

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Rebecca Boyles, Director of Customer Care and Marketing

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

DATE: March 10, 2022

RECOMMENDATIONS

1. Adopt resolution approving services contract with Polaris Inc. for implementation support of the AgFIT (Flexible Irrigation Technology) dynamic pricing pilot in an amount not to exceed \$1.25M.
2. Authorize the Interim General Manager 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. Polaris was awarded a grant by the California Energy Commission that is the precursor study for the AgFIT pilot and provides them with the prerequisite skills and knowledge to support the VCE AgFIT pilot. Additionally, Polaris (and TeMix) 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 Polaris for pilot implementation support. Notes: (1) Polaris' support services will be compensated through the CPUC funded pilot program and (2) staff will be returning at the April meeting with a recommendation for approval of a services contract with TeMix who will be designing the dynamic rate for VCE agricultural customers that will be conveyed as price signals via Polaris' agricultural irrigation pricing/scheduling software.

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. TeMix). 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 Polaris for support of the AgFIT dynamic pricing pilot.

ATTACHMENTS

1. Polaris AgFIT services contract
2. Resolution

AGREEMENT FOR CONSULTANT SERVICES

This Agreement is made and entered into as of [REDACTED], 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 Polaris Energy Services, Inc., a California corporation with its principal place of business at 411 Woodbridge Street, San Luis Obispo, California 93401 (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 fully and adequately perform the services necessary for the Project as more particularly described on Exhibit A (“Services”). 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. Subject 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 of March 10, 2022 through March 1st, 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 David Meyers 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.

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 the 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 the 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 the 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 the 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 the VCE, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify, and hold the 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) the 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 the 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 the 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) the 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 the 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 the 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 the 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 the 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 the 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 the 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 \$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 the 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.

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 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 three (3) 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 the 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, 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. Notwithstanding the above, VCE may immediately terminate this Agreement without limitation and without liability if VCE reasonably determines that Consultant fails or has failed to meet its obligations under Exhibit E.

5.2.3 In the event VCE elects to terminate pursuant to this section, 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, both VCE and Consultant reserve the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to the other Party. 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 the VCE, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the VCE. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted 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, the 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 either Party 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, and all documents prepared, of any type whatsoever, 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. Under no circumstances shall VCE acquire any rights to use Consultant's proprietary software products following the termination of this Agreement.

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 the 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. Upon mutual written consent, VCE and Consultant may assign this Agreement and its obligations to a Joint Powers Agency formed for the purpose of forming and operating a CCE program. Otherwise, Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of the 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 sanctions, penalties, or claims of damages resulting from Consultant's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and

Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost; except to the extent caused by VCE's negligence or intentional 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.

6.3.1 Survival of Obligation. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the 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 the 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 the 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: Polaris Energy Services, Inc.
411 Woodbridge Street
San Luis Obispo, California 93401
Attn: David Meyers

VCE: Valley Clean Energy Alliance
604 2ND 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 the 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 the 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 the VCE, during the term of his or her service with the 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

David Meyers (Consultant Name)

By: _____
Mitch Sears
VCE Interim General Manager

By: _____
Its: _____

Printed Name: _____

APPROVED AS TO FORM:

By: _____
Inder Khalsa
VCE Legal Counsel

EXHIBIT A

SCOPE OF SERVICES

Program Design

- A. Define the program parameters for taking service on the transactive tariff including:
 - a. When prices will be published (tenders).
 - b. What forecast will be available prior to tenders being offered.
 - c. When and how customers will be notified of cost changes.
 - d. How differences between scheduled (transacted) and actual (consumed) energy will be calculated and presented.
- B. Draft and refine (with VCE) the customer participation agreement.
 - a. Program eligibility (e.g., current tariff).
 - b. Customer commitment requirements (e.g., one year on the tariff or entire program).
 - c. Incentive allocation and payment terms.
 - d. Engagement expectations (e.g., participating in season debrief, using system).

Customer Recruitment

- A. With VCE, develop marketing collateral and a marketing plan for the program.
- B. Execute the marketing plan with VCE (e.g., webinars, web posts, etc.).
- C. Engage VCE customers to present the program opportunity to them by, in order of priority:
 - a. Existing relationships.
 - b. VCE introductions.
 - c. PG&E account rep referrals.
 - d. Technology partner referrals.
 - e. Inbound marketing (web, bill insert, etc.).
 - f. Outbound sales (LinkedIn/Email/Phone).
- D. Analyze operational flexibility and savings potential using customer-authorized interval data using PG&E's Share My Data system.
- E. Present technology/automation options and incentives and develop a plan and budget.
- F. Demonstrate myPOLARIS app.
- G. Secure customer participation agreement.

Customer Enablement

- A. Deploy automation systems (if using Polaris' Pump Automation Controller (PAC)).
- B. Configure and enable customer pump sites and users in the Polaris platform (whether or not they use Polaris' PAC).
- C. Establish connection between a TeMix subscription tariff and the customer account and pump site in the Polaris platform.
- D. Test end-to-end system.
- E. Train customers on use of the system.
- F. In the event that no modifications are made to D.21-12-015 and there is only sufficient budget to cover one year of services by Polaris, customers will still be provided a full 3-year license to use the Polaris platform.

Program Execution

- A. Monitor the publication of prices, schedule creation, system notifications and customer response to ensure proper operation of the system.
- B. Compare schedules in the Polaris system to actual usage from field controllers (where applicable) and Share My Data, report on exceptions and contact customers regarding discrepancies.
- C. (Optional) Issue critical 'events' to encourage customer response during times of grid stress, in addition to price-driven decisions (add 'shed' to 'shift').
- D. Provide customer service and support as needed.
- E. Provide support to VCE as needed.
- F. Conduct periodic reviews with customers.
- G. Conduct periodic reviews with VCE and TeMix.

Program Analysis and Reporting

- A. Deliver summary reports on a regular basis and at the end of the season.
 - a. Customer accounts, pumps, and peak load by status.
 - b. Schedules created (transactions) vs. executed.
 - c. Scheduling changes from initial creation.
 - d. Scheduled vs. executed pump operation.
 - e. Load shift achieved (peak usage as % of total vs. historical).
 - f. Customer cost savings/increase.
- B. Summarize qualitative and quantitative analyses in end-of-season and end-of-pilot reports.

- C. Participate in meetings and presentations with PG&E, CPUC, CEC and other bodies as appropriate.

Non-Recurring Engineering

- A. Extend and customize Polaris' platform to conform to VCE Pilot design (differences from EPIC pilot)
 - a. Display TeMix prices instead of incentives.
 - b. Capture schedule changes and execute multiple transactions per operating hour.
 - c. Monitor tenders received after schedule creation (transaction) and show cost changes
 - d. Alert customers per preferences on price and/or cost changes
- B. Develop utility view of customers, summary reports, real-time view

Pricing Approach

- A. Automation
 - a. Customers may participate in the program using Polaris' automation, home-grown or third-party automation, or no automation.
 - b. New automation may be paid for in whole or in part out of the automation budget for the program up to \$200/kW peak load measured across all participating service accounts for an individual customer.
 - c. Where its automation system is selected, Polaris will be paid for the turnkey system (including installation subcontractors, third party equipment, etc.), and a 3-year software subscription out of the automation budget.
 - d. Where the customer chooses a third-party automation system or a home-grown automation system, the customer will be reimbursed for the system out of the automation budget and the budget will also include a 3-year subscription to Polaris' 'software only' system that includes the features needed to participate in the program as well as enablement, configuration, training and support throughout the program.
 - e. There may be an option to integrate third party systems using Polaris' API, most likely in the second year of the program, which would incur an additional integration fee and API subscription.
- B. Recruitment

- a. Based on its expected revenue from (A) Automation, Polaris will not receive compensation for its Account Managers' efforts to recruit customers to the program.
 - b. Outreach efforts of the dedicated Program Manager will be part of her overall scope and compensation to Polaris within (C) Program Management.
- C. Program Management
- a. All program management services (program design, marketing, customer analysis, program analysis and reporting) will be compensated at a fixed annual rate for the three-year term of the pilot.
 - b. This fee includes the dedicated Program Manager and efforts of other non-sales personnel on the program.
- D. Systems and Technology
- a. Non-recurring engineering to customize Polaris' platform and apps (web and mobile) for the VCE program will be charged on a one-time basis.
 - b. An annual subscription fee for unlimited (users and customers) use of the platform will be charged annually.

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCE

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF SERVICES

NOT APPLICABLE

EXHIBIT D

BUDGET AND COMPENSATION

VCE shall compensate Consultant for 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 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" shall not exceed the totals set forth in the tables below for each Task. Notwithstanding anything to the contrary herein, Consultant agrees that VCE shall not be obligated to compensate Consultant for any costs incurred or work performed on any Stage 2 tasks unless and until VCE has provided written authorization to proceed. 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.

Incentive Payments	Estimated Budget	<u>Stage</u>
1. Spring 2021 Incentive Payments	\$ 200,000	1
2. Subsequent Incentive Payments	\$ 800,000	2
Subtotal	\$1,000,000	

Other Tasks	Estimated Budget	<u>Stage</u>
1. Program Management a. Program Manager (incl. overhead) b. Support and Management	\$172,500	2
2. Non-Recurring Engineering a. Software Engineer (incl. overhead) b. Support and Management	\$182,160	2
3. Utility Software License a. Annual License	\$25,000	2
4. Subtotal	\$379,660	
5. Total Not-to-Exceed Amount	\$1,250,000	

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. If no modifications are made to D.21-12-015, the parties agree that the budget set forth in this Exhibit D is intended to cover one year of services by Polaris and the parties will negotiate in good faith as to whether extensions of the Project are feasible.

Invoices

Invoicing for Incentive Payments: To request payment for the Load Management Measures implemented by Participants in the Project (“Incentive Payments”), Polaris shall submit an Enablement Plan for each Participant for review and approval prior to finalization. The Enablement Plan shall identify, at minimum, the proposed Load Management Measures, estimated load shift, and estimated project costs. Upon installation of the Load Management Measures Polaris shall submit an invoice to VCE, including receipts or other reasonable documentation of the actual project costs. VCE shall pay all undisputed amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Upon receipt of payment from VCE, Polaris will reimburse each Project Participant for the Load Management Measures to the extent provided for in the Customer Participation Agreement.

General Invoicing: To request payment for all other tasks, Consultant shall submit monthly 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).

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by VCE. In no event shall reimbursable expenses collectively exceed the total sum of _____ (\$_____).

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from VCE Representative prior to commencement of any additional services. Consultant shall submit, at the VCE Representative’s request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

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 a VCE with 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 1798.2(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 Consultant 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.

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 POLARIS ENERGY SERVICES (POLARIS) AND AUTHORIZING INTERIM GENERAL MANAGER 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 Polaris, 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 Interim General Manager, in consultation with legal counsel, to execute a consulting services agreement with Polaris to provide services necessary to implement the pilot, for an amount not to exceed \$1.25M and to expire March 1, 20235.

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: Polaris Energy Services Agreement

ATTACHMENT A
POLARIS ENERGY SERVICES CONTRACT (AGFIT)