

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 11**

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Rebecca Boyles, Director of Customer Care and Marketing

SUBJECT: Approve Contract with TeMix Inc. for partial implementation of the AgFIT (Flexible Irrigation Technology) dynamic pricing pilot

DATE: April 14, 2022

RECOMMENDATIONS

1. Adopt resolution approving services contract with TeMix Inc. for implementation support of the three-year AgFIT (Flexible Irrigation Technology) dynamic pricing pilot in an amount not to exceed \$1.25M.
2. Authorize the Executive Officer and/or his designee to execute and take all actions necessary to implement the services contract substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel, to approve minor changes to the services contract so long as the term and amount are not changed.

BACKGROUND AND ANALYSIS

More than 85% of VCE's service territory is designated for agricultural use. Due to this high concentration, the agricultural sector represents approximately 18% of VCE's total annual load and 16% of its peak demand.

In support of VCE's significant agricultural sector, the Board adopted a 3-year programs plan on June 10, 2021 that included an agricultural demand side program which evolved into the AgFIT dynamic rate pilot program.

At its December 2, 2021, the CPUC issued decision 21-12-015 authorizing VCE's proposed dynamic rate pilot to be made available to customers taking electric service on irrigation pumping tariffs. The Pilot includes automation of agricultural pumping loads to respond to dynamic prices set by VCE and implementation of an experimental rate that incorporates energy and delivery costs in hourly prices. Customers who successfully respond to the prices and shift load out of expensive hours—typically the ramp hours—are projected to enjoy bill savings of over 10% while contributing to grid reliability when it is most needed. A significant amount of the State's agricultural irrigation pumping load is shiftable, presenting an important opportunity for California's grid and environment.

Pilot Program Consultant Support

The AgFIT pilot is a unique undertaking that requires a combination of technical knowledge, electricity rate structuring that is matched with practical expertise in the agricultural sector that is exceedingly uncommon. TeMix worked with Polaris, which was awarded a grant by the California Energy Commission that is the precursor study for the AgFIT pilot, and provides both organizations with the prerequisite skills and knowledge to support the VCE AgFIT pilot. Additionally, TeMix (and Polaris) sought out VCE based on our proposal submitted to the CPUC in late 2020 to implement a dynamic pricing structure to achieve load shift in the agricultural sector and formed an aligned effort to build the case for the pilot. Due to their unique expertise and experience in this specialized work in the agricultural sector, staff is recommending that the Board approve the services contract with TeMix for pilot implementation support. Note: TeMix's support services will be compensated through the CPUC funded pilot program.

FISCAL IMPACT

VCE will be providing short-term budget support until the CPUC budget process is completed (anticipated in Q2). Following CPUC action, VCE will be reimbursed for short-term budget support expenditures incurred under this and other pilot support services contracts (e.g. Polaris). On January 27, 2022 the VCE Board approved a temporary budget of up to \$200,000 of the program reserve fund that will be covered by future reimbursable revenues to have a net neutral impact on the budget.

The AgFIT program budget is included in the staff recommended 2022 budget (agenda item 18 on the February 10, 2022 Board agenda).

CONCLUSION

Staff recommends the Board approve the consultant services contract with TeMix for support of the AgFIT dynamic pricing pilot.

ATTACHMENTS

1. TeMix AgFIT services contract
2. Resolution

AGREEMENT FOR CONSULTANT SERVICES

This **Agreement** is made and entered into as of _____, 2022 by and between **Valley Clean Energy Alliance**, a Joint Powers Authority organized and operating under the laws of the State of California with its principal place of business at 604 Second Street, Davis, California, 95616 (“VCE”), and **TeMix**, a CORPORATION with its principal place of business at 221 Main St. #360 Los Altos, CA 94023 (hereinafter referred to as “Consultant”). VCE and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

WHEREAS, Consultant desires to perform and assume responsibility for the provision of certain services required by VCE on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing energy advisory services to public clients and is familiar with the plans of VCE with respect to the Project, as defined below.

WHEREAS, VCE desires to engage Consultant to render such services in connection with the Agricultural Pumping Dynamic Rate Pilot project (“Project”) as set forth in this Agreement.

NOW, THEREFORE, VCE and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

1.1 Scope of Services. Consultant promises and agrees to furnish to VCE all labor, services, and incidental and customary work necessary to provide certain professional consultant services and software necessary for the Project (“Services”). The Services are more particularly described in **Exhibit A**. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules, and regulations. In the event of a conflict between a provision in this Agreement and a provision in **Exhibit A** or in any other exhibit to this Agreement, the provision in this Agreement shall control.

1.2 Facilities, Equipment, and Other Materials. Except as specifically provided in **Exhibit B**, Consultant shall, at its sole cost and expense, furnish all facilities, tools, equipment, and other materials necessary for performing the Services pursuant to this Agreement. VCE shall furnish to Consultant only those facilities, tools, equipment, and other materials specifically listed in **Exhibit B**, according to the terms and conditions set forth in that exhibit.

1.3 Schedule of Services. Consultant shall perform the Services expeditiously and in accordance with the Schedule of Services set forth in Exhibit C and any updates to the Schedule of Services approved by VCE. Time is of the essence in the performance of this Agreement. Excluding delays due to a Force Majeure Event or delays caused by VCE, Consultant's failure to perform any Service required under this Agreement within the time limits set forth in Exhibit C shall constitute a material breach of this Agreement.

1.4 Term. The term of this Agreement shall begin on the date VCE Board of Directors approves this Agreement with a term period through March 1, 2025 or when terminated as provided in Article 5.

2. PROJECT COORDINATION.

2.1 VCE 's Representative. VCE hereby designates Mitch Sears and/or its designee to act as its representative for the performance of this Agreement. Mitch Sears and/or its designee shall have the power to act on behalf of VCE for all purposes under this Agreement. VCE hereby designates Rebecca Boyles and/or its designee as the "Project Manager," who shall supervise the progress and day-to-day performance of this Agreement.

2.2 Consultant's Representative. Consultant hereby designates Edward Cazalet to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services to be performed under this Agreement.

Should the Consultant's Representative need to be substituted for any reason, the proposed new Consultant's Representative shall be subject to the prior written acceptance and approval of the Project Manager. The Consultant shall not assign any representative to whom VCE has a reasonable objection.

2.3 Coordination of Services. Consultant agrees to work closely with VCE staff in the performance of the Services and shall be available to VCE staff at all reasonable times for the duration of this Agreement.

3. RESPONSIBILITIES OF CONSULTANT.

3.1 Independent Contractor. VCE retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Nor shall any additional personnel performing the Services under this Agreement on behalf of Consultant be employees of VCE; such personnel shall at all times be under Consultant's exclusive direction and control. Consultant shall be entitled to no other benefits or compensation except as provided in this Agreement.

3.2 Control and Payment of Subordinates. The Services shall be performed by Consultant or personnel under its supervision. Consultant will determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.3 Conformance to Applicable Requirements. All services performed by Consultant shall be subject to the Project Manager's review and reasonable approval. Consultant shall furnish VCE with every reasonable opportunity to determine that Consultant's services are being performed

in accordance with this Agreement. VCE's review of Consultant's services shall not relieve Consultant of any of its obligations to fulfill this Agreement as prescribed.

3.4 Substitution of Key Personnel. Consultant has represented to VCE that it will perform and coordinate the Services under this Agreement. Should such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon VCE's written approval. In the event that VCE and Consultant cannot agree as to the substitution of key personnel, VCE shall be entitled to terminate this Agreement for cause.

3.5 Licenses and Permits. Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement, at Consultant's sole cost and expense.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Consultant shall perform, at its own cost and expense and without reimbursement from VCE, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of Consultant or its subconsultants who is determined by VCE to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to VCE, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, *et seq.*, California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100, *et seq.*, and shall give all notices required by law. Consultant shall be liable for

all violations of such laws and regulations by Consultant in connection with the Services. If Consultant performs any work knowing it to be contrary to such laws, rules, and regulations and without giving written notice to VCE, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify, and hold VCE, its officials, directors, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the extent arising out of any failure or alleged failure of Consultant to comply with such laws, rules, or regulations.

3.8 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and, if applicable, agrees to comply with such provisions before commencing the performance of the Services.

3.9 Non-Discrimination. No discrimination shall be made in the employment of persons under this Agreement because of that person's race, color, national origin, ancestry, religion, age, marital status, disability, gender, sexual orientation, or place of birth.

3.10 Insurance.

3.10.1 Time for Compliance. Consultant shall not commence the performance of Services under this Agreement until it has provided evidence satisfactory to VCE that it has secured all insurance required herein. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to VCE that the subconsultant has secured all insurance required herein. Failure to provide and maintain all required insurance shall be grounds for VCE to terminate this Agreement for cause.

3.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this

Agreement by Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of this Agreement. Such insurance shall meet at least the following minimum levels of coverage:

3.10.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (a) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (b) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 8 and 9 (Hired & Non-Owned); and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

3.10.2.2 Minimum Limits of Insurance. Consultant shall maintain limits no less than: (a) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (b) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (c) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

3.10.3 Professional Liability. Consultant shall procure and maintain, and require its subconsultants to procure and maintain, for a period of five (5) years following completion of the Project errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim, and shall be endorsed to include contractual liability.

3.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by VCE to add the following provisions to the insurance policies:

3.10.4.1 General Liability. The general liability policy shall include or be endorsed (amended) to state that: (a) VCE, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Consultant, including materials, parts or equipment furnished in connection with such work; and (b) the insurance coverage shall be primary insurance as respects VCE, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by VCE, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.2 Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (a) VCE, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired or borrowed by Consultant or for which Consultant is responsible; and (b) the insurance coverage shall be primary insurance as respects VCE, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by VCE, its directors, officials, officers, employees, agents, and volunteers shall be excess of Consultant's insurance and shall not be called upon to contribute with it in any way.

3.10.4.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against VCE, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Consultant.

3.10.5 Separation of Insureds; No Special Limitations. All insurance required herein shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to VCE, its directors, officials, officers, employees, agents, and volunteers.

3.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by VCE. Consultant shall guarantee that, at the option of VCE, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects VCE, its directors, officials, officers, employees, agents, and volunteers; or (b) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A: VIII, licensed to do business in California, and satisfactory to VCE .

3.10.8 Verification of Coverage. Consultant shall furnish VCE with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to VCE. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by VCE if requested. All certificates and endorsements must be received and approved by VCE before work commences. VCE reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.10.9 Reporting of Claims. Consultant shall report to VCE, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out the Services, Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the

work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (a) adequate life protection and life saving equipment and procedures; (b) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (c) adequate facilities for the proper inspection and maintenance of all safety measures.

3.12 Records. Consultant shall allow a representative of VCE during normal business hours to examine, audit and make transcripts of copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment under this Agreement.

4. FEES AND PAYMENT.

4.1 Compensation. This is a “time and materials” based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed One Million, Two-hundred, Fifty Thousand Dollars (\$1,250,000) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

4.2 Payment of Compensation. VCE shall, within 45 days of receiving an invoice for services rendered by CONSULTANT in accordance with this Agreement, review the invoice and pay all approved charges thereon.

4.3 VCE 's Right to Withhold Payment. VCE reserves the right to withhold payment from Consultant on account of Services not performed satisfactorily, delays in Consultant's performance of Services past the milestones established in the Schedule of Services (**Exhibit C**),

or other defaults hereunder. Consultant shall not stop or delay performance of Services under this Agreement if VCE properly withholds payment pursuant to this Section 4.3, provided that VCE continues to make payment of undisputed amounts.

4.4 Payment Disputes. If VCE disagrees with any portion of a billing, VCE shall promptly notify Consultant of the disagreement, and VCE and Consultant shall attempt to resolve the disagreement. VCE's payment of any amounts shall not constitute a waiver of any disagreement and VCE shall promptly pay all amounts not in dispute.

4.5 Extra Work. At any time during the term of this Agreement, VCE may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by VCE to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the VCE Manager.

4.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. VCE shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make available to interested parties upon request, copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services and shall post copies at the Consultant's principal place of business and at the Project site. Consultant shall defend, indemnify, and hold VCE, its elected officials, officers, employees and agents free and harmless pursuant to the indemnification provisions of this Agreement and in accordance with the language of Section 6.3, from any claim or liability to the

extent arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

4.7 Compensation Contingent on Receipt of Funds. Notwithstanding the above and the provisions of Exhibit D, VCE's obligation to compensate Consultant for the Services rendered under this Agreement is contingent on VCE's receipt of the necessary funds for the Project from the California Public Utilities Commission and/or Pacific Gas & Electric (PG&E). Consultant agrees that if VCE does not receive said funds, Consultant shall have no claim for compensation against VCE.

5. SUSPENSION AND TERMINATION.

5.1 Suspension. VCE may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any material provision of this Agreement. Consultant will be paid for satisfactory services performed hereunder through the date of temporary suspension pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant may terminate this Agreement and collect payment for any satisfactory services provided through the date of temporary suspension pro rating for any payment in connection with the next milestone as described above.

5.2 Termination for Cause.

5.2.1 If Consultant at any time refuses or neglects to prosecute its services in accordance with the Schedule of Services, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without VCE's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any material respect to properly and diligently prosecute its services, or otherwise fails

to perform fully any and all of the material agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within thirty (30) days after written notice thereof, or if Consultant is not diligently pursuing a cure to VCE's satisfaction within thirty (30) days after written notice of the breach, VCE may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared for VCE or used by Consultant exclusively in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

5.2.3 In the event VCE elects to terminate, VCE shall have the right to immediate possession of all documents and data and work in progress prepared by Consultant pursuant to this Agreement, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor. In case of such default termination, Consultant shall not be entitled to receive any further payment under this Agreement until the Project is completely finished. At that time, if the expenses reasonably incurred by VCE in obtaining the Services necessary to complete the Project exceed such unpaid balance, then Consultant shall promptly pay to VCE the amount by which such expense exceeds the unpaid balance of the not-to-exceed amount reflected in Section 4.1. The expense referred to in the previous sentence shall include expenses incurred by VCE in causing the Services called for under this Agreement to be provided by others, and for any costs or damages sustained by VCE by reason of Consultant's default or defective work.

5.2.4 If VCE fails to make timely payment to the Consultant or otherwise fails to perform fully any and all of the material agreements herein contained, VCE shall be in default. If such default is not cured within thirty (30) days after written notice thereof, the Consultant may, at its sole option, terminate this Agreement and VCE shall pay the Consultant all amounts

due for services satisfactorily provided to VCE as of the date of Consultant's written notice of default.

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, VCE reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by VCE pro-rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith, plus (2) payment for Additional Work satisfactorily completed and accepted by VCE, plus (3) reimbursable expenses actually incurred by Consultant, as approved by VCE . The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deduced from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against VCE or the Project for any additional compensation or damages in the event of such termination and payment. In addition, VCE's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

5.3.2 If this Agreement is terminated by VCE for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

5.3.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without

limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency (a “Force Majeure Event”). The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. VCE shall be the owner of the following items produced exclusively pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of VCE. Consultant assumes no liability for VCE’s use of Documents in any manner not contemplated in the scope of the Project.

6.1.2 Copyright. No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as determined at the sole discretion of VCE. VCE shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

6.1.3 Release of Documents to VCE. Consultant shall deliver to VCE all materials prepared by Consultant exclusively in connection with this Agreement, including all drafts,

memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from VCE.

6.1.4 Data Privacy and Information Security. Consultant shall at all times while this Agreement is in effect comply with the data privacy and information security requirements set forth in **Exhibit E**.

6.1.5 Confidentiality. All documents, reports, information, data, and exhibits prepared or assembled by Consultant in connection with its performance under this Agreement are confidential until released by VCE to the public, and Consultant shall not make any of these documents or information available to any individual or organization not employed by Consultant or VCE without the written consent of VCE before any such release, unless Consultant is required to do so under applicable law.

6.2 Assignment; Successors. Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of VCE. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

6.3 Hold Harmless

a. General Hold Harmless

Consultant shall indemnify and save harmless VCE and its officers, agents, employees, and servants from all claims, suits, or actions of every kind, and description resulting from this Agreement, the performance of any work or services required of Consultant under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Consultant or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of VCE and/or its officers, agents, or employees. However, Consultant's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which VCE has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code

b. Intellectual Property Indemnification

Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement. Consultant warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall defend, indemnify, and hold harmless VCE from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided in the United States. Consultant's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) VCE notifies Consultant promptly in writing of any notice of any such third-party claim; (b) VCE cooperates with Consultant, at Consultant's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Consultant retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Consultant shall not have the right to settle any criminal action, suit, or proceeding without VCE's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose

any financial or other obligation on VCE, impair any right of VCE, or contain any stipulation, admission, or acknowledgment of wrongdoing on the part of VCE without VCE's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Consultant's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes VCE's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Consultant shall, at Consultant's option and expense, either: (i) procure for VCE the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Consultant will have no obligation or liability to VCE under this Section to the extent any otherwise covered claim is based upon: (a) any aspect of the services under this Agreement which have been modified by or for VCE (other than modification performed by, or at the direction of, Consultant) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by VCE in a manner prohibited by this Agreement.

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 278 of the California Civil Code. For the avoidance of doubt, Consultant's obligations under this Section are not subject to the Limitation on Liability set forth in Exhibit F.

6.3.1 Survival of Obligation. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement for a period of three years, and shall not be restricted to insurance proceeds, if any, received by VCE, its directors, officials, officers, employees, agents, or volunteers.

6.4 Consultant Not Agent. Except as VCE may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of VCE in any capacity for VCE whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind VCE to any obligation whatsoever.

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California and any legal actions concerning this Agreement's validity, interpretation and performance shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against VCE. Such Government Code claims, and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by the Parties hereunder. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against VCE.

6.6 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	TeMix Inc. ContactTeam@temix.com Attn: Customer Relations
VCE:	Valley Clean Energy Alliance 604 2 ND Street Davis, CA 95616 Attn: Mitch Sears

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

6.7 Incorporation by Reference. All exhibits referred to in this Agreement are attached hereto and are by this reference incorporated herein.

6.8 VCE 's Right to Employ Other Consultants. VCE reserves the right to employ other consultants in connection with the Project, provided that such other consultants shall not be performing the work set forth in the Scope of Services of this Agreement.

6.9 Construction; References; Captions. The language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various sections and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

6.10 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.

6.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel or otherwise.

6.12 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the parties.

6.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

6.14 Interest of Consultant. Consultant covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial, or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement. Consultant certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of VCE.

6.15 Interest of Subconsultants. Consultant further covenants that, in the performance of this Agreement, no subconsultant or person having any interest, direct or indirect, financial, or otherwise, which would conflict in any manner or degree with the performance of the Services under this Agreement shall be employed. Consultant has provided VCE with a list of all subconsultants and the key personnel for such subconsultants that are retained or to be retained by Consultant in connection with the performance of the Services, to assist VCE in affirming compliance with this Section.

6.16 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid, nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If required, Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with VCE 's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, VCE shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of VCE, during the term of his or her service with VCE, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

6.17 Cooperation; Further Acts. The parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

6.18 Attorneys' Fees. If either party commences an action against the other party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and all other costs of such action.

6.19 Authority to Enter Agreement. Each party has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants

that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

6.20 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

6.21 Entirety of Agreement. This Agreement contains the entire agreement of VCE and Consultant with respect to the subject matter hereof, and no other agreement, statement or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Agreement, shall be binding or valid.

[Signatures on following page]

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

IN WITNESS WHEREOF, VCE and Consultant have entered into this Agreement as of the date first stated above.

VCE

TeMix Inc.

By: _____
Mitch Sears
Executive Officer

By: _____
Edward Cazalet
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Inder Khalsa
VCE Legal Counsel

EXHIBIT A

SCOPE OF SERVICES

Software Services

Consultant will deploy its Software product known as the TeMix UNIDE/RATES transactive Platform™ (“Platform”), which will perform the experimental tariff pricing calculations, record the retail transactions and meter readings for each pump, and calculate the experimental tariff shadow bills.

Professional Services

Consultant will provide the following professional services:

- 1) Tariff design: Consultant will compute the shadow bill and provide bill data to PG&E and VCE on a monthly basis.
- 2) Interface with PG&E’s circuit data
- 3) Project Management and Planning

Separate Considerations:

Consultant is providing the Services of this Agreement at a highly discounted price that is beneficial to VCE and its customers, and as outlined in the California Public Utilities Commission’s (CPUC) Decision 21-12-015.

The Consultant has full intention to work with VCE to extend the Services of this Agreement with its other products, for long-term use, later to be determined. To achieve this additional Service scope, Consultant and VCE may execute an additional contract.

End User License Agreement: Exhibit F contains the End User License Agreement for the Software which is an element of this contract.

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCE

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF SERVICES

As directed by VCE and in accordance with CPUC Decision 21-12-015. Both parties acknowledge the timeline for this project is fluid and agree to work in good faith to meet all deadlines.

EXHIBIT D

BUDGET, PAYMENT, RATES

VCE shall compensate Consultant for software license fees and professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the license fees and hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of **one million two hundred fifty thousand dollars (\$1,250,000)**, as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to VCE unless previously approved in writing by VCE.

Consultant understands that VCE has submitted to the CPUC a revised allocation of the budget approved for the Project by D.21-12-015. In the event that modifications are made to D.21-12-015, the parties agree to negotiate in good faith as to any amendments that may be necessary to this Exhibit and/or the Agreement.

Software License Fees: Three hundred fifty thousand dollars (\$350,000.00) per year. The first annual license fee shall be due and payable 30 days after receipt of funds to VCE from PG&E; provided, however, that VCE agrees to use best efforts to submit payment to Consultant as soon as reasonably practicable after receipt of such funds. Each subsequent annual license fee shall be due annually, based on the anniversary date of the first annual license fee due date.

Professional Services Fees:

A total of two hundred thousand dollars (\$200,000.00). for the professional services described in Exhibit "A", to be paid in four equal payments of fifty thousand dollars (\$50,000.00). The first payment shall be due and payable 30 days after receipt of funds to VCE from PG&E; provided, however, that VCE agrees to use best efforts to submit payment to Consultant as soon as reasonably practicable after receipt of such funds. Subsequent payments shall be due upon receipt of invoice the first business day of 2023, the first business day of 2024, and at the end of the project, on May 1, 2025.

Additionally, Extra Work requested in writing by VCE will be provided by the Consultant and billed separately at the following rates, paid 30 days after the receipt of the bill:

Software and System Engineers - \$125/hr. US funds
Senior Economists and Engineers - \$200/hr. US funds

Invoices:

In order to request payment, Consultant shall submit invoices to VCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). VCE shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in this Agreement, provided VCE has received funds from the California Public Utilities Commission via PG&E if that is the source of funds for the Extra Work. VCE does not pay interest on past due amounts.

EXHIBIT E

DATA PRIVACY AND INFORMATION SECURITY

- 1.1 Undertaking by Consultant. Without limiting Consultant's obligation of confidentiality as further described in this Agreement, Consultant shall be responsible for establishing, maintaining, and providing a written description to VCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the VCE Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the VCE Customer Data; (c) protect against unauthorized disclosure, access to, or use of the VCE Customer Data; (d) ensure the proper disposal of VCE Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect VCE Customer Data be less stringent than the safeguards used by Consultant for its own data. If the Services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). For purposes of this Agreement, "VCE Customer Data" means any personally identifiable information collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, usage information obtained through the use of Advanced Metering Infrastructure or an individual's name in combination with any other of the elements listed herein. "VCE Customer Data" does not include information from which identifying information has been removed such that an individual, family, household or residence, or non-residential customer cannot reasonably be identified, or publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- 1.2 Third-Party Data Security Review. Consultant shall undergo an independent third-party security review as required by PG&E, and shall provide VCE with a copy of any findings from such review.
- 1.3 CPUC Compliance. Consultant shall comply with all applicable consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.

1.4 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of VCE Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of VCE Customer Data, Consultant shall, as applicable: (a) notify VCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with VCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by VCE; (c) in the case of personal information as defined in California Civil Code Section 2798.2(h), (1) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; and (2) provide third-party credit and identity monitoring services to each of the affected individuals who comprise the personal information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (d) perform or take any other actions required to comply with applicable law as a result of the occurrence; (e) without limiting VCE's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless VCE for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from VCE in connection with the occurrence; (f) be responsible for recreating lost VCE Customer Data in the manner and on the schedule set by VCE without charge to VCE; (g) provide to VCE a detailed plan within ten (10) calendar days of the occurrence describing the measures Service Provider will undertake to prevent a future occurrence and (h) upon conclusion of the occurrence, or at VCE's request, provide to VCE a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by VCE, which shall be executed by Consultant and may be relied upon by VCE as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity

monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

- 1.5 Injunction, Specific Performance or Such Other Relief. Consultant acknowledges that disclosure or misappropriation of any VCE Customer Data could cause irreparable harm to VCE and/or VCE Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that the VCE shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of VCE Customer Data by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the VCE, in law or equity.

EXHIBIT F

END USER LICENSE AGREEMENT

END USER LICENSE AGREEMENT FOR TEMIX PLATFORM (“SOFTWARE”)

IMPORTANT – READ THIS AGREEMENT BEFORE USING THE SOFTWARE. USING THE SOFTWARE IN THE CLOUD INDICATES YOU AND ANY ENTITY YOU REPRESENT (“you”) ACCEPT THIS AGREEMENT. If you do not agree to all of the terms of this Agreement, then do not use the Software. By agreeing to this Agreement, you represent that you have full power, capacity and authority to accept the terms of this Agreement. If you are accepting the terms of this Agreement on behalf of an employer or another entity, you and such employer or other entity represent that you have full legal authority to bind such employer or other entity to this Agreement.

This End User License Agreement (“EULA”) is a legal agreement between you and TeMix Inc. (“TeMix”), as the licensor of the Software (except for Excluded Software as defined below) and related materials, including printed or online documentation, updates or upgrades provided by TeMix, and any data or files created by the operation of the software, which shall be collectively referred to as the “Software.”

The Software is that deployed, at the time of registration, on the Microsoft Azure™ cloud environment and all updates or modifications provided by TeMix, but not Excluded Software as defined below, during the term of this EULA. TeMix may add to, change, or remove any part, term, or condition of this EULA, including but not limited to as it applies to the Software at any time without prior notice or liability to you.

SOFTWARE LICENSE

The Software is owned by TeMix, and it includes its structure, organization and code which are valuable trade secrets of TeMix. The Software is protected by applicable copyright and other intellectual property laws and international treaties. Except as expressly set forth in this EULA, this EULA does not grant you any intellectual property rights in the Software, and you cannot use the Software except as specified herein. TeMix grants you the non-exclusive, non-sublicensable license to use the Software solely in accordance with this EULA and the documentation and specifications provided by TeMix solely within any scope provided in the respective Valley Clean Energy Alliance Consulting Service Agreement from TeMix. The Software is licensed, not sold. The Software will create data or files automatically for use and you agree that any such data or files are deemed to be a part of the Software. This does not include, any user-generated content or project files, which will remain the property of the owner. The Software is licensed as a sole product, and you may not separate its components. You agree not to copy, modify, publish, adapt, redistribute, reverse engineer, decompile, disassemble, attempt to derive, or discover source code, or otherwise reduce to a human-perceivable form, or create derivative works of, the Software in

whole or in part, or to use the Software in whole or in part for any purpose other than as expressly permitted under this EULA. You may not modify or tamper with any digital rights management functionality of the Software, or bypass, modify, defeat, or circumvent any of the functions or protections of the Software or any mechanisms operatively linked to the Software. You may not remove, alter, cover, or deface any trademarks or notices on the Software. In addition, you may not share, distribute, loan, rent, lease, sublicense, assign, transfer, or sell the Software. TeMix expressly reserves and retains all rights, title, and interest (including but not limited to intellectual property rights) that this EULA does not expressly grant to you. You shall not: (a) violate, tamper with, bypass, modify, defeat, or circumvent any of the functions or protections of the Software, or any mechanisms operatively linked to the Software; or (b) remove, alter, cover, or deface any trademarks or proprietary legends, notices, or language in or on the Software.

EXCLUDED SOFTWARE

Notwithstanding the foregoing limited license granted via this EULA, you acknowledge that the Software includes software subject to terms and conditions governing the use of such software, other than this EULA, known as (“Excluded Software”). Certain Excluded Software may be covered by third-party or open-source software licenses, which may mean, including but not limited to any license, as a condition of its distribution any distributor may make the software available in source code format. Such terms and conditions may be changed by the applicable third-party at any time. To the extent required by the licenses covering any Excluded Software components, the terms of such licenses will apply in lieu of the terms of this EULA. To the extent the terms of the licenses applicable to any Excluded Software components prohibit any of the restrictions in this EULA with respect to such any Excluded Software components, such restrictions will not apply to such any Excluded Software components.

TELECOMMUNICATION CONNECTIVITY AND SERVICES

You understand, acknowledge, and agree that access to certain Software features requires a telecommunication connection for which you are solely responsible for procuring and maintaining. You are solely responsible for payment of any third-party fees associated with your telecommunications connection, including but not limited to any service provider or airtime charges. Operation of the Software may be limited or restricted depending on the capabilities, bandwidth or technical limitations of your telecommunications connection and service. You understand, acknowledge, and agree that telecommunications connectivity in relation to the Software’s effectiveness is provided by third parties over which TeMix has no control, and is governed by the respective terms of such third parties. The provision, quality, availability and security of such telecommunications connectivity, software and services are the sole responsibility of you and such third party.

ACCEPTANCE TO PRIVACY POLICY

You agree that TeMix' collection, use and disclosure of information will be in accordance with this Agreement and the TeMix privacy policy available here: www.temix.com/privacy-policy/. To the extent there is a conflict between the TeMix privacy policy and this VCE Consulting Service Agreement, this Agreement shall control.

AUTOMATIC UPDATES

From time to time, TeMix may automatically update or otherwise modify the Software, including, but not limited to, for purposes of enhancement of security functions, error correction and improvement of functions, at such time as you interact with TeMix's or third parties' servers, or otherwise. Such updates or modifications may delete or change the nature of features or other aspects of the Software, including, but not limited to, functions you may rely upon. You acknowledge and agree that such activities may occur at TeMix's sole discretion and that TeMix may condition continued use of the Software upon your complete installation or acceptance of such update or modifications. Any updates/modifications shall be deemed to be, and shall constitute part of, the Software for purposes of this EULA. By acceptance of this EULA, you consent to such update/modification.

EXCLUSION OF WARRANTY

THE SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE FURNISHED TO YOU "AS IS" AND "AS AVAILABLE" AND WITHOUT WARRANTIES, DUTIES OR CONDITIONS, STATUTORY OR OTHERWISE, OF ANY KIND. TEMIX EXPRESSLY DISCLAIM ALL WARRANTIES, DUTIES AND CONDITIONS, EXPRESS (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE BY THIS EULA) OR IMPLIED, STATUTORY OR OTHERWISE, OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. TEMIX DOES NOT WARRANT THAT THE SOFTWARE OR ACCOMPANYING DOCUMENTATION, WILL MEET YOUR REQUIREMENTS OR PROVIDE SPECIFIC RESULTS, OR THAT THEY WILL BE UPDATED, OR THAT THE OPERATION OF ALL OR ANY OF THEM WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ANY DEFECTS WILL BE CORRECTED, OR THAT THE SOFTWARE WILL NOT DAMAGE ANY OTHER SOFTWARE, HARDWARE OR DATA, OR THAT ANY NETWORK SERVICES OR PRODUCTS (OTHER THAN THE SOFTWARE) UPON WHICH THE SOFTWARE'S PERFORMANCE DEPENDS WILL CONTINUE TO BE AVAILABLE, UNINTERRUPTED OR UNMODIFIED. FURTHERMORE, TEMIX DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR ACCOMPANYING DOCUMENTATION IN TERMS OF THEIR ACCURACY, RELIABILITY, COMPLETENESS OR OTHERWISE. TEMIX SHALL HAVE NO RESPONSIBILITY FOR THE SECURITY OF, TIMELINESS, DELETION, MIS-

DELIVERY, OR FAILURE TO STORE ANY OF YOUR COMMUNICATIONS OR PERSONALIZED SETTINGS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY TEMIX SHALL CREATE A WARRANTY, DUTY OR CONDITION, OR IN ANY WAY CHANGE THIS EXCLUSION OF WARRANTY, DUTY AND CONDITION. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU (NOT TEMIX) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

Without limiting the generality of the foregoing, you further understand, acknowledge, and agree that the Software is not designed or intended for use on or within any other product other than the Software. You expressly acknowledge and agree that any other hardware, software, content, or data could be damaged by installing or using the Software on or within any other product other than the Software, and TeMix are not responsible for any such damage.

LIMITATION OF LIABILITY

IN NO EVENT WILL TEMIX FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THIS EULA ON ACCOUNT OF THE USE OR LOSS OF USE OF THE SOFTWARE, OR ACCOMPANYING DOCUMENTATION, DOWNTIME OR YOUR TIME, LOSS OF PRESENT OR PROSPECTIVE PROFITS, LOSS OF DATA, INFORMATION OF ANY KIND, BUSINESS PROFITS, OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON WHATSOEVER, WHETHER BASED ON THEORIES OF CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY), EVEN IF TEMIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE SOFTWARE, SOFTWARE AND ACCOMPANYING DOCUMENTATION ARE FURNISHED TO YOU IS FOR USE AT YOUR OWN RISK. TEMIX WILL NOT BE LIABLE FOR DAMAGES FOR BREACH OF ANY EXPRESS (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE BY THIS EULA OR ACCOMPANYING DOCUMENTATION) OR IMPLIED WARRANTY, DUTY OR CONDITION, UNDER BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE SOFTWARE, OR ACCOMPANYING DOCUMENTATION, OF THIS EULA. TEMIX CANNOT ENSURE THAT THE SOFTWARE, OR OTHER DATA YOU ACCESS OR DOWNLOAD FROM OR THROUGH THE SOFTWARE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES, AND TEMIX DISCLAIM ANY LIABILITY RELATED THERETO. TEMIX FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SOFTWARE. IF, NOTWITHSTANDING THE TERMS OF THIS EULA, TEMIX IS FOUND TO BE LIABLE TO YOU FOR ANY DAMAGE OR LOSS WHICH ARISES UNDER OR IN CONNECTION WITH THIS EULA, INCLUDING BUT NOT LIMITED TO YOUR USE OF THE SOFTWARE, OR ACCOMPANYING DOCUMENTATION, TEMIX' COLLECTIVE TOTAL AGGREGATE LIABILITY TO YOU SHALL IN NO EVENT EXCEED

~~\$10,000. THIS LIMITATION ON LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTIONS 3.7, 6.1, AND 6.3 OF THIS VCE CONSULTING SERVICE AGREEMENT.~~

Some jurisdictions may not allow exclusions or limitations of incidental or consequential damages, exclusions or limitations of implied warranties, duties, or conditions, or allow limitations on how long an implied warranty, duty or condition lasts, so the above limitations or exclusions may not apply to you.

HIGH RISK ACTIVITIES

The Software and any other software provided on or through the Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software or such other software could lead to death, personal injury, or severe physical or environmental damage (“High Risk Activities”). TEMIX, its DIRECTORS, officers, employees, agents, information providers, licensors and licensees, and successors and assigns, SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY, DUTY OR CONDITION OF FITNESS FOR HIGH-RISK ACTIVITIES. YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTION, OR LACK OF ACTION, TAKEN TO PRESERVE LIFE OR PROPERTY.

USE OF SOFTWARE WITH OTHER MATERIALS

The Software can be used by you to store, process, and use content created by you and third parties. Such content may be protected by copyright, other intellectual property laws, and/or agreements. You agree to use the Software only in compliance with all such laws and agreements that apply to such content. You agree that TeMix may act or respond appropriately to protect copyright of content stored, processed, or used by the Software.

EXPORT RESTRICTIONS

The Software may contain encryption technology. You acknowledge that any export of Software containing encryption technology from the United States or subsequent re-export of such software or content by a person located outside of the United States requires a license or other authorization from the U.S. Department of Commerce’s Bureau of Industry and Security. You further acknowledge that the Software containing encryption technology and acquired from TeMix is not intended for use by a foreign government end user. By accepting this EULA, you agree to abide by all relevant U.S. export laws and regulations in the purchase and use of the Software being acquired, including but not limited to those regulations relating to the export control of

cryptographic items and not to transfer, or authorize the transfer, of the Software to a prohibited country or otherwise in violation of any such restrictions or regulations.

U.S. GOVERNMENT RESTRICTED RIGHTS

The Software and any other software provided on or through the Software are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the United States Government is subject to restrictions as set forth in subparagraphs (c)(1) and (c)(2) of the Commercial Computer Software clause at FAR 52.227 19, and subparagraph (c)(i)(ii) of the Rights in Technical Data and Computer Software clause at DOD FAR 252.227-7013 and any comparable federal, state, or local law or regulation. Manufacturer is TeMix Incorporated 221 Main St. #360 Los Altos, CA 94023.

EQUITABLE REMEDIES

You agree that any violation of or non-compliance with any term or condition this EULA by you will constitute an unlawful and unfair business practice and will cause irreparable harm to TeMix for which monetary damages would be inadequate, and you consent to TeMix obtaining any injunctive or equitable relief that TeMix deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies that may be available to TeMix under contract, at law or in equity.

The failure of TeMix to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision. If any part of this EULA is held invalid, illegal, or unenforceable, that provision shall be enforced to the maximum extent permissible to maintain the intent of this EULA, and the other parts will remain in full force and effect. If you provide any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the Software, or any other TeMix products or services (“Feedback”), you hereby grant TeMix a non-exclusive, perpetual, irrevocable, non-terminable, worldwide, royalty-free, fully-paid-up, sublicensable right and license to copy, distribute, display and create derivative works of and otherwise use such Feedback without restriction, including to improve the Software and to develop, market, offer, sell and provide other products and services.

THIRD PARTY BENEFICIARIES

This EULA shall not be interpreted or construed to confer any rights or remedies on any third parties, except that each Indemnified Party, and is an express intended third-party beneficiary of and shall be entitled to directly enforce and rely upon, each provision of this EULA that confers a right or remedy in favor of such party.

TERM AND SURVIVAL

This EULA is effective for the duration specified in this Valley Clean Energy Alliance Consulting Service Agreement or until terminated. TeMix may terminate this EULA immediately if you fail to comply with its terms. In addition, upon termination you will have no recourse against TeMix for your inability to use the Software or the accompanying documentation.

In case of such termination, you must cease all use of the Software, and delete all accounts you may have established which are accessible through the Software. Any of your obligations under this EULA which by their nature are intended to survive the termination of this EULA or your use of the Software shall continue to apply to you after the termination of this EULA or you cease to use the Software.

FEEDBACK

Should you have any questions concerning this EULA, you may contact TeMix by writing to TeMix Incorporated at ContactTeams@temix.com Attn.: Customer Relations

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022-___

A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE APPROVING ENTERING INTO AN AGREEMENT FOR SERVICES FOR THE AGRICULTURAL FLEXIBLE IRRIGATION TARIFF PILOT (AgFIT) WITH TEMIX, INCORPORATED (“TEMIX”) AND AUTHORIZING EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO EXECUTE AND SIGN THE AGREEMENT

WHEREAS, at its December 2, 2021, meeting the California Public Utilities Commission issued decision 21-12-015 authorizing Valley Clean Energy’s proposed dynamic rate pilot to be made available to customers taking electric service on irrigation pumping tariffs, with a budget of \$2.5M to be overseen by VCE; and

WHEREAS, in support of VCE’s significant agricultural sector, the Board adopted a 3-year Programs Plan on June 10, 2021, that included an agricultural demand-side program which evolved into the AgFIT dynamic rate pilot program; and,

WHEREAS, staff recommends that VCE enter into an agreement with TeMix, an entity that has prior experience with similar pilots in the agricultural sector in order to most efficiently execute the pilot.

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

1. Authorize the Executive Officer, in consultation with legal counsel, to execute a consulting services agreement with TeMix to provide services necessary to implement the pilot, for an amount not to exceed \$1.25M and to expire March 1, 2025.
2. Authorize the Executive Officer and/or his designee to execute and take all actions necessary to implement the services contract substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel, to approve minor changes to the services contract so long as the term and amount are not changed.

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

AYES:
NOES:
ABSENT:
ABSTAIN:

Jesse Loren, VCE Chair

Alisa M. Lembke, VCE Board Secretary
Attachment A: TeMix Incorporated Services Agreement

ATTACHMENT A

TEMIX INCORPORATED SERVICES AGREEMENT