this Agreement beyond the termination date.

**6. SERVICE SCHEDULES**

6.1 The Parties contemplate that they may, from time to time, add or remove Service Schedules under this Agreement. The attached Service Schedules A through E respectively, for Economy Energy Service, Unit Commitment Service, Firm Capacity/Energy Sale or Exchange Service, Operating Reserve – Spinning and Operating Reserve – Supplemental, and Energy Imbalance and Generator Imbalance Power, and Service Schedule R for Renewable Energy Certificate Transactions With And Without Energy, are incorporated into and made a part of this Agreement. Nothing contained herein shall be construed as affecting in any way the right of the Parties to jointly make application to FERC for a change in the rates and charges, classification, service, terms, or conditions affecting transactions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. Additional Service Schedules or amendments to existing Service Schedules, if any, shall be adopted only by amendment of this Agreement.

6.2 **[RESERVED]**

**7. ADMINISTRATION:**

SMUD has executed a WSPP Master Agreement to enable Confirmation both for its utility procurement purposes and power procurement for VCEA's purposes. VCEA acknowledges that this Agreement serves as a master agreement to enable VCEA to

purchase power from SMUD under Confirmations for regulatory compliance. Under the CCA Agreement, SMUD has the obligation to provide wholesale energy services, which includes the purchase of energy and/or capacity to serve VCEA's power requirements. This Agreement does not change or otherwise alter that obligation; it serves as a contract vehicle for VCEA's purchase of the energy and/or capacity from SMUD.

**8. [RESERVED]**

**9. PAYMENTS:**

The accounting, billing, and disputes processes for transactions under this Agreement shall be made pursuant to the CCA Agreement.

**10. UNCONTROLLABLE FORCES:**

No Party shall be considered to be in breach of this Agreement or any applicable Confirmation to the extent that a failure to perform its obligations under this Agreement or any such Confirmation is due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or

disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.

The following shall not be considered “Uncontrollable Forces”: (i) Seller’s cost of obtaining capacity and/or energy; or (ii) Purchaser’s inability due to the price of the capacity and/or energy, to use or resell such capacity and/or energy. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall exercise due diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice.

Where the entity providing transmission services for transactions under this Agreement and Confirmation interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force under this Section 10 of this Agreement only in the following two sets of circumstances:

- (1) An interruption in transmission service shall be considered an Uncontrollable Force if (a) the Parties agreed on a transmission path for that transaction in the Confirmation, (b) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the transaction under this Agreement and Confirmation, and (c) the entity providing transmission



service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract. There shall be no due diligence obligation associated with interruptions under this subparagraph (1).

- (2) If the Parties did not agree on the transmission path for a transaction in the Confirmation, an interruption in transmission service shall be considered an Uncontrollable Force only if (a) the Party contracting for transmission services shall have made arrangements with the entity providing transmission service for firm transmission to effectuate the transaction under the Agreement and Confirmation, (b) the entity providing transmission service curtailed or interrupted such transmission service, and (c) the Party which contracted for such firm transmission services could not obtain alternate energy at the delivery point, alternate transmission services, or alternate means of delivering energy after exercising due diligence.

No Party shall be relieved by operation of this Section 10 of this Agreement of any liability to pay for power delivered to the Purchaser or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

**11. WAIVERS:**

Any waiver at any time by any Party of its rights with respect to a default under this Agreement or any Confirmation, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

**12. NOTICES:**

12.1 Except for the oral notice provided for in Section 10 of this Agreement, any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail (postage prepaid), prepaid telegram, fax, or overnight delivery (with record of receipt).

12.2 Notices and requests of a routine nature applicable to delivery or receipt of capacity and/or energy shall be given in such manner as the Parties to a transaction shall prescribe in a Confirmation or otherwise; provided, however, if the Parties have not prescribed a method of providing such routine notices, then the procedures in Section 12.1 shall apply.

**13. EFFECT OF APPROVALS:**

13.1 This Agreement and all Confirmations are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Nothing contained in this Agreement or any Confirmation shall give FERC jurisdiction over those Parties not otherwise subject to such jurisdiction or be construed as a grant of jurisdiction over any Party by any state or federal agency not otherwise having jurisdiction by law.

13.2 Nothing in this Agreement or any Confirmation is intended to restrict the authority of the Bonneville Power Administration (BPA) pursuant to applicable statutory authority to use its existing wholesale power and transmission rates or to adopt new rates, rate schedules, or general rate schedule provisions for application

under this Agreement and obtain interim or final approval of those rates from FERC pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Sec. 839e, provided such rates do not exceed the maximum rates in the applicable Service Schedule and are consistent with the terms and conditions of said Service Schedule.

13.3 Nothing contained in this Agreement or any Confirmation shall be construed to establish any precedent for any other agreement or to grant any rights to or impose any obligations on any Party beyond the scope and term of this Agreement or any Confirmation.

**14. TRANSFER OF INTEREST IN AGREEMENT:**

With regard to the transfer of the rights and obligations of any Party associated with transactions under this Agreement and Confirmation(s), neither Party to such transactions may assign such rights or obligations unless the other Party provides its prior written consent which shall not be unreasonably withheld; any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement and Confirmation(s) (where applicable) to the same extent as though such successor or assignee were the original Party under this Agreement or the Confirmation(s), and no assignment or transfer of any rights under this Agreement or any Confirmation(s) shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement and any Confirmation(s) (where applicable). The execution

of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 14.

**15. SEVERABILITY:**

In the event that any of the terms, covenants or conditions of this Agreement or any Confirmation, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and the Confirmation and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement or such Confirmation(s).

**16. CONTROL AREA:**

Being a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Party which operates a Control Area and any other Party which operates within that Control Area.

**17. RELATIONSHIP OF PARTIES:**

17.1 Nothing contained in this Agreement or in any Confirmation shall be construed to create an association, joint venture, trust, or partnership, or agency relationship between or among the Parties, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be

individually responsible for its own covenants, obligations, and liabilities under this Agreement and under any applicable Confirmation.

17.2 All rights and obligations of the Parties under this Agreement are several and are not joint.

**18. NO DEDICATION OF FACILITIES:**

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

**19. NO RETAIL SERVICES:**

Except as explicitly provided for in the CCA Agreement, nothing contained in this Agreement shall grant any rights to or obligate any Party to provide any services hereunder directly to retail customers of any Party.

**20. THIRD PARTY BENEFICIARIES:**

This Agreement shall not be construed to create rights, in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 14.

**21. LIABILITY AND DAMAGES:**

21.1 This Agreement contains express remedies and measures of damages in Sections 21.3 and 22 for non-performance or default. This Agreement also contains additional remedies to enforce payment of monies due and to enforce terms of the Agreement and applicable Confirmations in Section 21.2.

**ALL OTHER DAMAGES OR REMEDIES, EXCEPT THOSE EXPRESSLY PROVIDED FOR IN THE CCA AGREEMENT, ARE HEREBY WAIVED.** Therefore, except as provided in Sections 21.3 and 22 or the CCA Agreement, no Party or its directors, members of its governing bodies, officers or employees shall be liable to any other Party or Parties for any loss or damage to property, loss of earnings, or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement (including any applicable Confirmation), including any negligence arising hereunder. Any liability or damages incurred by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

21.2 Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this

Agreement and without exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any Confirmation in any forum having competent jurisdiction. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.

21.3 The following damages provision shall apply to all transactions under this Agreement. The damages under this Section 21.3 apply to a Party's failure to deliver or receive (or make available in the case of capacity) capacity and/or energy in violation of the terms of the Agreement and any Confirmation. The Contract Quantity and Contract Price referred to in this Section 21.3 are part of the Agreement between the Parties for which damages are being calculated under this Section.

(a) If either Party fails to deliver or receive (or make available in the case of capacity), as the case may be, the quantities of capacity and/or energy due under the Agreement and any Confirmation (thereby becoming a "Non-Performing Party" for the purposes of this Section 21.3), the other Party (the "Performing Party") shall be entitled to receive from the Non-Performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces as provided in Section 10, the applicable Service Schedule, or by the Performing Party):

- (1) If the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Contract Price differed from the Resale Price (Contract Price - Resale Price) and the amount by which the quantity provided to the Purchaser was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this paragraph (1) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(1).
- (2) If the amount the Seller scheduled or delivered (or made available in the case of capacity) in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the Contract Price (Replacement Price - Contract Price) and the amount by which the quantity provided by the Seller was less than the hourly Contract



Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Seller's schedule or delivery (based on Purchaser's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this paragraph (2) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).

- (3) The Non-Performing Party also shall reimburse the Performing Party for any charges imposed on the Performing Party under open access transmission or FERC accepted or approved tariffs for regional organizations due to the non-performance.
- (4) The Non-Performing Party shall pay any amount due from it under this section within the billing period as specified in Section 9 of this Agreement or agreed to in the applicable Confirmation if the Parties agreed to revise the billing period in Section 9.
- (5) In the event (a) two Parties entered into two or more Confirmations in which the same Party is the Purchaser and the other Party is the Seller, (b) deliveries under two or more of such Confirmations are to occur, in whole or in part, on the same date and hour, and at the same delivery point, and (c) as to such date, hour, and delivery point, and with respect to one or more of such Confirmations, a

Party is a Non-Performing Party (for purposes of this Section 21.3(a)(5), each such instance of non-performance, a “non-performed transaction”), then, as set out in this Section 21.3(a)(5), each non-performed transaction shall be identified to a Confirmation, and the Contract Price of the Confirmation to which the non-performed transaction is identified, and the Contract Quantity of the non-performed transaction, shall be applied to the calculation of amounts due under Section 21.3(a)(1) through (3), as applicable.

The Parties in good faith shall seek to agree to the identification of each non-performed transaction to a Confirmation.

Each non-performed transaction not identified to a Confirmation by agreement, and any megawatt hours that are not fully accounted for by such identification, shall be identified to Confirmation(s) as follows:

- (i) The Performing Party in good faith shall determine whether each Confirmation is real-time, day-ahead, or forward; all Confirmations that are not real-time or day-ahead shall be deemed forward Confirmations.
- (ii) The Performing Party in good faith shall determine whether each non-performed transaction is real-time, day-ahead, or forward; all non-performed transactions that are not real-time or day-ahead shall be deemed forward non-performed transactions.

- (iii) The Performing Party shall:
  - (x) identify real-time non-performed transactions to real-time Confirmations, provided, that if the megawatt hours of real-time non-performed transactions exceed the megawatt hours of real-time Confirmations, then such excess megawatt hours shall be identified to day-ahead Confirmations and any excess megawatt hours remaining after such identification to day-ahead Confirmations shall be identified to forward Confirmations.
  - (y) identify day-ahead non-performed transactions to day-ahead Confirmations, provided, that if the megawatt hours of day-ahead non-performed transactions exceed the megawatt hours of day-ahead Confirmations, then such excess megawatt hours shall be identified to forward Confirmations.
  - (z) identify all remaining non-performed transactions to forward Confirmations.

The Performing Party, in its billing for amounts due under Section 21.3(a)(1) through (3), shall set out a detailed explanation of each applicable determination under parts (i), (ii), and (iii) of this Section 21.3(a)(5), and state the resulting Contract Quantity and Contract Price, and any amounts associated with each such determination under Section 21.3(a)(3).

- (b) The Parties agree that amounts recoverable under this Section 21.3 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain and the loss of protection against future risks.
- (c) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.
- (d) In the event the Non-Performing Party disputes the calculation of the damages under this Section 21.3, the Non-Performing Party shall pay the full amount of the damages as required by Section 9 of this Agreement to the Performing Party. After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement. If resolution or agreement results in refunds or the need for refunds to the Non-Performing Party, such refunds shall be calculated in accordance with Section 9.4 of this Agreement.
- (e) In the event non-performance of a transaction is accounted for by means of a Damages Settlement Transaction and the Damages Settlement Transaction is performed, then no damages shall be calculated or due under § 21.3(a) with respect to the non-performed transaction. Neither Party shall be required to enter into a Damages Settlement Transaction.

**22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND  
CONFIRMATIONS:**

22.1 EVENTS OF DEFAULT

An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

- (a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement or Confirmation if such failure is not remedied within ten (10) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) the failure by the Defaulting Party to provide clear and good title as required by Section 33.3, or to have made accurate representations and warranties as required by Section 37 and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;  
or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-

Defaulting Party under the Agreement or any Confirmation pursuant to Section 27 of this Agreement or any substitute or modified provision in any Confirmation; *provided*, however, that Seller shall be deemed to be in compliance with this Section 22.1(d) so long as Seller is in compliance with the Credit Support Service requirements applicable to Seller in Section 1.13 of Task Order 3, dated December 21, 2017 between VCEA and SMUD.

## 22.2 REMEDIES FOR EVENTS OF DEFAULT

22.2(a) If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance of transactions under this Agreement; provided, however, (i) in no event shall any such suspension continue for longer than ten (10) Business Days; (ii) such suspension must include all transactions under this Agreement in effect as of the date of the suspension between the Defaulting Party and the Non-Defaulting Party; and (iii) such suspension is available only once for each default. This ten (10) day suspension period shall not affect in any way the thirty (30) day period for exercising a right of termination under Section 22.2(b). The Non-Defaulting Party shall have the unilateral right to exercise its rights under this Agreement including its termination rights at any time within the suspension period. The Defaulting Party shall have no suspension rights. In no event shall the suspension continue beyond the cure of or waiver by the Non-Defaulting Party of the applicable Event of Default. If the Non-

Defaulting Party seeks to terminate the suspension period such that the suspension shall be terminated prior to the end of the ten (10) Business Day period specified above, it may do so only by providing at least twenty-four (24) hours written notice to the Defaulting Party before the suspension may be terminated.

22.2(b) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate all transactions between the Parties under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if the Non-Defaulting and Defaulting Parties agree to an extension), then such right of termination shall no longer be available to the Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this thirty day requirement for exercising termination rights shall not apply to defaults pursuant to Section 22.1(c). The Non-Defaulting Party terminating transaction(s) under this Section 22.2 may do so without making a filing at FERC.

If the Non-Defaulting Party elects to terminate under this Section, it shall be required to terminate all transactions between the Parties under the Agreement at the same time. Upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as practicable, provided that

in no event will the Non-Defaulting Party be allowed to liquidate Service Schedule A transactions. The payment associated with termination ("Termination Payment") shall be calculated in accordance with this Section 22.2 and Section 22.3. The Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for each terminated transaction ("Terminated Transaction") for the time period beginning at the time notice of termination under this Section 22 is received. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it under Section 21.3 of this Agreement or Confirmation(s), and any other remedies available to it at law or otherwise.

Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement or Confirmation(s) until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this Section 22 by any such payments due the Defaulting Party as provided in Section 22.3(d).

### 22.3 LIQUIDATION CALCULATION OPTIONS

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) The Gains and Losses shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent



quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from Dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts (or NYMEX power options contracts in the case of Physically-Settled Options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

- (b) The Gains and Losses calculated under paragraph (a) shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity

that matches the average remaining term of the Terminated Transactions;  
and

- (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, the Gains and Losses (as calculated in Section 22.3(a)) and Costs and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, which amount shall bear interest at the Present Value Rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value Rate from the time notice of termination was received until the Defaulting Party receives payment.
- (d) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its election, any or all other amounts owing between the Parties (discounted at the Present Value Rate) under this Agreement and any Confirmation against the Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated amount. The net amount due from any such liquidation shall be paid within three (3) Business Days following the date notice of termination is received.
- (e) (i) If the Non-Defaulting Party owes the Defaulting Party monies

under this Section 22.3, then notwithstanding the three Business Day payment requirement detailed above, the Non-Defaulting Party may elect to pay the Defaulting Party the monies owed under this Section 22.3 over the remaining life of the contract(s) being terminated. The Non-Defaulting Party may make this election by providing written notice to the Defaulting Party within three Business Days of the notice being provided to terminate and liquidate under this Section 22.3. The Non-Defaulting Party shall provide the Defaulting Party with the details on the method for recovering the monies owed over the remaining life of the contract(s). That method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each contract which allows it to receive the monies which would have been due it under Sections 22.3(c) and (d) in total (to be recovered over the term of the contract(s) to replicate as closely as possible the payment streams under such contract(s)) provided that the discounting using the Present Value Rate referenced in Section 22.3 (b) shall not be reflected in determining the amounts to be recovered under this provision. Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful.

- (ii) This Section 22.3(e) and the rights and obligations under it shall survive termination of any applicable transactions or agreements.
- (iii) The Party owed monies under this Section 22.3(e) shall have the right to request credit assurances consistent with Section 27 even after termination of any contract or transaction.
- (iv) If the Party owing money defaults on its payment obligations consistent with Section 22.1(a) or defaults with regard to providing credit assurances consistent with Section 22.1(d), then the other Party shall have the right (by written notice) at any time after the Party owing money defaults to require that Party to pay all monies owed under all of the contracts subject to this Section 22.3(e) within three (3) Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contract(s) reflecting a discount using the Present Value Rate from the date of the written notice.
- (f) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal dispute resolution as provided in Section 34.1 of this Agreement and thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment

calculated by the Non-Defaulting Party within three (3) Business Days (except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply) of receipt of notice as set forth in Sections 22.3(c) and (d) subject to the Non-Defaulting Party refunding, with interest, pursuant to Section 9.4, any amounts determined to have been overpaid.

- (g) For purposes of this Section 22.3:
- (i) "Gains" means the economic benefit (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
  - (ii) "Losses" means the economic loss (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
  - (iii) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace a Terminated Transaction, transmission and ancillary service costs associated with Terminated Transactions, and reasonable attorneys' fees, if any, incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the Terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.

- (iv) In no event, however, shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

**23. OTHER AGREEMENTS:**

No provision of this Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among the Parties. For any conflict or inconsistency that arises between this Agreement and the CCA Agreement, including any form of dispute notice or remedy, the CCA Agreement shall prevail.

**24. GOVERNING LAW:**

This Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of laws rules thereof.

**25. JUDGMENTS AND DETERMINATIONS:**

Whenever it is provided in this Agreement that a Party shall be the sole judge of whether, to what extent, or under what conditions it will provide a given service, its exercise of its judgment shall be final and not subject to challenge. Whenever it is provided that a service under a given transaction may be curtailed under certain conditions or circumstances, the existence of which are determined by or in the judgment

of a Party, that Party's determination or exercise of judgment shall be final and not subject to challenge if it is made in good faith and not made arbitrarily or capriciously.

**26. COMPLETE AGREEMENT:**

This Agreement and the Confirmation(s), shall constitute the full and complete agreement of the Parties with respect to a transaction, except as provided under Section 32.4 and the Master Professional Services Agreement dated October 25, 2017, and Task Order 3 dated December 21, 2017 between VCEA and SMUD.

**27. CREDITWORTHINESS:**

All requirements for creditworthiness, security, and assurance are contained in the CCA Agreement.

**28. NETTING:**

28.1 The Parties may by separate agreement either through a Confirmation or some other agreement set out specific terms relating to the implementation of netting in addition to or in lieu of Exhibit A.

28.3 Each Party reserves to itself all rights, set offs, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement and any applicable Confirmation.

**29. TAXES:**

The Contract Price for all transactions under this Agreement shall include full reimbursement for taxes, and the provisions of the CCA Agreement regarding payments and taxes shall control.

**30. CONFIDENTIALITY:**

30.1 The terms of any transaction under this Agreement or any other information exchanged by the Purchaser and Seller relating to the transaction shall not be disclosed to any person not employed or retained by the Purchaser or the Seller or their affiliates, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar



mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

- 30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

**31. [RESERVED]**

**32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS:**

32.1 General

32.1.1 A Confirmation shall include, at a minimum, the Standard Confirmation Provisions. (See Exhibit C for a sample). Subject to the limitations in Section 32.2 (Standard Confirmation Provisions) and Section 32.3 (Non-Standard Confirmation Provisions), the Confirmation shall be made in writing by a Documentary Writing or an Electronic Writing.

32.1.2 Pursuant to the provisions of this Section 32, the Parties to a transaction under this Agreement may agree to modify any term of this Agreement

which applies to such transaction, such agreement to be stated in a Confirmation or Confirmations.

32.2 Process For Confirming Standard Confirmation Provisions.

32.2.1 Confirmation of Standard Confirmation Provisions For Transactions of Less Than One Week in Duration.

Confirmation for Standard Confirmation Provisions applicable to transactions of less than one week in duration may be through:

- (i) a Documentary Writing (including a Confirmation which is not executed by both Parties but which is binding under Section 32.2.3) or
- (ii) an Electronic Writing.

Notwithstanding the foregoing sentence, with respect to a transaction of less than one week in duration as agreed in an Electronic Writing and that is to commence within one week of that agreement, a subsequent proposed confirming Documentary Writing under Section 32.2.3 shall not vary the terms of the Electronic Writing unless the Documentary Writing is executed by both Parties.

32.2.2 Standard Confirmation Provisions For Transactions of One Week or More in Duration.

Written confirmation shall be required for all Standard Confirmation Provisions for transactions of one week or more in duration. Such written confirmation may be made by a Documentary Writing

executed by both Parties or a Documentary Writing not executed by both Parties but which is binding under Section 32.2.3.

32.2.3 Written Confirmation Process for Standard Confirmation Provisions.

The Seller shall provide a proposed Documentary Writing containing the proposed Standard Confirmation Provisions.

32.3 Process for Confirming Non-Standard Confirmation Provisions.

32.3.1 Non-Standard Confirmation Provisions for Transactions of Less Than One Week in Duration. Confirmation for Non-Standard Confirmation Provisions for a transaction of less than one week in duration only may be through: (i) an Electronic Writing; or (ii) in a Documentary Writing executed by both Parties.

32.3.2 Non-Standard Confirmation Provisions for Transactions of One Week or More in Duration. Confirmation for Non-Standard Confirmation Provisions for transactions of one week or more only shall be through a Documentary Writing executed by both Parties.

32.3.3 Agreement is a Default Agreement.

If the Parties to a transaction (i) do not reach agreement on any proposed Non-Standard Confirmation Provision and (ii) do not confirm it under Section 32.3.1 or 32.3.2, as applicable, then the term or terms of the Agreement, which the Parties could not reach agreement to modify or change or which are not considered modified pursuant to this Section 32.3, shall apply to the transaction.

32.4 Prior Discussions And Statements

- 32.4.1 A Confirmation under Section 32.2 and/or 32.3, shall, together with this Agreement, be an integrated contract with respect to the transaction, shall supersede all discussions and negotiations with respect thereto, and are intended by the Parties as a final expression of their agreement with respect to such terms as are included therein and may not be contradicted by evidence of any prior agreement unless there is clear and convincing evidence of a mutual mistake in the Confirmation.
- 32.5 The Parties agree not to contest, or assert any defense with respect to, the validity or enforceability of any agreement to the terms concerning a specific transaction, on the basis that documentation of such terms fails to comply with the requirements of any statute that agreements be written or signed.
- 32.6 In the event of a conflict between a binding and effective Confirmation and this Agreement, the Confirmation shall govern.
- 32.7 The Seller shall not be required to file any Confirmation with FERC.
- 32.8 Other Products and Service Levels: The Parties may apply this Agreement and make a Confirmation with respect to a product/service level defined under any other document or form of agreement (e.g., the California ISO Tariff, the ERCOT agreement or the EEI agreement). The confirmation process set forth in Section 32.3 shall apply to any such Confirmation. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such transaction consistent with Section 32.3, the transaction shall be subject to all the terms of this Agreement, except that (1) all service level/product definitions, (2) force majeure/uncontrollable force definitions, and (3) other terms

as mutually agreed shall have the meaning ascribed to them in the different agreement or in the applicable Confirmation.

32.9 Reserved.

32.10 The Parties may agree to modify terms of this Agreement for more than one transaction pursuant to a separate written agreement (a “master confirmation agreement”), which agreement shall be considered part of each Confirmation between the Parties and shall apply to all transactions entered into between the two Parties unless the Parties specifically agree to override such changes for a particular transaction consistent with the procedure in Section 32.2 or 32.3, whichever is applicable.

**33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES:**

33.1 Performance

33.1.1 The Seller shall deliver to the delivery point(s) as agreed to in the applicable Confirmation and sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation.

33.1.2 The Purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation, at the delivery point(s) and purchase from the Seller in accordance with the terms of the Agreement and such Confirmation.

33.2 Title and Risk of Loss

Title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the Confirmation; provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Purchaser to the extent permitted by and consistent with applicable law.

33.3 Warranties

The Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation, free and clear of all liens, claims, and encumbrances arising or attaching prior to the delivery point and that Seller's sale is in compliance with all applicable laws and regulations.

**THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**34. DISPUTE RESOLUTION:**

The dispute resolution provisions of the CCA Agreement apply to this Agreement and any Confirmations.

**35. FORWARD CONTRACTS:**

The Parties acknowledge and agree that all transactions under this Agreement and any applicable Confirmation(s) are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The

Parties acknowledge and agree that all of their transactions, together with this Agreement and the related Confirmation(s) form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

**36. TRADE OPTION EXEMPTION**

The Parties intend that any Physically Settled Option under this Agreement shall qualify under the trade option exemption, 17 C.F.R. § 32.3. Accordingly, each Party buying or selling a Physically Settled Option agrees and warrants that any such option shall be offered only to a provider, user, or merchant and that the entities entering into the options are doing so solely for purposes related to their business.

**37. ADDITIONAL REPRESENTATIONS AND WARRANTIES:**

Each Party warrants and represents to the other(s) that it possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the applicable Confirmation for a transaction or transactions and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under this Agreement and the Confirmation represents a contract. Each Party also warrants and represents to the other(s) that each of its representatives executing or agreeing through a Confirmation to a transaction under this Agreement is authorized to act on its behalf.

Each Party further warrants and represents that entering into this Agreement and any applicable Confirmation does not violate or conflict with its Charter, By-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a

party and that this Agreement and applicable Confirmation, constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

Each Party also represents that it is solvent and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller before delivery.

**38. FLOATING PRICES:**

38.1 In the event the Parties intend that the price for a transaction is to be based on an index, exchange or any other kind of variable reference price (such price being a “Floating Price”), the Parties shall specify the “Floating Price” to be used to calculate the amounts in a Confirmation due Seller for that transaction.

38.2 Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined as follows. SMUD shall develop the Floating Price with the Originating Supplier(s) affected by the Market Disruption Event.

“Determination Period” means each calendar month during the term of the relevant transaction; provided that if the term of the transaction is less than one calendar month the Determination Period shall be the term of the transaction.

“Market Disruption Event” means, with respect to an index, any of the following events (the existence of which shall be determined in good faith by the Parties):

- (a) the failure of the index to announce or publish information necessary for determining the Floating Price;
- (b) the failure of trading to commence or the



permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

“Trading Day” means a day in respect of which the relevant price source published the relevant price or would have published the relevant price but for the Market Disruption Event.

- 38.3 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.
- 38.4 Corrections. For the purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine the relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will pay such amount consistent with the provisions of this Section 38.4. The amount that is payable as a result of the correction shall be included in the billing cycle in which the notice of the correction is provided.

**39. AMENDMENT:**

39.1 This Agreement may be amended upon mutual agreement of the Parties.

39.2 Unless otherwise stated in the amendment, all amendments shall apply only to new transactions entered into or agreed to on or after the effective date of the amendment. Preexisting agreements and transactions shall operate under the version of the Agreement effective at the time of the agreement for the transaction unless the Parties to a transaction or transactions mutually agree otherwise.

39.3 An agreement modifying this Agreement or a Confirmation for a transaction needs no consideration to be binding.

**40. EXECUTION BY COUNTERPARTS:**

This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

**41. WITNESS:**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the date of signature below.

Valley Clean Energy Alliance

By: \_\_\_\_\_  
Name of signing official:  
Title:  
Date:

Sacramento Municipal Utility District

By: \_\_\_\_\_  
Name of signing official:  
Title:  
Date:

**EXHIBIT A**

**NETTING**

The Parties may execute this Exhibit A to the Agreement to facilitate net payments for transactions under the Agreement and the applicable Confirmation(s). Executing this Exhibit A shall indicate below when it desires that its agreement to net becomes effective. A Party agreeing to net under this Exhibit A shall comply with the provisions of Section 28.2 of the Agreement. Defined terms used herein are as defined in the Agreement. Netting shall be done in accordance with the following provision:

If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under the Agreement and Confirmation(s), then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment times in Section 9.2 of the Agreement, unless the Parties have otherwise agreed to a different payment time as allowed by the Agreement. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Exhibit A for transactions under Agreement and the applicable Confirmation(s) shall be offset against each other or set off or recouped therefrom.

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Effective Date for Netting

\_\_\_\_\_  
Name of Entity

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date of Execution

**EXHIBIT B**

**RESERVED**

**EXHIBIT C  
SAMPLE FORM FOR CONFIRMATION**

**1. Transaction Specific Agreements**

The undersigned Parties agree to sell and purchase electric energy, or a Physically-Settled Option, pursuant to the Agreement as it is supplemented and modified below:

- (a) Seller: \_\_\_\_\_
- (b) Purchaser: \_\_\_\_\_
- (c) Period of Delivery: From \_\_\\_\_\\_\_ To \_\_\\_\_\\_\_
- (d) Schedule (Days and Hours): \_\_\_\_\_
- (e) Delivery Rate: \_\_\_\_\_
- (f) Delivery Point(s): \_\_\_\_\_
- (g) Type of Service (Check as Applicable)
  - Service Schedule A \_\_\_\_\_
  - Service Schedule B \_\_\_\_\_
  - Service Schedule C \_\_\_\_\_
  - Physically-Settled Option Service Schedule B \_\_\_\_\_
  - Physically-Settled Option Service Schedule C \_\_\_\_\_
  - Other products per Section 32.6 \_\_\_\_\_ **[Describe Product]**
- (h) Contract Quantity: \_\_\_\_\_ Total MWhrs.
- (i) Contract or Strike Price: \_\_\_\_\_
- (j) Transmission Path for the Transaction (If Applicable): \_\_\_\_\_
- (k) Date of Agreement if different: \_\_\_\_\_
- (l) Additional Information for Physically-Settled Options
  - (i) Option Type: *Put* \_\_\_\_\_ *Call* \_\_\_\_\_
  - (ii) Option Style: \_\_\_\_\_
  - (iii) Exercise Date or Period: \_\_\_\_\_
  - (iv) Premium: \_\_\_\_\_
  - (v) Premium Payment Date: \_\_\_\_\_
  - (vi) Method for providing notice of exercise \_\_\_\_\_
- (m) Special Terms and Exceptions:  
See Attachment A

[Special Terms and Exceptions shall be shown on an Attachment to this Confirmation.]

\_\_\_\_\_  
Name of Purchaser

\_\_\_\_\_  
Name of Seller

\_\_\_\_\_  
Authorized Signature  
for Purchaser

\_\_\_\_\_  
Authorized Signature  
for Seller

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**SERVICE SCHEDULE A**

**ECONOMY ENERGY SERVICE**

A-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

A-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms and conditions for requesting and providing Economy Energy Service.

A-3 TERMS:

A-3.1 A Party may schedule Economy Energy Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation.

A-3.2 Scheduling of Economy Energy Service hereunder shall be a responsibility of the Parties involved.

A-3.3 Each Seller/Purchaser may prepare a daily estimate of the amount of Economy Energy Service that it is willing and able to sell/buy each hour and the associated hourly sale/purchase price for the next Business Day, plus the weekend and holidays, and communicate this information to all other Parties via the Hub.

A-3.4 Purchasers shall arrange purchases directly with Sellers, and shall be responsible for transmission arrangements.

A-3.5 Unless otherwise mutually agreed between the Purchaser and the Seller, all Economy Energy Service transactions shall be pre-scheduled, and billings shall be

based on amounts and prices agreed to in advance by schedulers, subject to Paragraphs A-3.6 and 3.7 and subject to change by mutual agreement between dispatchers or schedulers due to system changes.

A-3.6 The price for Economy Energy Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section A-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

A-3.7 Except as provided for in Section A-3.6, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/ month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/ day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. In lieu of payment, such Parties may mutually agree to exchange economy energy at a ratio not to exceed that ratio provided for in Section C-3.6 of Service Schedule C. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any



transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary services charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including the exchange of economy energy. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. Any such transmission services (and ancillary service provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement.

A-3.8 Unless otherwise agreed, the Purchaser shall be responsible for maintaining operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

A-3.9 Each Party that is a FERC regulated public utility as defined in A-3.6 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

**SERVICE SCHEDULE B**  
**UNIT COMMITMENT SERVICE**

B-1 PARTIES:

This Service Schedule is agreed upon as part of this Agreement by the Parties.

B-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Unit Commitment Service.

B-3 TERMS:

B-3.1 A Party may schedule Unit Commitment Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Unit Commitment Service becomes a firm commitment, for both Parties, for the agreed capacity and terms.

B-3.2 Unless otherwise mutually agreed by the Parties involved in a Unit Commitment Service transaction, the terms set forth in this Service Schedule B shall govern such transaction.

B-3.3 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers, for a specified unit for a specified period of time.

B-3.4 Purchasers shall arrange purchases directly with Sellers.

B-3.5 The price for Unit Commitment Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in

Section B-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

B-3.6 Except as provided for in Section B-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has

filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule “Q” hereof (such incorporation to occur upon Seller’s request without approval of the WSPP Executive Committee).

B-3.7 Start-up costs and no-load costs if included by the Seller shall be stated separately in the price.

B-3.8 Energy schedules for the Purchaser's share of a unit may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the change is to take place, unless otherwise mutually agreed or unforeseen system operating conditions occur.

B-3.9 Unit Commitment Service is intended to have assured availability; however, scheduled energy deliveries may be interrupted or curtailed as follows:

- (a) By the Seller by giving proper recall notice to the Purchaser if the Seller and the Purchaser have mutually agreed to recall provisions,
- (b) By the Seller when all or a portion of the output of the unit is unavailable, by an amount in proportion to the amount of the reduction in the output of the unit, unless otherwise agreed by the schedulers,
- (c) By the Seller to prevent system separation during an emergency, provided the Seller has exercised all prudent operating alternatives prior to the interruption or curtailment,
- (d) Where applicable, by the Seller to meet its public utility or statutory obligations to its customers, or
- (e) By either the Seller or the Purchaser due to the unavailability of transmission

capacity necessary for the delivery of scheduled energy.

B-3.10 Each Party that is a FERC regulated public utility as defined above in B-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

**B-4 BILLING AND PAYMENT PROVISIONS:**

B-4.1 Except as provided in Sections B-4.2 and B-5, billing for Unit Commitment Service shall be computed based upon the agreed upon prices.

B-4.2 In the event the Seller requests recall of Unit Commitment Service in a shorter time frame than was mutually agreed pursuant to Section B-3.9(a) and the Purchaser agrees to allow such recall, the Purchaser shall be relieved of any obligation to pay start-up costs.

**B-5 TERMINATION PROVISION:**

In the event Unit Commitment Service is curtailed or interrupted except as provided in Section B-3.9(a), the Purchaser shall have the option to cancel the Unit Commitment Service at any time by paying the Seller for (i) all energy deliveries scheduled up to the notice of termination and (ii) all separately stated start-up and no-load costs.

**SERVICE SCHEDULE C**  
**FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE**

C-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

C-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Firm Capacity/Energy Sale or Exchange Service.

C-3 TERMS:

C-3.1 A Party may schedule Firm Capacity/Energy Sale or Exchange Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Firm Capacity/Energy Sale or Exchange Service becomes a firm commitment, for both Parties, for the agreed service and terms.

C-3.2 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

## SMUD/VCEA Master Power Purchase Agreement

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 The price for Firm Capacity/Energy Sale or Exchange Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section C-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

C-3.6 Except as provided for in Section C-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be mutually agreed to by the Seller and the Purchaser, (b) due to an Uncontrollable Force as provided in Section 10 of this Agreement; or (c) where applicable, to meet Seller's public utility or statutory obligations to its customers; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than



reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(a) or (b), the Non-Performing Party shall be responsible for payment of damages as provided in Section 21.3 of this Agreement or in any Confirmation.

C-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 Seller shall be responsible for ensuring that Service Schedule C transactions are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council.

**SERVICE SCHEDULE D**

**OPERATING RESERVE – SPINNING**

**AND**

**OPERATING RESERVE – SUPPLEMENTAL**

**D-1 PURPOSE**

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides Operating Reserve – Spinning and/or Operating Reserve – Supplemental, as specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or to resell as ancillary services under an OATT.

**D-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE**

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary and Applicable Standards. In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule.

D-2.1.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and of any Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group applicable to the Seller’s provision and the Designated Authority’s use of Operating Reserve – Spinning or Operating Reserve – Supplemental, in force as of the date of the Confirmation.

D-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

D-2.1.3 “Designated Authority” means the Regional Reliability Organization, Balancing

Authority, Reserve Sharing Group or other entity designated in the Confirmation, which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be the same entity or two different entities. If the Designated Authority and the Purchaser are the same entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.1.4 “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.1.5 “NERC Glossary” means the NERC Glossary of Terms Used in Reliability Standards.

D-2.1.6 “Non-Performance” with respect to Seller shall have the meaning given in Section D-4.1, and with respect to Purchaser, the meaning given in Section D-

4.2.

D-2.1.7 “OATT” refers to the Open Access Transmission Tariff of the Designated Authority or, if the Designated Authority has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

D-2.1.8 “OATT Schedule” refers to schedule 5 or 6 of the OATT for sale of ancillary services, or any other schedule under an OATT for sale of Operating Reserve – Spinning or Operating Reserve – Supplemental.

D-2.1.9 “Operating Reserve – Spinning” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 5 or similar schedule under an OATT.

D-2.1.10 “Operating Reserve – Supplemental” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 6 or similar schedule under an OATT.

D-2.2 The following rules apply to this Service Schedule.

D-2.2.1 In the event of inconsistency between the definition in the NERC Glossary of Terms and the Applicable Standards, the Applicable Standards shall control.

D-2.2.2 No product sold or transferred under this Service Schedule D shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

D-2.2.3 The OATT, OATT Schedules, regulations of the FERC, the NERC Glossary, and Applicable Standards shall be applied in their forms as of the date of the Confirmation.

D-3 TERMS OF SERVICE

D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Operating Reserve – Spinning and/or Operating Reserve – Supplemental, to which the Confirmation applies;
- (b) Identification of the Designated Authority and if the Designated Authority is not a Regional Reliability Organization, the Regional Reliability Organization within which the Designated Authority is electrically located;
- (c) The Standard Confirmation Provisions, as applicable;
- (d) Any additional attributes of the Operating Reserve – Spinning or Operating Reserve – Supplemental, as the Parties may agree;
- (e) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (f) Any conditions to the effectiveness of the Confirmation, including, for example, the completion of any arrangements or agreements between the Seller and the Designated Authority or among the Seller, Designated Authority, and Purchaser.

D-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

D-3.3 Seller shall provide Operating Reserve – Spinning or Operating Reserve – Supplemental, as applicable, to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation as are consistent with the Applicable Standards. Seller shall provide such service from one or more generation resources or Demand Response Resources. Such resources must be physically and

operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by, the Applicable Standards for the applicable service, and as required to conform to any additional attributes stated in the Confirmation.

D-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

D-3.4.1 Seller shall provide capacity and deliver energy associated with Operating Reserve – Spinning or Operating Reserve – Supplemental, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.4.2.

D-3.4.2 The Designated Authority shall use the capacity and energy provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's own obligations pertaining to Operating Reserve – Spinning and Operating Reserve – Supplemental, as specified in the Applicable Standards or the Confirmation. Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is required to enable it to respond to a contingency or other event for which the service specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.5 Inspection and Audit. The Purchaser and Designated Authority shall have the right, to

conduct such inspections and audits of Seller's records as are reasonable to assure that the Seller's provision of services under this Service Schedule and Confirmation conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct inspections and audits of the Designated Authority's records as reasonably required to assure that any use by the Designated Authority of the services under this Service Schedule and Confirmation conformed to Section D-3.4.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, provisions concerning confidentiality or limiting inspection to an agreed third-party auditor.

#### D-3.6 Regulatory Matters – Rate Caps

D-3.6.1 The price for Operating Reserve – Spinning or Operating Reserve – Supplemental shall not be subject to the rate caps specified in Section D-3.6.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

D-3.6.2 Except as provided for in Section D-3.6.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted

Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive



Committee).

#### D-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

D-4.1 Seller Non-Performance. “Non-Performance” with respect to Seller means Seller’s failure to provide capacity or deliver energy to the Designated Authority as this Service Schedule and the Confirmation require.

D-4.1.1 Purchaser Entitlement to Damages. In the event of Non-Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

D-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller’s Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided, that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.1.2 shall not diminish the performing Party’s rights to collect damages for such Non-Performance under Section D-4.1.1, or to avail itself of remedies for other Events of Default.

D-4.2 Purchaser Non-Performance. “Non-Performance” with respect to the Purchaser means the Designated Authority’s failure to receive capacity and/or energy, or the Designated Authority’s use of capacity and/or energy under this Service Schedule which use does not conform to Section D-3.4.2 (such capacity and/or energy, the “unauthorized energy”).

D-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall compensate Seller in an amount equal to the quantity of

unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour.

D-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (but not Section 22.2(a)), provided that the right to terminate all transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.2.1, or to avail itself of remedies for other Events of Default under the Agreement.

D-4.3 Termination under Section D-4.1.2 or D-4.4.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section D-4.1.2 or D-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

D-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

## **SERVICE SCHEDULE E**

### **ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER**

#### **E-1 PURPOSE**

This Service Schedule states procedures, terms and conditions pursuant to which the Seller provides Energy Imbalance Power and Generation Imbalance Power to the Purchaser, as specified in the Confirmation, and the Purchaser receives such service to meet a reliability obligation or to resell as ancillary services under an OATT.

#### **E-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE**

E-2.1 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1.1 “Balancing Power” means a service or product that can be resold as Energy Imbalance Power or Generator Imbalance Power under Schedules 4 and 9, respectively, of the OATT or other schedule under an OATT for sale of imbalance power.

E-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

E-2.1.3 “Non-Performance” with respect to Seller shall have the meaning given in Section E-4.1 and with respect to Purchaser the meaning given in Section E-4.2.

E-2.1.4 “OATT” refers to the Purchaser’s Open Access Transmission Tariff approved by the FERC or, if the Purchaser has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

E-2.1.5 “OATT Schedule” refers to schedule 4 or 9 of the OATT for sale of ancillary services, or any other schedule for sale of imbalance power under an OATT.

E-2.2 The following rules apply to this Service Schedule.

E-2.2.1 No product sold or transferred under this Service Schedule E shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

E-2.2.2 The OATT and OATT Schedules shall be applied in their forms as of the date of the Confirmation.

### E-3 TERMS OF SERVICE

E-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Energy Imbalance and Generator Imbalance Power, to which the Confirmation applies;
- (b) The Standard Confirmation Provisions, as applicable;
- (c) Any additional attributes of the Balancing Power, as the Parties may agree;
- (d) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (e) Any conditions to the effectiveness of the Confirmation.

E-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

E-3.3 Seller shall provide Balancing Power from one or more generation resources or Demand Response Resources. Such resources must be physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, as may be stated in the Confirmation.

E-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

E-3.4.1 Upon the requests of the Purchaser, Seller shall provide capacity and deliver energy associated with Balancing Power to the Purchaser at any rate of flow up to and including the applicable capacity(ies) and at such intervals as are specified in the Confirmation for the applicable hour(s).

E-3.4.2 Transmission must be available intra-hour, and may be arranged and scheduled in any manner that meets the requirements of the Parties.

E-3.5 Regulatory Matters – Rate Caps

E-3.5.1 The price for Balancing Power shall not be subject to the rate caps specified in Section E-3.5.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

E-3.5.2 Except as provided for in Section E-3.5.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange

ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

#### E-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

E-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's

failure to provide capacity or deliver energy to the Purchaser as this Service Schedule and the Confirmation require.

E-4.1.1 Purchaser Entitlement to Damages. In the event of Non- Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section E-4.1 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.1.1, or to avail itself of remedies for other Events of Default.

E-4.2 Purchaser Non-Performance. "Non-Performance" with respect to Purchaser means Purchaser's failure to receive energy that it had scheduled for receipt under this Service Schedule and the Confirmation.

E-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section E-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the

Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.2.1, or to avail itself of remedies for other Events of Default.

E-4.3 Termination under Section E-4.1.2 or E-4.2.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section E-4.1.2 or E-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

E-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.



**SERVICE SCHEDULE R**  
**RENEWABLE ENERGY CERTIFICATE TRANSACTIONS**  
**WITH AND WITHOUT ENERGY**

**R-1 Introduction; Transaction Documentation; and Rules of Construction.** This Service Schedule R states terms and conditions applicable to REC Transactions entered into by Parties under the Agreement.

**R-1.1 Documentation.** Each REC Transaction shall be documented in a Confirmation. Annex 2 is a Confirmation template, which the Parties may modify and make subject to any other agreement between them. A Confirmation for a REC Transaction will be given legal effect only if a Documentary Writing.

**R-1.2 Contract Documents.** The Agreement, Service Schedule R, and the fully executed Confirmation comprise a contract for a REC Transaction. Any conflicts between or among the Agreement, Service Schedule R, and the Confirmation shall be resolved in the following order of control: first, the Confirmation; second, Service Schedule R; and third, the Agreement.

**R-1.3 Definitions.** Definitions contained in the Agreement and Annex 1 apply to this Service Schedule R. Any conflicts among definitions contained in these documents shall be resolved in accordance with Section R-1.2.

**R-1.4 Rules of Construction.**

**R-1.4.1** The Annexes of Service Schedule R are incorporated into and made a part of this Service Schedule R, as though set forth fully herein.

**R-1.4.2** The word “including” shall mean “including but not limited to.” Unless otherwise specified, the word “Section” refers to a section of this Service Schedule R and includes all subparts of the specified section.

**R-1.4.3** Subject to any legal restrictions applicable to a Party, the Parties to a REC Transaction may vary any term or condition of this Service Schedule R for that REC Transaction. Provisions in this Service Schedule R concerning such variance of terms, such as “unless otherwise agreed,” shall not prejudice the generality of the preceding sentence, provided, that the Parties shall not vary Section C-3.6 of Service Schedule C, Section B-3.6 of Service Schedule B, and Section A-3.7 of Service Schedule A.

**R-1.4.4** An Applicable Program shall be applicable to a REC Transaction only if designated expressly in the Confirmation. No rule of contract construction or interpretation, and no inference or implication, shall cause an Applicable Program that is not designated expressly in the Confirmation to be applicable to a REC Transaction.

**R-2 Confirmations; REC Products.**

**R-2.1 REC Transaction.** A “REC Transaction” is a purchase and sale of a REC separately from or bundled with Energy. A REC Transaction may be for the purchase and sale of any REC Product defined in Section R-2.3 or another REC Product the Parties may define.

**R-2.2 Confirmations.** In addition to other terms and conditions to which the Parties may agree, the Confirmation:

**R-2.2.1** must include the following terms: REC Product, Contract Quantity, Contract Price, Vintage, and Transfer Date, and whether the Environmental Attributes covered by the REC are All Attributes, Program Attributes, or other coverage the Parties may specify;

**R-2.2.2** for a bundled REC Transaction (Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC), may include a single Contract Price which may be allocated between the REC and the Energy;

**R-2.2.3** must identify the Renewable Energy Facility or Renewable Energy Source if the REC Transaction is All Attributes (Section R-2.4.1) or Program Attributes (Section R-2.4.2), if a designated Applicable Program requires such identification, or if the REC Product is Resource Contingent Bundled REC or Facility As-Run Bundled REC;

**R-2.2.4** must designate an Applicable Program if the REC Transaction is Program Attributes, the Seller is to assure compliance with an Applicable Program (Sections R-5.2.1, 6.3, and 6.4), or to recover penalties and alternative compliance payments (Section R-9.1), and if the REC Transaction is All Attributes, may designate an Applicable Program (Section 2.4.1).

**R-2.3 REC Products.** A “REC Product” is any of the following defined products or other product specified in the Confirmation.

**R-2.3.1 Firm REC.** A “Firm REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of energy. The Seller has a firm obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force.

**R-2.3.2 Firm Bundled REC.** A “Firm Bundled REC” is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a firm obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force. The terms and conditions of Service Schedule C apply to the purchase and sale of Energy associated with a Firm Bundled REC as the Parties may modify such terms and conditions in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section C-3.6 of Service Schedule C shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule C at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price.

**R-2.3.3 Resource Contingent REC.** A “Resource Contingent REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller has a resource contingent obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-

performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties may have agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

**R-2.3.4 Resource Contingent Bundled REC.**

- (a) A "Resource Contingent Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a resource contingent obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable

Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery, due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC or Delivery. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

- (b) The terms and conditions of Service Schedule B apply to the purchase and sale of Energy associated with a Resource Contingent Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section B-3.6 of Service Schedule B shall apply, except (1) where the

Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule B at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule B Section B-3.8 is modified to state the following:

Energy schedules for the Purchaser's share of a Renewable Energy Facility may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is

to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions. Seller shall timely notify the Purchaser of Scheduled Maintenance.

The following is added at the end of Section B-3.9:

(f) By the Seller when all or a portion of the unit is unavailable due to Fuel Impediment, unless otherwise agreed by the schedulers.

**R-2.3.5 Facility As-Run REC.** A “Facility As-Run REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller is obligated to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in



accordance with such purchasers' contract quantities under contracts with Seller.

**R-2.3.6 Facility As-Run Bundled REC.**

- (a) A "Facility As-Run Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has an obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.
- (b) The terms and conditions of Service Schedule A apply to the purchase and sale of Energy associated with a Facility As-Run

Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section A-3.7 of Service Schedule A shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule A at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule A Section A-3.3 is modified to state the following:

Energy schedules may be modified by the Purchaser or Seller with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC

requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions.

**R-2.4 Environmental Attributes Contained In The REC.** The Confirmation may describe the Environmental Attributes covered by the REC as All Attributes, Program Attributes, or as the Parties otherwise may agree. If the Confirmation does not designate a REC Transaction as Program Attributes or otherwise limit the Environmental Attributes conveyed, and if a Renewable Energy Facility or Renewable Energy Source is specified, the REC Transaction shall be All Attributes. A designation of All Attributes will not be effective unless a Renewable Energy Facility or Renewable Energy Source is designated in the Confirmation.

**R-2.4.1 All Attributes.** An “All Attributes” REC conveys all of the Environmental Attributes the Renewable Energy Facility or Renewable Energy Source designated in the Confirmation is capable of producing, whether known or unknown on the Effective Date, including, at a minimum, all Environmental Attributes required by any Applicable Program designated in the Confirmation. Seller disclaims any warranty that Environmental Attributes other than those required by an Applicable Program designated in the Confirmation fulfill the requirements of any other Applicable Program. To establish the

Environmental Attributes conveyed, the Confirmation may include a specification thereof.

**R-2.4.2 Program Attributes.** A “Program Attributes” REC conveys the Environmental Attributes required by an Applicable Program designated in the Confirmation. It conveys no other Environmental Attributes, the rights to which are retained by the Seller. The Parties should verify that a designated Tracking System will recognize a Program Attributes REC. (Note, WREGIS does not recognize a Program Attributes limitation upon conveyed Environmental Attributes.)

**R-3 Delivery and Title.**

**R-3.1 Unbundled REC Transactions.** This Section R-3.1 applies if the REC Product is a Firm REC, Resource Contingent REC, or Facility As-Run REC.

**R-3.1.1 Delivery.** “Deliver(y)(ed)” occurs upon completion of Seller’s transfer of the Contract Quantity to Purchaser. If a Tracking System is designated in the Confirmation, Seller shall cause transfer in accordance with the rules and procedures of the Tracking System. If the Tracking System does not state such rules or procedures, then Delivery shall occur upon the Tracking System’s transfer of the REC into Purchaser’s account. If a Tracking System is not designated in the Confirmation, Delivery is completed upon Seller’s delivery to Purchaser of an Attestation.

**R-3.1.2 Acceptance.** “Accept(ance)(ed)” means Purchaser’s receipt of Delivery of the REC from Seller, without Purchaser’s rejection. If a

Tracking System is designated in the Confirmation, Purchaser shall receive a transfer in accordance with the rules and procedures of the Tracking System, and Acceptance (or rejection) shall be made within five (5) Business Days following the date the Tracking System gives electronic notice to Purchaser that it has initiated transfer (this deadline applies regardless of any different period stated in the Tracking System's rules and procedures) and if timely rejection is not made, then the Delivery is Accepted. If a Tracking System is not designated in the Confirmation, Acceptance occurs upon Purchaser's Acceptance, without rejection within five (5) Business Days of delivery, of the Attestation delivered by Seller.

**R-3.1.3 Passage of Title.** Title to the REC shall pass from Seller to Purchaser upon Delivery and Acceptance.

**R-3.2 Bundled REC Transactions.** This Section R-3.2 applies if the REC Product is a Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC.

**R-3.2.1 Delivery.** "Delivery(y)(ed)" occurs upon completion of Seller's transfer to Purchaser of the Contract Quantity of the REC and the Contract Quantity of the Energy. Delivery of the REC shall be completed in accordance with Section R-3.1.1. Delivery of Energy shall be completed in accordance with the terms and conditions of the Confirmation and the Agreement.

**R-3.2.2 Acceptance.** “Acceptance” of the REC occurs in the manner specified in Section R-3.1.2, and of the Energy upon receipt at the delivery point in accordance with the Confirmation.

**R-3.2.3 Passage of Title.** If the Vintage of the REC is prior to the Effective Date, title to the REC passes from Seller to Purchaser on the Effective Date or other date to which the Parties agree. If the REC is to be generated on or after the Effective Date, title to the REC passes upon the generation of each megawatt hour of energy required for production of the REC, and Seller shall hold the REC in trust for Purchaser until Delivery. Passage of title to Energy occurs pursuant to the Agreement.

**R-3.3 Actions Required of Parties to Assure Delivery.**

**R-3.3.1 Provision of Generation Information; Required Actions.** No less than monthly, Seller shall provide Purchaser with a written statement setting forth for applicable periods the quantities of Seller’s generation of energy for production of the REC. Seller shall promptly take all actions and do all things necessary and appropriate to cause the designated Tracking System, if any, to transfer the REC to Purchaser, including promptly providing all required information and documents in the required forms, and paying any and all fees the Tracking System imposes on Seller. If the Confirmation provides for a designated Tracking System to expedite issuance of certificates (for example, forward transfer certificates in WREGIS), Seller shall promptly take all actions required to cause such expedition. If no Tracking System is

designated in the Confirmation, then upon creation of the REC Seller shall promptly deliver the Attestation to Purchaser.

**R-3.3.2 Failure to Issue REC.** Seller is responsible for transfer and issuance of RECs by the Tracking System; Purchaser's sole responsibilities are maintenance of an account with the Tracking System and Acceptance of conforming RECs pursuant to Section R-3.1.2. Without prejudice to the immediately preceding sentence, in the event a Tracking System designated in the Confirmation declines to issue an electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of a REC, each Party will provide the other Party with all documents, communications, and information sent to or received from the Tracking System that pertain thereto. The Parties will cooperate, and each Party will complete any uncompleted items for which it is responsible, each at its own expense. If following such efforts, and due to no failure of Seller to take all required actions, the Tracking System does not issue the electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of the REC, Seller may, upon Purchaser's agreement (which Purchaser may decline in its discretion), provide an Attestation to Purchaser to effect Delivery. The obligations under this Section R-3.3.2 shall not be construed to diminish the Seller or the Purchaser's respective rights and obligations under the Agreement, Service Schedule R, and the Confirmation.

**R-3.4 Conveyance and Transfer.** As of both Delivery and passage of title, Seller shall transfer and convey to Purchaser all right, title, and interest in and to the REC and all Environmental Attributes underlying the REC pursuant to the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and the Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

**R-4 Charges; Credit.** The charge shall be an amount equal to the Contract Price multiplied by the Delivered and Accepted quantity, without prejudice to the right to recover damages owed in accordance with Section R-9. The Parties may state any credit terms and conditions to which they agree in the Confirmation; Section 27 of the Agreement applies unless otherwise agreed.

**R-5 Governing Law; Change in Law.**

**R-5.1 Governing Law.** Section 24 of the Agreement applies except as follows. If an Applicable Program is designated in the Confirmation, all performance obligations pursuant to the REC Transaction concerning the creation, issuance, transfer, tracking and retirement of the REC shall be governed as follows:

**R-5.1.1** If the Applicable Program was created by the laws of a Governmental Authority, then by the laws, rules, regulations, orders, and judicial precedent of such Governmental Authority;

**R-5.1.2** If the Applicable Program was not created by the laws of a Governmental Authority, but is a voluntary program, then Section 24 of the Agreement applies without modification, and the Parties shall be bound contractually to comply with the standards and criteria of the voluntary Applicable Program.



**R-5.2 Change in Law.**

**R-5.2.1 Applicability.** Section R-5.2 applies only to REC Transactions for which an Applicable Program is designated in the Confirmation. In a REC Transaction for which no Applicable Program is designated, Seller makes no representation or warranty concerning compliance with any particular Applicable Program and any such representation or warranty is expressly disclaimed.

**R-5.2.2 Definitions.**

- (a) “Change in Law” means any addition or amendment, by a Governmental Authority, to any laws, rules, regulations, orders, or judicial precedent, that applies to an Applicable Program designated in the Confirmation, that is enacted or issued after the Effective Date and nullifies compliance of the REC with the Applicable Program. An addition or amendment that is enacted or issued before the Effective Date but effective on or after the Effective Date is not a Change in Law.
- (b) “Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date and the Transfer Date, including requirements modified or added by a Change in Law.
- (c) “Not Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the

requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date only, and the REC and Environmental Attributes are not required to conform to requirements modified or added by a Change in Law.

**R-5.2.3 Default Designation as Regulatorily Continuing.** A REC Transaction as to which an Applicable Program is designated in the Confirmation shall be Regulatorily Continuing unless the Parties specify in the Confirmation that the REC Transaction is Not Regulatorily Continuing.

**R-5.2.4 Effect of Change In Law in Regulatorily Continuing REC Transaction.**

- (a) If a Change in Law occurs in a Regulatorily Continuing REC Transaction, Seller shall be obligated to make reasonable efforts to attain compliance with the designated Applicable Program, the costs of which shall not be required to exceed any cost cap specified in the Confirmation. If despite such efforts to attain compliance, including reasonable expenditures, Seller cannot obtain compliance and Purchaser refuses to accept Delivery of the REC due to the Change in Law, Seller shall not be liable for damages under Section R-9.
- (b) In the event Purchaser refuses to accept Delivery of the REC under Section 5.2.4(a), and Seller has Delivered energy to Purchaser in the REC Transaction, Purchaser shall not be

relieved of its obligation to pay for such energy, which payment shall be either at the price allocated to energy in the Confirmation, if any, and if no allocation is made, then at an amount equal to the Replacement Price.

**R-5.2.5 Amendment to Address Change In Law.** Nothing in this Section R-5.2 shall be construed to preclude the Parties from agreeing to amend the Confirmation to permit a Seller to perform its obligations in a REC Transaction as to which a Change in Law has occurred.

**R-6 Seller Representations and Warranties.** In each REC Transaction, Seller represents and warrants to Purchaser the following:

**R-6.1** As of both Delivery and passage of title, Seller has and conveys to Purchaser all right, title, interest in and to the REC and all Environmental Attributes underlying the REC as required by the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

**R-6.2** As of both Delivery and passage of title, the REC and Environmental Attributes conform to the requirements of the REC Transaction.

**R-6.3** If the REC Transaction is Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), subject to any limits upon Seller's obligations under Section R-5.2.4, as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date and the Transfer Date.

**R-6.4** If the REC Transaction is Not Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date.

**R-6.5** With respect to deliveries of Energy in REC Transactions for Firm Bundled REC, Contingent Resource Bundled REC, and Facility As-Run Bundled REC, that Seller has complied with the representations and warranties stated in Section 33 of the Agreement.

**SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**R-7 Records; Confidentiality**

**R-7.1 Correction of Records.** If any statement, charge or computation concerning a REC Transaction is inaccurate, the Parties promptly shall make any adjustments to records as reasonably necessary to correct such inaccuracy, and make any adjustment of payments required to correspond to the corrected records, provided, that Purchaser shall not be required to pay a higher Contract Price or accept a lower Contract Quantity than the Confirmation requires.

**R-7.2 Exception to Confidentiality.** Purchaser has the right to disclose to any Governmental Authority having jurisdiction over Purchaser, or to any voluntary Applicable Program and the person or entity specified by the rules of procedures of the voluntary Applicable Program to perform certification, any information necessary to demonstrate Purchaser's compliance with an Applicable Program

(whether or not designated in the Confirmation); provided, however, that Purchaser shall use reasonable efforts to minimize the scope of any such disclosure and shall require, as may be feasible, that the recipient maintain the confidentiality of any documents or confidential information governed by the provisions of Section 30.1 of the Agreement, including, if permitted under applicable procedures of the Governmental Authority or such administrator, and subject to any applicable public records laws, seeking a protective order or similar protective mechanism in connection with any disclosure. With respect to a REC, Purchaser also has the right to disclose the following to any customer or affiliate of Purchaser that is participating in any voluntary or mandatory Applicable Program: the Renewable Energy Source, the location of any Renewable Energy Facility designated in the Confirmation, and monthly generation quantities of energy underlying the REC.

**R-8 Uncontrollable Force.** The following is substituted for the first sentence of the second paragraph of Section 10 of the Agreement:

The following shall not be considered “Uncontrollable Forces”: (i) Seller’s cost of producing or obtaining the REC or energy (or ability to sell the REC or energy at a price exceeding the Contract Price); (ii) the loss or failure of Seller’s supply, including materials or equipment; or (iii) Purchaser’s inability economically to use or resell the REC or energy.

The following is added at the end of the second paragraph of Section 10 of the Agreement:

If production of energy at a Renewable Energy Facility designated in the Confirmation is curtailed due to an Uncontrollable Force, any production during

the period of such curtailment shall be allocated as follows: first, among all purchasers of Firm RECs, Firm Bundled RECs, Resource Contingent RECs, Resource Contingent Bundled RECs, and energy purchased under Service Schedules B and C, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation, and second, to all purchasers of Facility As-Run RECs, Facility As-Run Bundled RECs and energy purchased under Service Schedule A, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation.

**R-9 Remedies for Non-Performance.**

**R-9.1 Damages.** Section 21.3 of the Agreement, as modified in this Section 9, applies to REC Transactions.

**R-9.1.1 Failure to Receive or Deliver in Unbundled REC Transactions.**

This Section R-9.1.1 applies to REC Transactions for Firm REC, Resource Contingent REC, and Facility As-Run REC. Section 21.3(a)(3) and (5) of the Agreement are inapplicable. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery of RECs Delivered by Seller in accordance with the Confirmation, then Purchaser shall be liable to Seller for the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price and (ii) is the amount by which the quantity of

RECs Purchaser refused to Accept was less than the Contract Quantity, subject to any limitations stated in the Confirmation.

21.3(a)(2) is modified as follows:

If Seller fails to Deliver RECs to Purchaser in accordance with the Confirmation, then Seller shall be liable to Purchaser for:

(a) the product of (i) and (ii) where (i) is the amount, if any, by which the Replacement Price exceeded the Contract Price and (ii) is the amount by which the quantity of RECs Seller Delivered was less than the Contract Quantity; plus (b) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations stated in the Confirmation.

**R-9.1.2 Failure to Receive or Deliver in Bundled REC Transactions.**

(a) **Price Not Allocated between REC and Energy.** This Section R-9.1.2(a) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run Bundled REC, and in which the Confirmation does not allocate the Contract Price between the REC and Energy. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery from Seller in accordance with the Confirmation, then Purchaser shall be

liable to Seller for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price, and (ii) is the amount by which the quantity of RECs and Energy Purchaser refused to Accept was less than the Contract Quantity, plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Purchaser's schedule or receipt of Energy (based on Seller's commercially reasonable efforts to achieve such reduction), subject to any limitations stated in the Confirmation. If the Purchaser refused to Accept Delivery of RECs but Accepted Delivery of Energy, then Purchaser shall pay Seller for such received Energy at the Resale Price of the Energy; if the Purchaser refused to Accept Delivery of Energy but Accepted Delivery of RECs, the Purchaser shall pay Seller for Accepted RECs at an amount equal to the Contract Price less the Resale Price of the Energy.

Section 21.3(a)(2) of the Agreement is modified as follows:

If Seller fails to Deliver to Purchaser in accordance with the Confirmation, then Seller shall be liable to the Purchaser for: (a) the product of (i) and (ii) where (i) is the amount, if



any, by which the Replacement Price exceeded the Contract Price, and (ii) is the amount by which the quantity of RECs and Energy Delivered was less than the Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Seller's schedule or delivery of Energy (based on Purchaser's commercially reasonable efforts to achieve such reduction), plus (c) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations on such amounts stated in the Confirmation. In the event Seller Delivers Energy but not RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

- (b) **Price Allocated between REC and Energy.** This Section R-9.1.2(b) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run

Bundled REC, in which the Confirmation sets forth an allocation of the Contract Price between the REC and energy.

- (i) If Purchaser refuses to Accept Delivery of RECs in accordance with the Confirmation, then Purchaser shall be liable to Seller as set forth in Section R-9.1.1.
- (ii) Subject to part (v) of this Section, if Seller fails to Deliver RECs in accordance with the Confirmation, then the Seller shall be liable to Purchaser as set forth in Section R-9.1.1.
- (iii) If Purchaser refuses to receive Delivery of Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (iv) If Seller fails to Deliver Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (v) In the event Seller Delivers Energy but fails to Deliver RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

**R-10 Other Modifications of the Agreement for REC Transactions.**

**R-10.1 Revised Agreement Definitions.** For purposes of REC Transactions, the following revisions to definitions contained in Section 4 of the Agreement shall apply:

**R-10.1.1 Contract Quantity:** The amount of RECs and, if applicable, Energy, to be supplied for a transaction under the Agreement.

**R-10.1.2 Power Marketer:** An entity which buys, sells, and takes title to RECS, electric energy, transmission and/or other services from traditional utilities and other suppliers.

**R-10.1.3 Physically Settled Option:** Includes (i) a call option which is the right, but not the obligation, to buy an underlying REC and/or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying REC or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation.

**R-10.1.4 Replacement Price:** The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute REC(s), capacity and/or energy in place of the REC(s), capacity and/or energy not Delivered (for REC(s) and/or energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, for Energy at the delivery point specified in the Confirmation. Substitute

REC(s) must be similar in all material respects to the REC(s) specified in the Confirmation.

**R-10.1.5 Resale Price:** The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the REC(s), capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Seller in a commercially reasonable manner, for Energy at the delivery point specified for the transaction in a Confirmation.

**R-10.2 Notices.** Section 12.2 of the Agreement is revised by inserting “RECs or” before the phrase “capacity and/or energy.”

**SERVICE SCHEDULE R**  
**ANNEX 1 - DEFINITIONS**

“Acceptance” has the meaning given in Sections R-3.1.2 or R-3.2.2, as applicable.

“All Attributes” has the meaning given in Section R-2.4.1.

“Applicable Program” means (a) a program adopted by a Governmental Authority that requires the sale, purchase, or use of energy generated or produced by a facility that converts renewable natural resources such as wind, sunlight, rain, tides, geothermal heat, hydro, or biomass into electric energy, including any Renewable Portfolio Standard (RPS) adopted by a Governmental Authority and all Governing Law that pertains thereto, or (b) a voluntary program for reporting, crediting or attributing RECs and all rules, standards and procedures adopted by the administering organization that pertain thereto.

“Attestation” means (a) the Seller’s written statement, certified as true and correct by an authorized officer of Seller, that the REC is Delivered and title to the REC has been transferred to the Purchaser, and that the Seller has taken all steps to effect transfer of the REC required by any Tracking System designated in the Confirmation, and (b) that satisfies the requirements of any Applicable Program designated in the Confirmation or is a generation information system record of ownership transfer. Annex 2 Exhibit 1 is a template for use of the Parties; an agreed form of Attestation should be included as a part of the Confirmation, and the agreed form will suffice as an Attestation regardless of whether or not it meets the criteria of this definition.

“Change in Law” has the meaning given in Section R-5.2.2(a).

“Deliver” has the meaning given in Sections R-3.1.1 or 3.2.1, as applicable.

“Effective Date” means the date both Parties have executed the Confirmation, or which the Parties otherwise specify in the Confirmation.

“Environmental Attribute” means the following, unless a Tracking System is designated in the Confirmation, and such Tracking System defines “Environmental Attribute,” in which case the Tracking System’s definition of “Environmental Attribute” shall control: a characteristic concerning or affecting the environment created by or resulting from the generation of electric energy by a Renewable Energy Source, and which capable of measurement, verification, or calculation. The term does not include tax credits or other tax benefits under any law or other direct third-party subsidies for generation of electric energy by a Renewable Energy Source. The term includes “non-energy attributes” under Oregon law and “non-power attributes” under Washington law. By way of example, the term may include the following: avoided emissions of CO<sub>2</sub> or other gases, or avoided water use (but not water or other rights or credits required under an Applicable Program to site and develop the Renewable Energy Facility itself).

“Facility As-Run REC” has the meaning given in Section R-2.3.5.

“Facility As-Run Bundled REC” has the meaning given in Section R-2.3.6(a).

“Firm Bundled REC” has the meaning given in Section R-2.3.2.

“Energy” in the case of a Firm Bundled REC refers to Firm Capacity/Energy Sale or Exchange Service under Service Schedule C as may be modified by Service Schedule R, in the case of a Resource Contingent Bundled REC refers to Unit Commitment Service under Service Schedule B as may be modified by Service Schedule R, and in the case of Facility As-Run Bundled REC refers to Economy Energy Service under Service Schedule A as may be modified by Service Schedule R.

“Firm REC” has the meaning given in Section R-2.3.1.

“Fuel Impediment” means the reduction or lack of wind or sunlight, excessive wind, or other insufficiency or excess of a Renewable Energy Source (excluding biomass), that causes a reduction or cessation of generation of electric energy by a Renewable Energy Facility.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure (such unanticipated failure does not include a Fuel Impediment).

“Governing Law” has the meaning given in Section 24 of the Agreement as that Section may be modified by Section R-5.1.

“Governmental Authority” means the United States, a State thereof, any political subdivision or governmental body thereof, including any department or agency, with jurisdiction over a Party or an Applicable Program.

“Not Regulatorily Continuing” has the meaning given in Section R-5.2.2(b).

“Program Attributes” has the meaning given in Section R-2.4.2.

“Regulatorily Continuing” has the meaning given in Section R-5.2.2(a).

“REC” refers to a renewable energy certificate and means a credit or certificate representing Environmental Attributes created by or resulting from the generation of one (1) megawatt hour of electric energy by a Renewable Energy Source, subject to the terms and conditions stated in the Confirmation.

“REC Product” has the meaning given in Section R-2.2.

“REC Transaction” has the meaning given in Section R-2.1.

“Resource Contingent REC” has the meaning given in Section R-2.3.3.

“Resource Contingent Bundled REC” has the meaning given in Section R-2.3.4(a).

“Renewable Energy Facility” means an electric generation unit or other facility or installation capable of producing or emitting electric energy using a Renewable Energy Source.

“Renewable Energy Source” means (a) a resource that is recognized as a renewable energy source under an Applicable Program designated in the Confirmation, or (b) if no Applicable Program is designated in the Confirmation, a natural resource from or through which electric energy can be generated, including wind, solar, geothermal, landfill gas, wave, tidal, thermal ocean technologies, and hydroelectric power, and excluding fossil carbon-based, non-renewable, or radioactive fuel.

“Reporting Rights” means the right to report and register the exclusive ownership of the REC or Environmental Attributes under Governing Law or any other laws, regulations, orders or judicial precedents of the government of the United States of America or any department or agency thereof, or any State or political subdivision thereof, including mandatory and voluntary reporting, and including reporting under section 1605(b) of the Energy Policy Act of 1992 and any foreign or international emissions trading or reporting program.

“Scheduled Maintenance” means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

“Tracking System” means the entity, if any, the Parties designated in the Confirmation that will perform REC tracking and accounting functions, including receiving evidence of generation of the REC and crediting the resulting REC to the Purchaser’s account.

“Transfer Date” means the date specified in the Confirmation, no later than which Seller must make Delivery as defined in Sections R-3.1.1 or R-3.2.1, as applicable.

“Vintage” means the period in which the REC was or will be created.

**SERVICE SCHEDULE R ANNEX 2**

**FORM OF  
REC TRANSACTION CONFIRMATION**

**IDENTIFICATION OF PARTIES**

Name of Seller:

\_\_\_\_\_

Name of Purchaser:

\_\_\_\_\_

Seller Information:

\_\_\_\_\_

Contact

Tel (O):

\_\_\_\_\_

Tel (Cell):

\_\_\_\_\_

E-mail:

\_\_\_\_\_

Fax:

\_\_\_\_\_

Purchaser Information:

\_\_\_\_\_

Contact

Tel (O):

\_\_\_\_\_

Tel (Cell):

\_\_\_\_\_

E-mail:

\_\_\_\_\_

Fax:

\_\_\_\_\_

Contact information is subject to change by notice.

**ADDRESSES FOR FORMAL NOTICES:**

Purchaser:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Seller

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**INCORPORATED DOCUMENTATION** (any “long form” or other bilateral agreements between the Parties applicable to this Confirmation and incorporated herein)

\_\_\_\_\_

**REC TRANSACTION TERMS**

REC Product (e.g., Firm REC, Firm Bundled REC, etc.) (see Section R-2.3):

\_\_\_\_\_



Vintage of REC already created or period of generation for REC to be created (mm/yyyy)

---

Contract Quantity (stated either on a megawatt hour basis or percentage of output of a designated Renewable Energy Facility)

---

Transfer Date (generally the Effective Date of this Confirmation for REC that already exists, and future date for REC to be generated after Effective Date)

---

Contract Price:

---

Allocation, if agreed:

REC:

---

Energy:

---

Environmental Attributes (Check One)

All Attributes (this designation is effective only if a Renewable Energy Source or Renewable Energy Facility is designated below)

Program Attributes (this designation is effective only if an Applicable Program is identified below) (Note: WREGIS and possibly other Tracking Systems will not recognize a Program Attributes REC, or may treat it as an All Attributes REC)

Applicable Program (required for Program Attributes; not required for All Attributes, but designation establishes the minimum Environmental Attributes required by a designated Applicable Program). Also required for recovery of penalties and alternative compliance payments (Section R-9.1). Designation should include detailed information, including any applicable legal citations, to assure adequate description of the program.

---

Designation of Renewable Energy Source or Renewable Energy Facility (required for All Attributes).

Renewable Energy Source: \_\_\_\_\_

Renewable Energy Facility

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

Location: \_\_\_\_\_

Generation Information System number: \_\_\_\_\_

Tracking System number: \_\_\_\_\_

Fuel (wind, solar, etc.): \_\_\_\_\_

Change in Law Provisions (Check One)

- Regulatorily Continuing (Section R-5.2.2(b), requiring that Seller make commercial reasonable efforts to obtain compliance with Changes in Law in the designated Applicable Program. If checked, state any agreed maximum costs of such efforts (if no maximum is stated, then no maximum applies):

\$ \_\_\_\_\_

- Not Regulatorily Continuing (Section R-5.2.2(c)).

Tracking System(s) if any: (if none specified, then Delivery occurs by Attestation and not by Tracking System crediting)

Damages. Damages include reimbursement for penalties and alternative compliance payments, subject to any agreed cap on this damages component, which can be zero (Section R-9.1):

\$ \_\_\_\_\_

Any agreements concerning forward certificates in WREGIS or other Tracking System Expedition ) (Section R-3.3.1):

\_\_\_\_\_

**TERMS APPLICABLE TO ENERGY IF INCLUDED IN REC PRODUCT**

Period (Schedule) of Delivery: From \_\_\\_\_\\_\_ To \_\_\\_\_\\_\_

Schedule (Days and Hours): \_\_\_\_\_

Delivery Rate: \_\_\_\_\_

Delivery Point(s): \_\_\_\_\_

Contract Quantity (specify all details): \_\_\_\_\_

Transmission Path for the Transaction (If Applicable): \_\_\_\_\_

**EFFECTIVE DATE AND OTHER PROVISIONS**

Effective Date (no earlier than mutual execution of this Confirmation)

\_\_\_\_\_

Other provisions: \_\_\_\_\_ [generally stated in attachment to the Confirmation]

The Parties agree to the REC Transaction set forth herein as of the Effective Date

Seller

Purchaser

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**ANNEX 2, Exhibit 1**  
**Form of Attestation To Be Included As Exhibit To Confirmation**

**Attestation Of [Seller] (“REC Generator”)**  
**Of Sale, Transfer, and Delivery Of Renewable Energy Certificate to**  
**[Purchaser] “Purchaser”**

**Party and Contact Information:**

[Insert names and addresses of Parties, address, and contact information]

**Attestation:**

I, [name of attesting officer], the [title] of Seller, declare and certify that Seller sold and delivered

Elect one:

Environmental Attributes Only

Bundled with electricity

to Purchaser, and further, that

1. Was generated by the Renewable Energy Facility (“REF”) designated below and sold, transferred and delivered, subject to receipt of payment, to Purchaser.
2. Is associated with electricity delivered into the [insert delivery area] in compliance with applicable energy delivery rules.

REF Generator Name and Number	Technology Type	Fuel Type (Renewable Energy Source)	Generation Period (mm/yy)	Generator First Day of Operation

The above statements are true and correct to the best of my knowledge, and based on my duly diligent inquiry. This Attestation may serve as a Bill of Sale to document, in accordance with the Confirmation, the transfer from Generator to Purchaser of all of Seller’s right, title and interest in and to the REC and environmental attributes it represents, as set forth above.

Either Party may disclose this Attestation to others, including a Tracking System, public utility commissions and other regulatory bodies having jurisdiction over Purchaser, and administrators of voluntary green energy programs, to substantiate and verify the accuracy of the Parties’ compliance, advertising and public claims.

Signature:

\_\_\_\_\_

Date \_\_\_\_\_

Print Name: \_\_\_\_\_

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 16

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To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Authorization for VCEA Interim General Manager to Execute Task Order 5 with SMUD to Implement Long Term Renewable Energy Procurement

Date: May 10, 2018

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### **Recommendation**

Authorize VCEA's Interim General Manager to complete final negotiations and execute Task Order 5 related to Long Term Renewable Procurement (LTP) with SMUD pursuant to the VCEA/SMUD Master Agreement in substantially the same form as attached, with any such additional non-material changes mutually agreed to by SMUD and VCEA Interim General Manager. Services under Task Order 5 are estimated at \$124,550 based on time and materials associated with consummating up to four (4) long term renewable power contracts on VCEA's behalf.

### **Background**

VCEA commences commercial retail operation in June 2018. Although VCEA has and continues to acquire short term resource contracts and hedges to support its upcoming retail power load and RPS needs, VCEA has no long-term supply arrangements in place which help foster out-year business stability, enhanced cost certainty, and regulatory compliance.

Recent changes to California's Integrated Resource Planning (IRP) process pursuant to SB350, require that by 2021, Load Serving Entities (LSEs) like VCEA must have at least 65% of their required Renewable Portfolio Standard (RPS) resources under contracts with a duration of 10 or more years. SB350 further requires that by 2030, 50% of VCEA's retail load be served by RPS eligible resources. SMUD's LTP will provide a process to help meet some or all of VCEA's 2021 and beyond RPS compliance requirements.

### **Discussion**

VCEA's first formal IRP filing is scheduled to be submitted by August 1, 2018 (SMUD is performing this task). This filing will include estimated RPS resource requirements thru at least 2030. By 2021, 65% of VCEA's RPS requirement must be met by contracts of at least ten years in duration. Attaining long term contract resources is a complex process involving contact with

potential suppliers, receiving and evaluating proposals, negotiating with the more favorable counter-parties, followed by contract execution and implementation. Substantial contract delivery performance obligations fall on selected sellers, coupled with reciprocal significant payment obligations on buyers (VCEA in this case). For example, a 10MW “flat” contract, for 10 years, at \$40 / MWh will result in total lifetime contract payments of over \$35 million. Careful analysis will help assure prudent decisions are made.

For VCEA to meet its 2021 long term RPS contract obligations, it must engage wholesale power suppliers and enter long term supply arrangements. VCEA currently has neither the internal capacity nor the experience to perform this undertaking.

### **SMUD Task Order 5 LTP Proposal**

SMUD’s attached Task Order 5 LTP Proposal outlines the following steps and cost estimates for VCEA to issue a Request for Offers (RFO), evaluate and rank offers received, and then to consummate contracts arrangements with 3-4 of the most favorable counter-parties:

<b>Sequence</b>	<b>Task</b>	<b>Cost Estimate</b>
1	Design RFO	\$6,500
2	Issue / Manage RFO	\$19,000
3	Evaluate and Rank	\$54,000
4	Select / Short List	\$4,000
5	Negotiations	\$12,000
6	Contract Approvals / Execution	\$29,000
	Estimated Total	\$124,500 *

\*SMUD’s proposal is based on actual time and materials; especially complex projects or contract terms, or additional counter-parties will increase costs accordingly. The hourly rates SMUD used for the cost estimates are those approved within the VCEA/SMUD Master Agreement.

SMUD appropriately places cost emphasis on evaluating and ranking offers received. The many factors which must be assessed/modelled include: project technology; project age; project capacity and energy characteristics; project location; delivery and receipt points; transmission congestion; counter-party credit and performance track record, and the like. In addition, selected counter-parties may have special terms they want applied to VCEA. Only after all such elements are evaluated can prudent recommendations and decisions be made. SMUD estimates that the total process could take in the range of 16 months. SMUD has the capability and experience to undertake this LTP Proposal.

### **Analysis**

SMUD is fully qualified to perform VCEA’s wholesale power market solicitation to meet all or some of VCEA’s long-term RPS contract requirements to be implemented by 2021. VCEA has an existing wholesale services agreement with SMUD (Task Order 3) which provides for the addition of these LTP services subject to VCEA Board authorization. The cost estimates identified by SMUD fall within industry norms (as do the hourly staff rates in the Master

Agreement) and SMUD has the additional advantage of being familiar with VCEA's power supply needs. VCEA does not have the internal capacity or tools to perform this LTP function. Other consultants/vendors may be able to perform some or all of LTP tasks, however VCEA would need to establish one or more new contract relationships to attain these services without reasonable expectation of cost reduction or process outcome improvement versus SMUD.

**Attachments:**

1. Resolution
2. Task Order 5 - Long Term Renewable Energy Procurement Proposal

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2018- \_\_\_\_\_

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING LONG TERM RENEWABLE PROCUREMENT SERVICES TASK ORDER 5 – LONG TERM RENEWABLE PROCUREMENT SERVICES

WHEREAS, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

WHEREAS, on August 31, 2017, the VCEA Board considered a proposal by the Sacramento Municipal Utilities District (“SMUD”) to provide program launch and operational services and subsequently directed VCEA staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board; and

WHEREAS, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCEA to provide CCA support services; and

WHEREAS, On October 12, 2017 the VCEA Board approved the Master Professional Services Agreement and Task Order 1 and Task Order 2 to provide program launch and operational services consistent with the SMUD proposal and VCEA Board direction; and

WHEREAS, On November 16, 2017 the VCEA Board approved Task Order 3 to provide Wholesale Energy Services consistent with the SMUD proposal and VCEA Board direction; and

WHEREAS, On December 14, 2017 the VCEA Board approved Task Order 4 to provide Operational Staff Services to VCEA for program launch and operations.

WHEREAS, VCEA and SMUD staff negotiated the draft Task Order 5 to provide long term renewable procurement services.

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

1. VCEA Interim General Manager, in consultation with VCEA Legal Counsel, is hereby directed to finalize Task Order 5 for long term renewable procurement services, in substantial conformance with the attached Task Order 5, for signature by the VCEA Board Chair.



2. The Chair of the Board is hereby authorized to approve and execute on behalf of VCEA Task Order 5 in substantial conformance with the attached Task Order 5 under the terms set forth in this Resolution.

ADOPTED, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Lucas Frerichs, Chair

\_\_\_\_\_  
Secretary

Approved as to form:

\_\_\_\_\_  
Interim VCEA Counsel

EXHIBIT A - Form long term renewable procurement services Task Order 5 between VCEA and SMUD

EXHIBIT A

Form long term renewable procurement services Task Order 5 between VCEA and SMUD

**Addition to Exhibit A: VCEA/SMUD Master Services Agreement  
Task Order 5  
Long Term Renewable Energy Procurement**

SMUD and VCEA agree to the following services, terms and conditions described in this Task Order. This Task Order 5 is for Long Term Renewable Energy Procurement (“Task Order 5”), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (“Agreement”) between the Parties. If any provisions of this Task Order 5 conflict with any provisions in the Agreement, the provisions of this Task Order 5 shall take precedence.

The Effective Date of this Task Order 5 is the date of the last signature below.

**A. SCOPE OF WORK**

SMUD will issue a solicitation and negotiate Power Purchase Agreements (PPA’s) for renewable or other designated resources on behalf of VCEA. VCEA and the successful proposer or proposers will be the parties to the resulting PPA’s. The Scope of Work consists of six tasks as defined below:

**1 Task 1: Request for Offers Package Development**

**1.1 Define Scope of Solicitation**

Utilizing the stakeholder discussions from the Integrated Resource Planning Process, and decisions made during that process, SMUD will draft the scope of the solicitation. Items to be considered include:

- Local and non-local (what is local) what is non-local
- Technologies desired (which may include large hydro, for example)
- Define notional capacity/annual energy quantities
- Term(s) of PPAs
- Cost constraints
- Storage (Battery) Integration
- Other factors

This task includes an email review cycle and conference call with VCEA staff.

**1.2 Prepare the Solicitation Document**

Starting with an existing SMUD solicitation template, SMUD will draft the preliminary solicitation document for VCEA’s Long Term Renewable Energy Procurement.

**1.3 RFO Solicitation Document Stakeholder Review Cycle**

Review the scope draft, and the solicitation document with VCEA staff and Community Advisory Committee. This subtask may include one or more conference calls, as warranted, and includes one in-person consolidated review session. (Additional sessions would be at additional cost).

## **2 Task 2: Solicitation**

### **2.1 Set Up SMUD EBSS System**

SMUD will utilize its Electronic Bid Solicitation System, which has a large number of suppliers signed up to receive solicitation notices via email. SMUD will provide VCEA with a list of suppliers signed-up to receive bid notices for energy procurements from SMUD's EBSS. The system will be set up to send notices to registrants signed up to receive notifications for "solar," "wind," and other subcategories under the "renewable" category, and other technologies per discussion between SMUD and VCEA. This step will include emailing sign-up notices to any potential suppliers that have contacted VCEA directly or that VCEA want to include. The registration page for SMUD's EBSS can be found at this URL:

*Link: <https://www.smud.org/en/Corporate/Do-Business-with-SMUD/Page-Content/Vendor-Registration-for-Contracting-with-SMUD-EBSS>*

### **2.2 Plan/Hold Bidders Conference (WebEx)**

SMUD will plan and conduct a bidders' conference using WebEx to walk through the solicitation document and to field questions. VCEA staff will be available to participate in the bidders' conference.

### **2.3 Manage Bidder Questions**

SMUD will document and reply to bidder questions. This includes reposting questions and answers to the EBSS for the benefit of all potential respondents.

### **2.4 Intake of Solicitations**

SMUD will process the incoming proposals, catalog, and post the proposals on a file sharing site for VCEA staff access.

### **2.5 Review and Compile Offer Data**

SMUD will review all offers and compile data into spreadsheets for Rating and Ranking. VCEA will be provided a copy of the initial list of all proposals received.

## **3 Task 3: Evaluation**

Task 3 and each of its sub-tasks has been costed assuming the list of all potential projects will be screened down to, and due diligence performed on, the top 10 projects. There may be additional costs if VCEA requests that SMUD perform due diligence on more than ten (10) projects.

### **3.1 Initial Screening**

Based upon required information submittals, SMUD will screen proposals on criteria such as: price; how far along the project is in the development stage; fit with technology criteria; whether a project fits within the criteria for local and non-local siting; whether proposed technology/equipment is commercial (versus research, and/or pre-commercial); and, developer financial strength/backing. SMUD will

provide VCEA with the detailed results of the initial screening, including the itemized score for each proposer.

### **3.2 Solicit Additional Information for Screened Proposals**

SMUD and VCEA will determine which proposals pass the initial screening process. For the proposals passing screening, SMUD will request additional information on: CAISO Interconnection Process status, Project Development Status, Project Team References, level of site control, status of equipment procurement, detailed annual energy production estimates, and other factors relevant to the selection process.

### **3.3 Conduct Due Diligence**

SMUD will conduct due diligence on each proposal that passes screening. Due diligence will be conducted to verify: CAISO Interconnection Process status; development status; experience of development team; status of site control; status of equipment procurement; review and analysis of detailed annual energy production estimates; and, etc.

If review is required for non-standard technologies (such as a renewable resource with integrated battery storage, or other factors which may increase a given project's complexity), due diligence costs could increase accordingly.

### **3.4 Pricing and Valuation Analysis**

SMUD will conduct a valuation analysis based upon historical nodal pricing to determine the implicit energy value for each project, and will perform a Resource Adequacy value assessment for each. The cost of financial security will be included, based upon each proposer's stated size of letter of credit required. The result of the analysis will be an implicit cost of the renewable premium, which could be either negative (high value) or positive (value not as high).

If evaluation is required for non-standard technologies (such as a renewable resource with integrated battery storage, or other factors which may increase a given project's complexity), pricing and valuation analysis costs could increase accordingly.

### **3.5 Rating and Ranking**

SMUD will develop and populate a proposal rating matrix, based on assessment of information from the proposals, SMUD's pricing and evaluation analysis, and the due diligence checks. This task will include an in-person review of the proposals' rating and ranking with VCEA staff, and may include several conference calls as warranted or requested by VCEA or SMUD.

If additional in-person review cycles are requested, there may be additional cost.

## **4 Task 4: Selection/Short Listing**

### **4.1 Review Ratings/Rankings and Recommendations with Stakeholders**

Review with VCEA staff and Community Advisory Committee. This task includes one preparatory conference call between VCEA and SMUD, and one in-person consolidated review session with incorporation of feedback.

If additional review sessions are requested, there may be additional cost.

#### **4.2 Develop Bidder Short List**

From the feedback received in Task 4.1, SMUD, in consultation with VCEA staff, will re-rank screened proposals and develop a short list for negotiations. This task includes review (in-person and/or via conference call) with VCEA staff for concurrence on final Short List.

### **5 Task 5: Negotiation**

Costs for Task 5 and each of its sub-tasks has been costed assuming that the short list consists of up to four projects. Task Fees are based on time and materials rates. There may be additional costs for additional projects added to the short list, and/or if particular projects are especially complex from a business or technical perspective.

#### **5.1 Develop/Present Term Sheets**

SMUD, in consultation with VCEA staff, will develop and present term sheets to the short-listed entities.

#### **5.2 Negotiate Basic Commercial Terms**

SMUD will negotiate basic commercial terms for any proposed Power Purchase Agreement(s), and will modify term sheets as appropriate. This task includes review by VCEA staff and counsel, and does not include review by additional stakeholders. Costs may be higher if review is required by other VCEA stakeholders.

#### **5.3 Coordinate Letters of Intent/Non-Disclosure Agreements**

SMUD will coordinate development and execution of Letters of Intent/Non-Disclosure Agreements by short-listed bidders and VCEA's General Manager.

### **6 Task 6: Contracting**

Costs for Task 6 and each of its sub-tasks have been estimated assuming that contract negotiations proceed on up to four projects. Task fees are based on time and materials rates and there may be additional costs for additional projects added to the short list and/or if particular projects are especially complex from a technical or contracting perspective.

#### **6.1 Develop Standard Form PPA**

Using existing PPA templates, SMUD will develop a standard form Renewable Power Purchase Agreement for inclusion in the solicitation. The scope of this task includes working with VCEA staff and counsel to review. Costs may be higher if review is required by other VCEA stakeholders.

## **6.2 Negotiate PPA Terms**

SMUD will negotiate with short listed entities for PPA terms. This task includes working with VCEA staff and counsel as required.

## **6.3 Coordinate Execution of PPA**

SMUD will coordinate execution of PPAs, including preparing staff reports for Board approval of the PPAs, preparation of Board presentation materials, as well as presentation to the Board. SMUD will collaborate with VCEA staff in preparing and presenting materials for VCEA Board level PPA approvals.

## **B. DOCUMENTATION**

During the procurement process, SMUD will develop and maintain a chronological file of key documentation, project ranking spreadsheets/reports, meeting/conference call schedules, and other materials pertinent to the evaluation and decision process (“Deliverables”). SMUD will provide this file to VCEA and VCEA is to have complete control and discretion over any subsequent VCEA utilization of such materials and or modelling outputs contained in the file. In the provision of Deliverables hereunder, SMUD will not directly provide proprietary models used in the required analysis tasks, but will describe to VCEA any proprietary models/techniques used to evaluate proposals . Such disclosures may be subject to the Confidentiality provisions in the Agreement. SMUD may use any information/results attained during the procurement process for its own purposes.

## **C. APPROVAL PROCESS / ACCEPTANCE**

Both Parties agree to perform tasks, reviews, and approvals in a timely manner in order to maintain agreed upon timelines as set forth in the Deliverables Schedule (“Appendix A”) to this Task Order 5. SMUD will provide deliverables to VCEA’s Interim General Manager for review by VCEA. Deliverables that require VCEA Board review and approval will be identified and sufficient time will be allocated in the project schedule.

## **D. TERM AND TERMINATION**

### **D.1. Term of Task Order 5**

Task Order 5 is effective on the Effective Date of this Task Order and shall remain in effect for a period of sixteen (16) months from the Effective Date, unless terminated in accordance with the Agreement or extended by mutual agreement of the Parties.

The expiration of this Task Order 5 shall not affect the term of the Agreement.

### **D.2 Termination**

This Task Order 5 may be terminated pursuant to Section 4 (“Term and Termination”) of the Agreement.

## E. COMPENSATION FOR SERVICES

### E.1. Long Term Renewal Energy Procurement

#### Estimated Hours

	Hours					Cost
	VP	Principal	Senior	Journey	Admin	
	\$ 250	\$ 190	\$ 150	\$ 100	\$ 80	
<b>1 Request for Offers Package Development</b>						<b>\$ 6,520</b>
1.1 Define Scope of Solicitation	0	6	3	0	0	\$ 1,590
1.2 Prep the Solicitation Document	0	4	18	0	0	\$ 3,460
1.3 RFO Document Stakeholder Review Cycle	0	3	6	0	0	\$ 1,470
<b>2 Solicitation</b>						<b>\$ 18,850</b>
2.1 Set Up SMUD EBSS system.	0	0	7	0	0	\$ 1,050
2.2 Plan/Hold bidders conference (WebEx)	0	2	6	0	0	\$ 1,280
2.3 Manage Bidder Questions	0	4	28	0	0	\$ 4,960
2.4 Intake of Solicitations	0	0	8	40	0	\$ 5,200
2.5 Review and Compile Offer Data	0	4	24	20	0	\$ 6,360
<b>3 Evaluation</b>						<b>\$ 53,810</b>
3.1 Initial Screening	0	10	50	0	0	\$ 9,400
3.2 Solicit Additional Information for Screened Proposals	0	0	14	0	0	\$ 2,100
3.3 Conduct Due Diligence	0	0	110	0	0	\$ 16,500
3.4 Pricing and Valuation Analysis	0	29	60	0	0	\$ 14,510
3.5 Rating and Ranking	0	20	50	0	0	\$ 11,300
<b>4 Selection/Short Listing</b>						<b>\$ 4,070</b>
4.1 Review Ratings/Rankings and Recommendations with Stakeholders	0	6	12	0	0	\$ 2,940
4.2 Develop Bidder Short List	0	2	5	0	0	\$ 1,130
<b>5 Negotiation</b>						<b>\$ 11,900</b>
5.1 Develop/Present Term Sheets	0	5	15	0	0	\$ 3,200
5.2 Negotiate Basic Commercial Terms	0	10	14	0	0	\$ 4,000
5.3 Coordinate Letters of Intent/Non-Disclosure Agreements	0	5	25	0	0	\$ 4,700
<b>6 Contracting</b>						<b>\$ 29,400</b>
6.1 Develop Standard Form PPA	0	40	20	0	0	\$ 10,600
6.2 Negotiate PPA Terms	0	15	90	0	0	\$ 16,350
6.3 Coordinate Execution of PPAs	0	5	10	0	0	\$ 2,450
<b>Total</b>						<b>\$ 124,550</b>

#### Estimated Fees

Based upon the assumptions outlined in the Scope of Work, the estimated fee for this Task Order 5 is \$124,550.

### E.2. Hourly Rates

Services performed under this Task Order 5 are to be performed on a time and materials basis, calculated monthly. SMUD shall receive compensation, including authorized reimbursements, for services rendered under this Task Order at the rates set forth in below. Additional Professional Services work may be mutually agreed by the Parties.

The SMUD hourly billing rates in the schedule below are applicable to any work performed by SMUD under this Task Order 5. Hourly rates are fixed through June 30, 2019 and are subject to escalation at U.S. Department of Commerce, Bureau of Labor



Statistics, "Consumer Price Index-All Urban Consumers less food and energy" Series ID: CUUR0000SA0LIE thereafter.

### Professional Services Hourly Rates

Resources	Hourly Rate
SMUD CEO/VP	\$250.00
Principal	\$190.00
Senior Analyst/Specialist	\$150.00
Analyst/Specialist	\$100.00
Administrative	\$80.00

#### F. PAYMENT TERMS

SMUD will record the monthly charges for staff and hours expended for the professional services provided under this Task Order 5. From the Effective Date of Task Order 5 through September 30, 2018, SMUD will provide a monthly statement to VCEA for review and validation. Payment of the fees incurred through September 30, 2018, will be deferred until October 1, 2018, and will be payable in accordance with Section 8.8 of the Agreement.

Invoices for fees incurred from October 1, 2018, through the termination of Task Order 5, will be submitted to VCEA monthly. For services under this Task Order 5, VCEA shall pay all undisputed portions of invoices within thirty (30) calendar days of the date of the invoice.

#### G. TASK AMENDMENT

This Task Order 5 may only be amended or otherwise modified with the written agreement of the Parties, and approved by each Party's governing body where required by law or policy.

It is mutually understood that business requirements, resources, and dates may change subject to the applicable terms of Task Order 5. Any changes to the scope defined in Task Order 5 will be addressed through a task amendment process. Material changes that require a formal task amendment, are those which will specifically impact defined scope, schedule, budget, or resources.

#### H. SIGNATURES

The Parties have executed this Task Order 5 and it is effective as of the date of last signature below.

**Valley Clean Energy Alliance**

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

**Name:** Mitch Sears

**Title:** Interim General Manager

**Date:** \_\_\_\_\_

**Sacramento Municipal Utility District**

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

**Name:** Arlen Orchard

**Title:** Chief Executive Officer and General

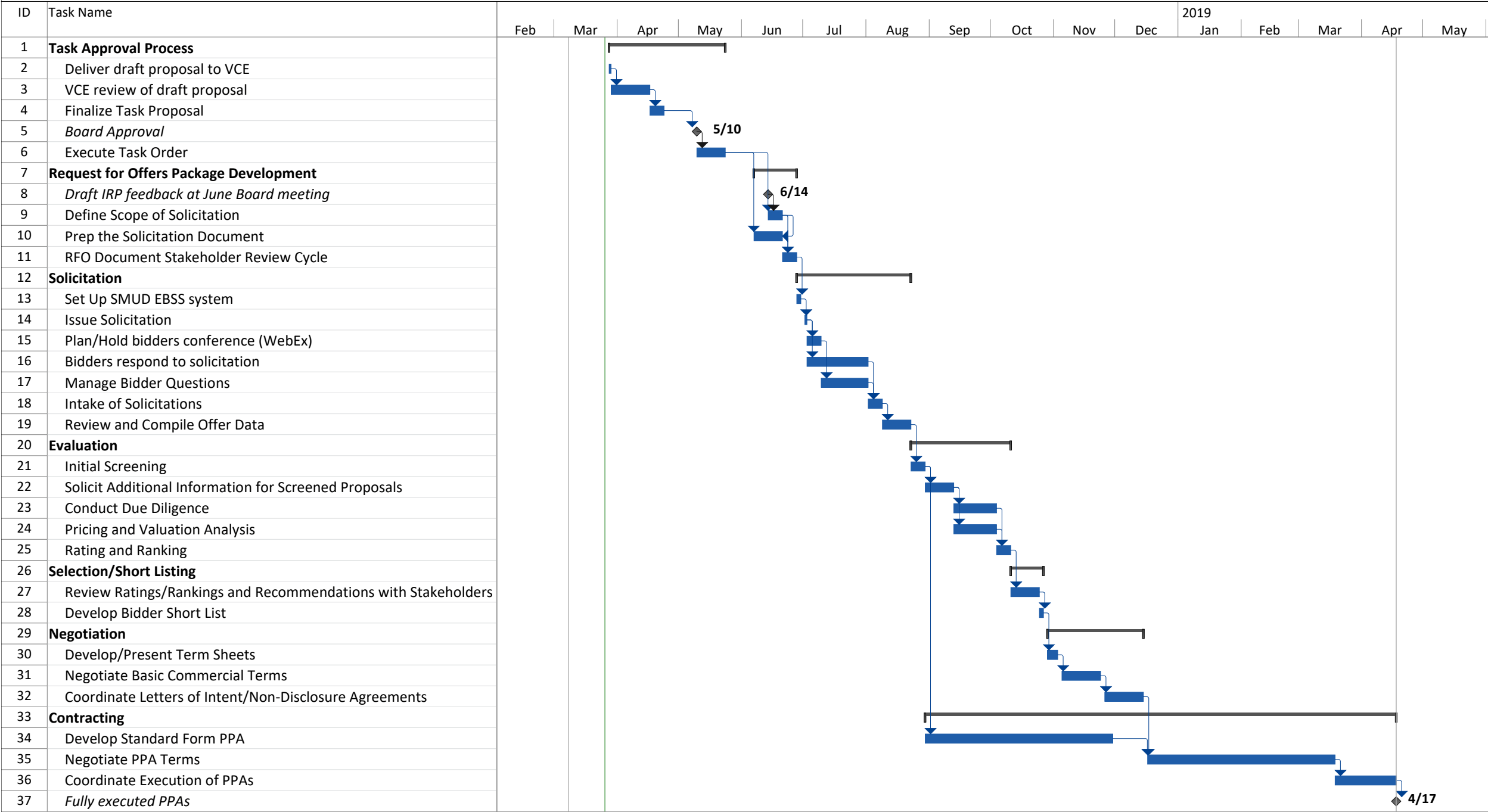
**Title:** Manager

**Date:** \_\_\_\_\_

**APPENDIX A: DELIVERABLES SCHEDULE**

#	Deliverable	Timing
	To be determined.	To be determined.

VCE Long Term Procurement Schedule



# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Agenda Item 17

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager  
Jim Parks, Director of Marketing & Customer Care  
Christopher Cole, Key Account Manager

**SUBJECT:** Peak Day Pricing (PDP) Pilot Program

**DATE:** May 10, 2018

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### RECOMMENDATION

Staff is recommending the Board adopt a resolution establishing a Peak Day Pricing Pilot Program that provides alternatives for certain VCE commercial, industrial and agricultural customers participating in PG&E's Peak Day Pricing program.

### BACKGROUND

Peak Day Pricing is a PG&E program dating back to 2010 that provides commercial, industrial and some agricultural customers with a discount on their energy rates from May 1 through October 31 (summer tariff season) in exchange for a significantly higher rate between 2 PM and 6 PM for up to 15 Peak Day Events per year. A customer may or may not save money in any given year, depending on their response to the peak day event and the amount of energy used during the event. Most customers were automatically enrolled in PG&E's PDP program, and although many customers do not save money they have not opted out, perhaps because they are unaware of their involuntary participation. PDP customers are eligible for CCA enrollment; however, the program does not carry over once customers have been switched over to VCE service. This results in significant opt-out risk among some of VCE's largest customers.

### ANALYSIS AND DISCUSSION

Currently, PG&E has 3,600 PDP customers located in VCE territory, of which 450 PDP customers are medium to large commercial, industrial and agricultural customers. These 450 PDP customers are currently on tariff rates A10, AG-4, AG-5, E-19 and E20. Staff recommends that VCE establish a pilot program to provide an opportunity to study issues related to Peak Day Pricing and provide alternatives for certain VCEA commercial, industrial and agricultural customers participating in PG&E's PDP program. The recommended Pilot Program would concentrate initially on the 450 PDP customers in the five tariff classifications listed above (i.e. A10, AG-4, etc). These are the largest customers on PDP and are the most likely to be aware of the program and to have financially material outcomes.

### **E-19 and E-20 Customers:**

E-19 and E-20 customers are primarily large commercial & industrial customers and there are approximately 145 customers in these rate classes.

Staff recommends that VCE contact all E-19 and E-20 PDP customers and inform them that as a VCE customer, they will no longer be eligible for PG&E's PDP program. If the customer would like to continue to participate in PDP, VCE will mitigate opt-out risk by providing them with VCE's Competitive Offer which is designed to offset any discount lost by having been switched over to VCE service. VCE's Competitive Offer will be an annual bill credit for any loss by the customer for not being on PG&E's PDP program. VCE will include all PDP Service Address IDs, regardless of tariff designation that the customer may have in the annual calculation. In addition, the customer will receive VCE's standard 2.5% reduction on the generation portion of the monthly bill.

In exchange, the customer agrees to follow the current PG&E PDP program of managing their electric costs by reducing their load between 2 PM and 6 PM for up to 15 Peak Day Events per year during the summer tariff season, May 1 - October 31. If the annual bill credit calculation, confirms that the customer did not save any money on VCE's Competitive Offer program and the customer's usage pattern is expected to continue, they can be dropped from VCE's Competitive Offer program.

### **A-10, AG-4 and AG-5 Customers:**

A-10, AG-4 and AG-5 customers are primarily medium size commercial and large agricultural customers. There are approximately 305 customers in these rate classes.

VCE will analyze the billing data of all customers in these rate classes and create two lists:

**List 1)** PDP customers for which the 2.5% Generation savings is less than the PDP benefit

**List 2)** PDP customers for which the 2.5% Generation savings is greater than the PDP benefit.

Staff recommends that VCE send a letter to all PDP customers on List 1 informing them that as a VCE customer, they are no longer eligible for PG&E's PDP program. We will inform the customer of the possible financial impact of being removed from PGE's PDP and describe all the benefits of VCE. VCE will give the customer the option to opt-out of VCE if they so choose.

Staff recommends that PDP customers on List 2 be automatically dropped from PDP by PG&E when they move to VCE. They will receive standard opt-out notices the same as other customers.

### **FISCAL IMPACTS**

There are one-time and on-going costs associated with this Pilot Program for the Board's consideration:

- VCE will incur a one-time cost to perform the analysis of billing data for all PDP customers in rate classes A-10, AG-4, AG-5; cost for this is expected not to exceed \$7,600.
- VCE will incur a one-time cost of approximately \$1,000 to send letters to PDP customers on List 1.
- VCE will incur a recurring cost of approximately \$200 per customer per year to perform the annual "true-up" bill calculation required for customers with a VCE Competitive Offer.
- VCE will incur costs associated with "making customers whole" for those that participate in VCE's Competitive Offer. Those costs are TBD at this time, but could range from \$130,000 - \$400,000 per year.

**CONCLUSION**

Staff recommends VCE adopt a Peak Day Pricing Pilot Program that mitigates opt-out risk by providing alternatives for A-10, AG-4, AG-5, E-19 and E-20 customers that are currently on PG&E's PDP program. VCE will review the Pilot Program in early 2019 and may revise certain elements, including the potential to serve former PDP customers in other rate classes, once an analysis of the program's costs and effectiveness has been evaluated.

**Attachments**

1. Resolution
2. Peak Day Pricing Pilot Program

**VALLEY CLEAN ENERGY ALLIANCE  
RESOLUTION NO. 2018- \_\_\_\_\_**

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE ADOPTING A  
PEAK DATE PRICING (PDP) PILOT PROGRAM**

**WHEREAS**, the Valley Clean Energy Alliance (“VCEA”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

**WHEREAS**, Peak Day Pricing (PDP) is a PG&E program dating back to 2010 that provides commercial, industrial and some agricultural customers with a discount on their energy rates from May 1 through October 31 (summer tariff season) in exchange for a significantly higher rate between 2 PM and 6 PM for up to 15 Peak Day Events per year; and

**WHEREAS**, PG&E’s PDP Program does not carry over once customers have been switched over to VCEA service; and

**WHEREAS**, in order to provide an opportunity to study issues related to Peak Day Pricing and provide alternatives for certain VCEA commercial, industrial and agricultural customers participating in PG&E’s PDP program, VCE is establishing a Peak Day Pricing Pilot Program.

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance hereby adopts a Peak Day Pricing Pilot Program (Exhibit A).



**PASSED, APPROVED AND ADOPTED** at a regular meeting of the Valley Clean Energy Alliance, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Lucas Frerichs, Chair

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Secretary

Approved as to form:

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EXHIBIT A – Peak Day Pricing Pilot Program

## EXHIBIT A

### VALLEY CLEAN ENERGY ALLIANCE PEAK DAY PRICING PILOT PROGRAM

Valley Clean Energy (VCE) is establishing a Peak Day Pricing Pilot Program in order to provide an opportunity to study issues related to Peak Day Pricing and provide alternatives for certain VCEA commercial, industrial and agricultural customers participating in PG&E's PDP program. VCE's Peak Day Pricing Pilot Program will concentrate initially on the commercial, industrial and agricultural customers participating in PG&E's Peak Day Pricing (PDP) program. These PDP customers are currently on tariff rates A10, AG-4, AG-5, E-19 and E20.

#### **E-19 and E-20 Customers:**

VCE will contact all E-19 and E-20 PDP customers and inform them that as a VCE customer, they will no longer be eligible for PG&E's PDP program. If the customer would like to continue to participate in PDP, VCE will mitigate opt-out risk by providing them with VCE's Competitive Offer which is designed to offset any discount lost by having been switched over to VCE service.

VCE's Competitive Offer will be an annual bill credit for any loss by the customer for not being on PG&E's PDP program. VCE will include all PDP Service Address IDs, regardless of tariff designation that the customer may have in the annual calculation. In addition, the customer will receive VCE's standard 2.5% reduction on the generation portion of the monthly bill.

In exchange, the customer agrees to follow the current PG&E PDP program of managing their electric costs by reducing their load between 2 PM and 6 PM for up to 15 Peak Day Events per year during the summer tariff season, May 1 - October 31.

#### **A-10, AG-4 and AG-5 Customers:**

VCE will analyze the billing data of all customers in these rate classes and create two lists:

**List 1)** PDP customers for which the 2.5% Generation savings is less than the PDP benefit

**List 2)** PDP customers for which the 2.5% Generation savings is greater than the PDP benefit.

VCE will send a letter to PDP customers on List 1 informing them that as a VCE customer, they are no longer eligible for PG&E's PDP program. We will inform the customer of the possible financial impact of being removed from PGE's PDP and describe all the benefits of VCE. VCE will give the customer the option to opt-out of VCE if they so choose.

PDP customers on List 2 will be automatically dropped from PDP by PG&E when they move to VCE. They will receive standard opt-out notices the same as other customers.