

## 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.

(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

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

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

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

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- (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