

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager, VCEA
Shawn Marshall, LEAN Energy US
Don Dame, Energy Consultant

Subject: Professional Services Agreement for Implementation and Operational Services

Date: October 12, 2017

RECOMMENDATIONS

1. Approve the Sacramento Municipal Utility District (SMUD) as the service provider for VCEA program launch and operations.
2. Adopt a resolution authorizing the VCEA Interim General Manager, in consultation with VCEA Legal Counsel, to finalize a services agreement with SMUD, in substantial conformance with the attached Master Professional Services Agreement, for signature by the VCEA Board Chair.

BACKGROUND AND ANALYSIS

On August 31, 2017 the VCEA Board directed staff to negotiate a contract with the Sacramento Municipal Utility District (SMUD) to provide launch and operational services for VCEA. The services sought from SMUD include technical and energy services, data management/ call center services, wholesale energy services, credit support services, and up to five years of CCA business operations support. VCEA has contracted separately for Marketing and Outreach Services and is currently considering Banking and Financial services through a separate RFP process.

VCEA staff, legal counsel, and consultants have negotiated the attached draft Master Services Agreement (Agreement) and the associated first two Task Orders (Agreement) with SMUD's executive and legal team. The scope of work included in the draft Agreement encompasses the technical and energy services and the data management and call center services described in the SMUD proposal. Additional Task Orders addressing wholesale energy services and operational services will be brought to the Board for consideration in November. Additional feedback on the draft Agreement was provided by a subcommittee of the VCEA Community Advisory Committee which helped shape the final draft Agreement.

As directed by the Board, the draft Agreement includes implementation services plus an initial five-year term with two possible five-year extensions. The Agreement also contains an option for VCEA to withdraw partially or fully after year three. The overall cost to VCEA is within the price of services included in the SMUD proposal which was detailed in the Comparative Analysis considered by the VCEA Board at its August 31, 2017 meeting. As detailed more fully in the previous staff report, the costs under the SMUD Agreement are competitive with and comparable to similar CCA program launch and operational services which have been and are being provided to existing California CCA programs.

Structure of Master Agreement

Due to the range of services covered, the contract with SMUD is structured as a Master Services Agreement with multiple Task Orders addressing various service areas to be provided by SMUD. Each Task Order includes a schedule of deliverables and budget to allow VCEA to track progress and cost. The component parts of the overall Agreement are outlined below:

- **Master Professional Services Agreement (completed)**. The Master Professional Services Agreement creates a framework for the services provided by SMUD. It has been structured as a master agreement with individual task orders for specific services as outlined below. The general requirements of the Agreement apply to the services in each Task Order. In addition, from time to time, VCEA may require additional services that SMUD may be willing to provide. The additional services would be added to the Agreement through amendment to an existing Task Order or entering into a new Task Order that would be attached to the Master Agreement.
- **Task Order 1 (completed)**. This Task Order addresses the Technical and Analytical Services provided to VCEA for Phase 1: program development and launch in order to prepare for and enable the successful launch of VCEA's Program; and Phase 2: initial Program operations. These services include but are not limited to: Development and submission of the VCEA Implementation Plan, development of financial model and program pro forma analysis, development of one year and three year operating budgets, financial analysis needed to secure program financing and banking services, rate analysis/design/rate setting services, regulatory filings associated with program launch and early operations, and development of an initial integrated resource plan.
- **Task Order 2 (completed)**. This Task Order addresses the Data Management and Customer Call Center Services required by VCEA for Phase 1 (launch) and Phase 2 (operations). These services include but are not limited to: electronic data exchange services with PG&E, development of a customer information system, design, implementation and management of a customer call center, development of a billing engine to communicate with PG&E billing services, CAISO reporting, and reports generated for VCEA program monitoring and planning.
- **Task Order 3 (under development)**. This Task Order addresses the Wholesale Energy Services required by VCEA during Phase 1 (launch) and Phase 2 (operations). TO-3 is under

development and is to be considered at VCEA's November Board meeting. These services include, but are not limited to: load forecast model development, wholesale power procurement and risk policy and reporting, resource portfolio modeling and power supply budget, program launch filings, scheduling coordinator service, wholesale load and resource settlements and verification, power portfolio purchase service, market risk instruments management, CAISO market monitoring, resource portfolio compliance reporting, and energy procurement credit support service. If approved, Task Order 3 will be added as an attachment to the Agreement.

- Task Order 4 (under development). This Task Order addresses ongoing Operational Services not otherwise captured in Task Orders 1-3. TO-4 is under development and is to be considered at VCEA's November Board meeting. Tasks in this area will include ongoing operational services to support the day-to-day operations, staffing and activity of the program. These time-and-materials based operational services include a fixed-staff component with employees working on-site at VCEA offices. Components of the agreement with SMUD may include general and administrative support, additional technical, operations, finance, public affairs, and other support services. In developing the scope of work for this Task Order, VCEA and SMUD may identify other items that may be within the scope of services. VCEA and SMUD will be finalizing this scope of services in the next few weeks, and staff anticipates returning to the Board in November with a developed scope of work for operational services. If approved, Task Order 4 will be added as an attachment to the Agreement.

Agreement Key Provisions

As noted, staff followed the SMUD proposal in crafting the draft Agreement. Key points of negotiation with SMUD included:

- Joint indemnification provisions to protect both VCEA and SMUD.
- Flexibility to Re-Open Agreement. Due to the nature of this new form of CCA services support, there was general agreement that the Agreement as well as the Task Orders could be opened by mutual consent to address any unforeseen issues. This flexibility allows both VCEA and SMUD to refine the Agreement when necessary to address significant changes in the market or legislative/regulatory rule changes that might impact VCEA (or SMUD).
- Term and extensions. The Agreement allows sufficient time for VCEA to launch and establish itself over the initial 5-year operational period. If the relationship continues to be mutually beneficial, the Agreement can be extended through mutual agreement for up to two additional 5-year terms.
- Termination and transition provisions. VCEA and SMUD staff carefully considered the termination and transition provisions recognizing that VCEA may desire to bring certain services in-house as the Program develops and matures. The Agreement builds in

flexibility allowing this type of transition after year 3 and provides a 6-month period to transition services.

- Data/information ownership. The Agreement includes provisions specifying that deliverables created or developed specifically for VCEA as part of the services provided under the Agreement, not otherwise owned by SMUD, are the sole property of VCEA; but allows SMUD to use such deliverables as well.

CONCLUSION

Staff is recommending the VCEA Board pass the attached resolution authorizing the Board Chair, in consultation with VCEA staff and Legal Counsel, to approve and sign the final Agreement, including Task Orders 1 and 2, in substantially the same form as attached. Staff believes this Agreement provides a reasonable and stable foundation for the successful launch and operations of VCEA and solidifies an important relationship with an aligned public agency.

Attachments:

1. Resolution Approving VCEA-SMUD Master Services Agreement and Task Orders 1 and 2
 - Resolution Exhibit A – Form Master Services Agreement and Task Orders 1 and 2

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2017- _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING SELECTION OF THE
SACRAMENTO MUNICIPAL UTILITIES DISTRICT AS THE SERVICE PROVIDER FOR
VCEA PROGRAM LAUNCH AND OPERATIONS

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

WHEREAS, on August 31, 2017, the VCEA Board considered a proposal by the Sacramento Municipal Utilities District (“SMUD”) to provide program launch and operational services and subsequently directed VCEA staff to negotiate a services agreement between VCEA and SMUD for consideration and action by the VCEA Board; and

WHEREAS, on September 21, 2017, the SMUD Board of Directors authorized its CEO to enter into a contract with VCEA to provide CCA support services; and

WHEREAS, VCEA and SMUD staff negotiated the attached draft Master Professional Services Agreement to provide program launch and operational services consistent with the SMUD proposal and VCEA Board direction.

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

1. SMUD is hereby approved as the VCEA program launch and operation services vendor subject to final negotiation and approval of an agreement that is consistent with this Resolution.
2. VCEA Interim General Manager, in consultation with VCEA Legal Counsel, is hereby directed to finalize a services agreement with SMUD, in substantial conformance with the attached Master Professional Services Agreement, for signature by the VCEA Board Chair under the following terms:
 - a. Scope. Project scope, term, and schedule shall be consistent with the attached Master Professional Services Agreement and Task Orders 1 and 2 (Exhibit A). Any significant changes to the scope, budget, schedule, or length of contract will be brought back to the VCEA Board for consideration.

3. The Chair of the Board is hereby authorized to approve and execute on behalf of VCEA a services agreement in substantial conformance with the attached Master Professional Services Agreement under the terms set forth in this Resolution.

ADOPTED, this _____ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Don Saylor, Chair

Secretary

Approved as to form:

Interim VCEA Counsel

EXHIBIT A - Form Master Professional Services Agreement between VCEA and SMUD

EXHIBIT A

Form Master Professional Services Agreement between VCEA and SMUD

-- Draft --

MASTER PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE
VALLEY CLEAN ENERGY ALLIANCE
AND THE
SACRAMENTO MUNICIPAL UTILITY DISTRICT

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1 PREAMBLE

This Master Professional Services Agreement (Agreement) is entered into between the VALLEY CLEAN ENERGY ALLIANCE (VCEA), a joint powers authority (JPA) within the State of California organized under Section 6500 *et seq.* of the California Government Code; and the SACRAMENTO MUNICIPAL UTILITY DISTRICT (SMUD), a local publicly owned electric utility within the State of California, acting as a contractor to VCEA. VCEA and SMUD may be referred to herein individually as the “Party” or collectively as the “Parties.”

2 EXPLANATORY RECITALS

- 2.1** WHEREAS, VCEA seeks to develop, finance, implement, and operate a Community Choice Aggregation (CCA) program for its VCEA Members pursuant to Public Utilities Code Section 366.2 *et seq.* (Project);
- 2.2** WHEREAS, VCEA has solicited proposals to provide services related to the Project;
- 2.3** WHEREAS, SMUD submitted a proposal responsive to VCEA’s solicitation;
- 2.4** WHEREAS, SMUD provides many of the same services for its internal business purposes that are required by VCEA and has the ability to leverage these services and expertise to support VCEA;
- 2.5** WHEREAS, VCEA’s core mission and values align with SMUD’s community-owned structure and core mission to deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emission reductions;
- 2.6** WHEREAS, VCEA has selected SMUD to provide specified services set forth herein and related Task Orders to support VCEA’s launch and business operations;
- 2.7** WHEREAS, for purposes of clarity, SMUD is providing services to VCEA solely as a contractor subject to the terms and conditions set forth in this Agreement;
- 2.8** WHEREAS, this Agreement is a master agreement with individual Task Orders in Exhibit A, and as may be agreed to in the future, for different services, which is intended to retain flexibility for current and future services, and to permit the Parties to amend or modify the provisions of specific services without necessarily affecting other services.

NOW THEREFORE, in view of the understandings set forth in the recitals above, which the Parties acknowledge and agree are accurate representations of the facts, the Parties agree to the terms of this Agreement that set forth the roles, obligations, and responsibilities of each Party to one another.

3 DEFINITIONS

The following terms with initial capitalization, whether singular or plural, have the meaning set forth below:

- 3.1 *Bankrupt*** means, with respect to either Party, the Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.
- 3.2 *CCE Service*** means VCEA's CCA program, hereinafter referred to as Community Choice Energy (CCE), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other California Public Utilities Commission directives.
- 3.3 *CCE Service Request* and *CCESR*** mean requests in a form approved by PG&E to change a CCE service customer's, utility customer's or direct access customer's choice of services which could include returning a CCE Service customer to bundled utility service or direct access service.
- 3.4 *Confidential Information*** means: (a) all written materials marked "Confidential," "Proprietary," or with words of similar import provided to a Party by another Party; (b) all observations of equipment (including computer screens) and oral disclosures related to a Party's business, systems, operations, or activities that are indicated as such at the time of observation or disclosure (or is identified as "confidential" or "proprietary" in a letter sent to another Party no later than five (5) calendar days after the disclosure), respectively, and (c) VCEA customer names, account numbers, usage and billing information. Confidential Information includes portions of documents, records, and other material forms or representations that any Party may create, including but not limited to, handwritten notes or summaries that contain or are derived from such Confidential Information.
- 3.5 *Effective Date*** means the date upon which the last of the Parties has executed this Agreement.
- 3.6 *Event of Default*** means any Party's failure to perform its obligations in accordance with this Agreement as defined in Section 26.
- 3.7 *Launch Date*** means the date upon which VCEA begins providing CCA service to its customers, currently scheduled to be June 1, 2018, but which may be changed based on operational considerations, market conditions, and other factors.
- 3.8 *PG&E*** is the incumbent investor owned Utility Distribution Company.

- 3.9 *Prudent Utility Practice*** means any of the practices, methods and acts engaged in or accepted by a significant portion of the electrical utility industry in the United States of America at the time the decision was made or any of the practices, methods and acts that, in the exercise of reasonable judgment in the light of the facts known or that should reasonably have been known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.
- 3.10 *Scope of Services*** shall mean those services described in the Task Orders to be performed by SMUD, as generally described in Sections 6 and 7, and set forth in more detail in Exhibit A to this Agreement.
- 3.11 *Task Order*** shall mean an individual scope of services, as described in Section 7.
- 3.12 *Uncontrollable Force*** shall mean any cause beyond the control of the Party affected, including but not limited to Act of God, change in law, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid and that prevents fulfillment of an obligation under this Agreement. Any Party rendered unable to fulfill any obligation by reason of Uncontrollable Force shall exercise commercially reasonable efforts to remove such inability with all reasonable dispatch. Notwithstanding the foregoing, Uncontrollable Force shall not include lack of financial resources, material cost increases, or other economic conditions.
- 3.1 *VCEA Members*** shall mean any and all local government entities that join the VCEA JPA, which are presently the City of Davis, Yolo County, and City of Woodland, and which may be expanded or contracted in accordance with VCEA's JPA Agreement.

4 TERM AND TERMINATION

4.1 Effective Date

The Agreement shall be effective upon the Effective Date.

4.2 Term

- 4.2.1 This Agreement shall remain in effect for five (5) years from the Launch Date, with two options to extend the Agreement each for an additional five-year term by mutual agreement of the Parties, for a maximum total of fifteen (15) years, or until terminated in accordance with Section 4.3 (Termination) or as otherwise agreed in writing by the

Parties. Additionally, each Task Order will have its own term, not to exceed the term of the Agreement.

- 4.2.2 The Launch Date currently is scheduled for June 1, 2018. In the event the Launch Date is delayed to October 1, 2018 or later, the Parties shall meet and confer to discuss changes, if any, to the Task Order(s) as a result of a later Launch Date.

4.3 Termination

4.3.1 Termination for Convenience

Notwithstanding the Term, and except for Task Order 3: Wholesale Energy Services (Exhibit A.3), VCEA shall have the option, in its sole discretion, after year three (3) of each Task Order to terminate a Task Order.

Task Order 3 does not have an option to terminate, and can only be terminated by expiration of the term provided in the Task Order or mutual agreement of the Parties.

In the event VCEA exercises its option to terminate a Task Order, VCEA shall provide SMUD written notice of its intent at least one hundred and eighty (180) calendar days before the termination is effective. If VCEA elects termination, the termination will take effect no sooner than Midnight on the eve of the year three anniversary of the Launch Date. The Agreement will continue in effect with respect to any Task Order(s) not terminated. In the event that all Task Orders are terminated, then this Agreement shall be terminated as well.

4.3.2 Termination for Delayed Launch

If VCEA has not launched by December 31, 2018, each Party may terminate this Agreement by giving sixty (60) calendar days' notice. The Parties acknowledge that the expected Launch Date may be delayed for unexpected reasons from the current Launch Date of June 1, 2018 to a later date. The Launch Date is dependent on, among other things, milestones in Task Order 3, which has two phases (Phase I and Phase II). Phase I entails the services necessary to procure wholesale power to begin serving VCEA's customers on the Launch Date. Phase II begins following the Launch Date. If this Agreement is terminated pursuant to this Section 4.3.2 then all Task Orders are terminated as well.

4.3.3 Termination for Event of Default

If an Event of Default occurs, the non-defaulting party shall have a right to terminate this Agreement pursuant to Section 26.

4.3.4 Transition

- 4.3.3.1 In the event of termination of the Agreement or any Task Order, SMUD agrees to work with VCEA to coordinate transfer to VCEA or a VCEA contractor for any or all Task Order services provided under this Agreement.

- 4.3.3.2 Within thirty (30) calendar days after the termination date, SMUD shall submit an invoice to VCEA for all fees, costs, and expenses incurred by SMUD for the Scope of Services rendered up to the effective date of termination.
- 4.3.3.3 In the course of performing the Scope of Services, SMUD may be required to commit to expenditures that will be incurred at a future date after the effective date of termination. In the event of a termination of the Agreement or a Task Order, SMUD and VCEA agree, to the extent reasonably possible, to transfer any such commitments to VCEA, or avoid the cost if a transfer is not feasible or desirable.
- 4.3.3.4 In the event VCEA elects to terminate this Agreement or a Task Order before the expiration of the applicable term, SMUD will submit to VCEA an invoice or invoices at the actual cost for all committed expenditures at the time such costs are incurred, that are not otherwise transferred to VCEA pursuant to section 4.3.3.3. Upon request by VCEA, SMUD will provide supporting documentation and/or invoice(s) for the incurred costs. Such costs shall be paid as provided in the applicable Task Order.

In the event that SMUD elects to terminate this Agreement or a Task Order before termination by VCEA or the expiration of the applicable term, SMUD shall not be entitled to recover any costs related to committed expenditures that are incurred after the effective date of termination and that are not otherwise transferred to VCEA pursuant to section 4.3.3.3.

For avoidance of doubt, this section 4.3.3.4 does not apply to resettlement under Section 23 of this Agreement.

5 PRE-CONTRACT ADVANCE WORK

The Parties recognize that SMUD has performed various tasks within the Scope of Services prior to execution of this Agreement to help VCEA meet its expected June 1, 2018 Launch Date. The Parties acknowledge that prior to execution of this Agreement they have agreed in good faith for SMUD to perform such services under an agreement-in-principle (Advance Work). SMUD will track for reimbursement its Advance Work. SMUD's first invoice to VCEA shall include its fees, costs, and expenses to perform the Advance Work, and VCEA shall pay SMUD for this Advance Work pursuant to Section 7 of this Agreement. Prior to execution of the Agreement, SMUD will provide an accounting of all incurred expenses and estimate the costs expected to be incurred by execution of the Agreement.

6 SCOPE OF SERVICES

- 6.1** The Parties have structured this Agreement as a master agreement with individual Task Orders for specific services that will be attached to and incorporated into this Agreement in Exhibit A, pursuant to Section 7 below. Requirements and obligations under this Agreement will begin for each Task Order if or when VCEA and SMUD both approve the individual Task Order, at which time the general requirements of this Agreement shall apply to the services in the Task Order. In addition, from time to time, VCEA may require additional services that SMUD may be willing to provide. Additional services may be added to this Agreement through amending the existing Task Orders or entering into a new Task Order that is approved and executed by the Parties.
- 6.2** For all services related to providing utility services, SMUD agrees to use Prudent Utility Practices to perform the applicable “Scope of Services” set forth in the Task Orders, which are incorporated by reference herein. For all other services in the Task Orders, SMUD agrees to perform services in accordance with generally accepted professional practices and principles and in a manner consistent with commercially reasonable efforts.
- 6.3** Upon SMUD’s request, VCEA shall provide such information and assistance (including, but not limited to, advice from the VCEA Board and various committees, customer interaction protocol, etc.) available to VCEA as is reasonably required for SMUD to provide the tasks set forth in the Scope of Services. If VCEA fails to provide SMUD with such requested information or assistance then SMUD shall continue to provide in a timely manner any such portion(s) of the affected Task Order that SMUD can reasonably provide to the extent possible in the absence of such information or assistance. Notwithstanding any provision to the contrary herein, failure by VCEA to provide SMUD with such information or assistance shall not constitute an Event of Default; provided, however, that SMUD’s performance or lack of performance under this Agreement shall be excused to the extent that it is hindered, prevented, or impacted as a result of VCEA’s failure to provide such information or assistance as is reasonably available to VCEA and not otherwise reasonably available to SMUD. In any case, the Parties shall timely inform each other of any such deficiencies in writing and correct such situation(s) as soon as reasonably practicable.
- 6.4** The Parties acknowledge and agree that certain services contemplated under this Agreement may be provided by a SMUD subcontractor. Notwithstanding the foregoing, SMUD shall remain responsible for the proper rendering of such services in accordance with this Agreement. Any subcontract for services (excluding power supply under Task Order 3 which are not considered services) that exceeds \$100,000 dollars in a fiscal year (July 1 - June 30) following the Effective Date shall require written notice to and approval by VCEA (to be provided to SMUD in written form), unless already identified within the Task Order as work to be done by a subcontractor. Such approval by VCEA shall not be unreasonably withheld.

7 TASK ORDERS

- 7.1** Task Orders. Pursuant to the provisions of this Agreement, SMUD shall provide certain Services to VCEA as described and implemented in the Task Orders as set forth in Exhibit A to this Agreement. Subsequent Task Orders shall be executed by the Parties and attached hereto. Each Task Order by this reference is incorporated as part of this Agreement.
- 7.2** Phases of Work. The Task Orders shall be divided in two separate phases with designated services and time periods (each a “Phase”), and proceed in chronological order, as appropriate. The phases shall be as follows: Phase I (referred to as “Program Development and Launch”) and Phase II (referred to as “Program Operations”). Each Task Order contains services for the applicable Phase(s).
- 7.3** Amendments. Upon mutual agreement of the Parties, Task Orders may be amended, or new Task Orders issued, for additional services. Each Party’s governing body may delegate authority to individuals (such as a Board member or staff member) to agree to any amended or new Task Orders.

8 COSTS AND COMPENSATION

VCEA agrees to compensate SMUD for its performance of the Scope of Services in the Task Orders under this Agreement in accordance with the following:

- 8.1** For time and materials activities, SMUD will track and record the hours and material costs incurred that are associated with the Task Orders. For fixed fee activities under the Task Orders, the amount is predetermined according to the rates in the applicable Task Order.
- 8.2** SMUD is authorized to pay, and shall pass through without mark-up, any and all regulatory and market expenses incurred by SMUD that are required to enable VCEA to serve as a CCA and participate in regulated and organized markets. These expenses include, but are not limited to, CPUC registration fees, CPUC bond, CAISO registration and market settlement fees, PG&E rates/charges and registration fees, WREGIS registration and fees (Expenses).
- 8.3** SMUD will submit to VCEA an invoice by e-mail and U.S. Mail for such hours, fixed fees, and Expenses. The invoice procedure may vary for each Task Order; as such, the Task Orders shall include the specific invoicing process for that Task Order.
- 8.4** VCEA shall pay SMUD according to the timeline(s) in each Task Order. VCEA shall give notice to SMUD of any disputed charges before the applicable payment deadline in accordance with Section 13 below. Late payments of undisputed amounts hereunder shall accrue interest at an annual rate equal to the weekly average one year constant maturity United States Treasury yield at the time of the delinquency plus

- 2%, but not to exceed 7% per annum, commencing on the first day when such payment is delinquent, or, in the case of disputed amounts, after such dispute is resolved.
- 8.5** Payments will be submitted via electronic wire pursuant to instructions provided by SMUD.
- 8.6** VCEA shall be responsible for and shall reimburse SMUD for any taxes and fees, including, without limitation, sales, use, excise, value added and gross receipts levied in direct relation to SMUD providing the Scope of Services under this Agreement.
- 8.7** Except for payment for Power Supply Contracts in accordance with Task Order 3, all other fees payable to SMUD will be deferred until October 1, 2018 for the Deferment Period. "Deferment Period" means the period of time that includes Advance Work through September 30, 2018. Interest on any deferred payment shall be calculated using a 2.0% per annum interest rate. For all expenses incurred prior to October 1, 2017, interest shall be calculated beginning on Oct. 1, 2017. For all expenses incurred after October 1, 2017, interest shall be calculated from the date when VCEA's payments would have otherwise been due under this Agreement, but for the Deferment Period. All repayments and interest shall be amortized for payment in equal monthly amounts during the 24 month period beginning October 1, 2018.
- 8.8** Except for the pre-contract Advance Work performed under Section 5 of this Agreement, SMUD shall be under no obligation to perform services under Task Orders unless VCEA has agreed through execution of the Task Order to pay for the services as set forth in the Task Order or the Parties have agreed through a Task Order to defer payment for the services pursuant to Section 8.7.

9 LIMITATION OF LIABILITY

9.1 Direct Damages

For breach of any provision of this Agreement, the liability of the defaulting party shall be limited to direct damages and each Party agrees to waive all other types of damages to which it might be entitled.

The cumulative maximum amount of SMUD's liability, if any, arising from any and all claims, lawsuits, actions, other legal proceedings by VCEA or any other person or entity arising out of or in connection with SMUD's performance or nonperformance hereunder, whether based upon contract, warranty, tort, strict liability, or any other theory of liability, shall be no more than an aggregate of Five Million Dollars (\$5,000,000 USD) (Liability Cap). Notwithstanding the foregoing, any liability arising from a negligent or wrongful act or omission by SMUD under Section 9.4 shall not apply to the Liability Cap.

9.2 Indirect Damages

Except for liability under Section 9.4 arising from a Party's negligent or wrongful act or omission, in no event shall either Party be liable to the other Party for any consequential, incidental or indirect damages for any cause of action, whether by statute, in contract or tort, under any indemnity provision, or otherwise. Incidental, consequential or indirect damages include, but are not limited to, lost profits or revenues, lost opportunity costs, loss of business opportunity, or other business interruption damages not directly related to the defaulting party's conduct, whether or not the Party was aware or should have been aware of the possibility of such damages.

9.3 Risk Management

The Scope of Services under this Agreement includes specific risk management policies, to be developed and agreed-upon by both Parties after the Effective Date of the Agreement. The Parties intend to develop two risk policies: 1) a VCEA Enterprise Risk Policy, which shall be attached and incorporated herein as Exhibit B to this Agreement, and 2) a Wholesale Power Procurement and Risk Policy included in Task Order 3. The Parties may develop additional risk policies as they see fit, subject to approval of the additional scope of services.

In providing the Scope of Services under this Agreement, in no event shall SMUD be liable to VCEA for losses which VCEA may incur by reason of engaging in risk management strategies recommended by SMUD, whether or not implemented by VCEA, or due to recommendations not made by SMUD in the provision of risk management services. In recommending risk management strategies, SMUD shall use Prudent Utility Practices.

9.4 Indemnification

Subject to the limitations set forth in this Section 9, SMUD and VCEA, to the extent permitted by applicable law, agree to indemnify, hold harmless, and defend the other Party and its respective officers, directors, regents, members, subsidiaries, affiliates, partners, and employees from any and all liabilities, claims, actions, legal proceedings, demands, damages, losses, penalties, forfeitures and suits, and all costs and expenses incident thereto (including, but not limited to, costs of defense, settlements, and reasonable attorneys' fees), and further including damage or injury of any kind, in law or equity, to property or persons, including wrongful death, which the other Party may here after incur, become responsible for, or pay out as a result of any negligent or wrongful act or omission of the indemnifying Party, its employees, officers, directors, or agents in the performance of this Agreement. Neither Party shall be required to indemnify the other Party for liabilities, claims, suits, actions, legal proceedings, demands, damages, penalties, forfeitures and suits, and all costs and expenses incident thereto (including, but not limited to, costs of defense, settlements and reasonable attorneys' fees), to the extent caused by the negligence or wrongful act or omission of the other Party.

It is the intent of the Parties hereto that, where negligence is determined to have been contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate costs of any loss, damage, expense and liability attributable to that Party's negligence.

10 CONFIDENTIALITY

10.1 Treatment of Confidential Information

The Parties recognize that for the purposes of carrying out the Scope of Services, SMUD and VCEA may receive information from each other that is considered Confidential Information. Except as set forth herein, the Parties agree to keep in confidence and not to voluntarily disclose, disseminate, or distribute outside of SMUD and VCEA any Confidential Information or any part thereof, without the prior written permission of the other Party.

10.2 Required Disclosure of Confidential Information

As required by subpoena, the California Public Records Act, or other legal or regulatory law/process, the Parties may be required to disclose Confidential Information. Compliance with a subpoena, request under the California Public Records Act, or other legal or regulatory law/process shall not constitute a breach of this Agreement. If either Party is required to disclose any Confidential Information, the disclosing Party shall notify the other Party in writing as promptly as feasible so that the other Party may, if it so chooses and at its own expense, challenge the disclosure or seek a protective order. The Party challenging the disclosure or seeking a protective order shall be responsible for any costs or attorneys' fees awarded to a prevailing litigant seeking the records in the event that a court awards such costs or fees against the Party maintaining the records. However, disclosure pursuant to a legal requirement shall not constitute a breach of this section.

10.3 Destruction of Confidential Information

Each Party will use commercially reasonable efforts to maintain the confidentiality of the Confidential Information. Within thirty (30) calendar days of termination of this Agreement, or a Task Order, unless directed to retain or return Confidential Information by the other Party, any and all Confidential Information in the possession or control of the receiving Party, its agents, representatives, assigns, employees, and subcontractors shall be destroyed in accordance with this section. Confidential Information contained in system backup media, including but not limited to servers, workstations, laptops, databases and electronic mail backup tapes, need not be returned or destroyed so long as the backup media are maintained in confidence, not readily accessible to unauthorized access, and are overwritten in the ordinary course of business. All paper documents that contain Confidential Information, must be shredded using at least a cross-cut shredder or pulverized.

11 COMMUNICATION

Each Party shall designate a Primary Project Representative with sufficient knowledge about the services provided under this Agreement to serve as the primary point of contact. The Party's Primary Project Representative shall be identified in Appendix 1 to this Agreement. The Primary Project Representative shall be kept apprised of developments relevant to the services being provided. SMUD's Primary Project Representative, or his/her designee, shall attend all VCEA Board meetings, unless previously excused in writing. In addition, SMUD shall make available relevant staff for VCEA Board and advisory committee meetings, as reasonably requested.

12 PROPRIETARY INTEREST

SMUD shall retain sole ownership of any patent, copyright, trade secret, trademark, or service mark that SMUD has developed or acquired outside of providing the services under this Agreement. VCEA acknowledges and agrees that SMUD shall be the sole owner of any intellectual property rights developed by SMUD outside of this Agreement and except as specifically set forth below in this section or by separate written agreement, VCEA is not receiving any license to use any of those intellectual property rights. To the extent VCEA is required to use any of SMUD's intellectual property described above in connection with the matters described in this Agreement and subject to any third-party obligations, then SMUD agrees to negotiate with VCEA for a non-exclusive, non-transferable, limited license to use such intellectual property solely for those purposes.

Any deliverables, including copyright therein, created or developed specifically for VCEA as part of the services rendered under this Agreement that is not otherwise owned by SMUD shall be the sole property of VCEA. Excluding any VCEA Confidential Information, SMUD shall have the right to use any of the deliverables developed by SMUD under this Agreement without restriction or limitation on their use. Nothing contained in this Section 11 shall be construed as limiting or depriving SMUD of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement. Nothing contained in this Agreement shall be deemed to grant either directly or by implication, estoppel, or otherwise any rights under any patents, patent applications, copyrights, or other proprietary interests of any other invention, discovery or improvement of SMUD, other than the specific copyright rights covering Deliverables arising under this Agreement.

13 DISPUTE RESOLUTION

In the event of any dispute regarding the terms, conditions, and performance of this Agreement, the Parties shall attempt in good faith to promptly resolve any such dispute informally by the operating personnel of each Party. If the dispute cannot be settled through such negotiations within a period ending no longer than thirty (30) calendar days of the date

on which one Party notifies the other in writing of a dispute or such longer period as the Parties may agree to, the executive representative(s), or his or her delegate, from each Party, will personally and in good faith seek to resolve the dispute through negotiation (Negotiation Period). If the matter cannot be resolved through the executive negotiation, any Party shall proceed as follows:

13.1 Mediation

At any time during the Negotiation Period, either party may initiate a mediation of the controversy. All negotiations, settlement conferences, compromise discussions, and any mediation conducted pursuant to this clause are non-binding, confidential, and shall be treated as compromise and settlement negotiations.

13.2 Arbitration

In the absence of a voluntary resolution reached after mediation, or at any time after the Negotiation Period, and in the absence of either party electing to initiate mediation, the Parties may mutually agree to submit the dispute for arbitration in accordance with the provisions of this Section and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (Rules). If the Parties agree to arbitration, the arbitration shall be binding and the sole and exclusive dispute resolution mechanism for any disputes subject to the arbitration.

13.2.1 Notice of Arbitration - Arbitration is commenced by both Parties mutually agreeing in writing to adjudicate a dispute through arbitration. If the Parties can agree on the identity of a single arbitrator, who shall be a neutral, disinterested party with significant experience in the electric power industry, who has never been an officer, director, employee or attorney of either Party, or any of their affiliates and who has a formal financial, accounting or legal education, then that single arbitrator shall decide the dispute. If the Parties are unable to agree upon the identity of a mutually acceptable single arbitrator on or before thirty (30) calendar days after receipt of the Arbitration Demand, then the arbitrator(s) shall be selected in accordance with the applicable Rules. The arbitration shall take place in Sacramento, California and shall be conducted under the Rules. The decision of the arbitrator, or a majority of the arbitrators, if applicable, shall be final and binding. Any judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

13.3 Government Claim Act

Prior to initiating litigation against the other Party, the complaining Party must comply with all requirements and deadlines of the Government Claim Act, California Government Code Sections 810 *et seq.*; provided, however, that the Negotiation Period shall toll any presentment deadline or statute of limitations.

13.4 Continuing Performance Obligations

While a dispute, controversy, or claim is pending, each Party will continue to perform its respective obligations under the Agreement, unless such Party is otherwise entitled to

suspend its performance hereunder or terminate the Agreement in accordance with the terms hereof.

13.5 Fees

Each Party shall bear its own attorney's fees and costs with respect to any dispute. In the event the Parties pursue mediation and/or arbitration, the Parties shall share equally all fees and costs of the mediation or arbitration, the mediator or arbitrator(s), and similar expenses.

14 AMENDMENT

This Agreement may only be amended or otherwise modified with the written agreement of the Parties, and approved by each Party's governing body where required by law or policy.

15 RELATIONSHIP OF PARTIES

15.1 Independent Contractor

SMUD shall perform the Scope of Services as an independent contractor, and SMUD or any of its officers, employees, or agents shall not be treated as an employee of VCEA for federal, state, or local tax purposes, workers' compensation purposes, or any other purpose. The Parties acknowledge and agree that nothing contained in this Agreement shall be deemed to create or constitute an employer-employee relationship, a partnership, or a joint venture between the Parties.

15.2 Non-Exclusive Relationship

VCEA hereby expressly acknowledges that SMUD may provide the same or similar services as contemplated under this Agreement to other entities. However, SMUD's performance of the Scope of Services will not be adversely affected by work for other entities. In addition, the parties agree that VCEA may seek and obtain services from other entities that may supplement or be similar to services that SMUD may provide under this Agreement, so long as VCEA has not contracted with SMUD to provide the same service(s).

16 PROHIBITED INTERESTS

SMUD maintains and warrants that it has not employed nor retained any company or person, other than an employee working solely for SMUD, to solicit or secure this Agreement. Further, SMUD warrants that it has not paid nor has it agreed to pay any company or person, other than an employee working solely for SMUD, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, SMUD further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with VCEA as required under state law in the performance of the

Scope of Services. For the term of this Agreement, no director, official, officer or employee of VCEA or its Member Agencies, during the term of his or her service with VCEA, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

SMUD further covenants that, in the performance of this Agreement, no company or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Scope of Services under this Agreement shall be employed. SMUD will provide VCEA a list of subcontractors as they are identified.

17 GOVERNING LAW

The rights and obligations of the Parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of California.

18 NO THIRD PARTY BENEFICIARIES

No right or obligation contained in this Agreement shall inure to the benefit of any person or entity not a Party to this Agreement. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

19 ASSIGNMENTS

VCEA or SMUD may make an assignment of its rights and obligations under this Agreement only after obtaining the written consent of the other Party, which consent may be withheld in the non-assigning Party's sole discretion. A Party's assignee shall expressly assume, in writing, the duties and obligations of such Party under this Agreement and shall immediately furnish or cause to be furnished to the other Party a true and correct copy of the documents evidencing such assignment and assumption of duties and obligations. The assigning Party shall give notice to and provide the other Party with a copy of the documents evidencing such proposed assignment no less than thirty (30) calendar days prior to the proposed effective date of the assignment.

Notwithstanding the general consent requirement above, consent shall not be required in the event of a change in law affecting VCEA's ability to continue providing Community Choice Aggregation. In such a change in law event, VCEA may assign its rights under this Agreement to a VCEA Member Agency. Change in law shall not include a VCEA or VCEA Member Agency policy, resolution, ordinance, or similar action.

20 NO EXCLUSIVE REMEDY

Subject to the provisions of Section 13 (Dispute Resolution), no remedy in this Agreement conferred upon or reserved to any Party is intended to be exclusive of any other remedy or

remedies available under this Agreement or existing at law, in equity, by statute, or otherwise, but each and every such remedy shall be cumulative and shall be in addition to every other remedy under this Agreement or now or hereafter existing at law or in equity or otherwise provided by statute. The pursuit by any Party of any specific remedy shall not be deemed to be an election of that remedy to the exclusion of any other or others, whether provided hereunder or at law, in equity, by statute, or otherwise.

21 INSURANCE

SMUD and VCEA shall each at its own expense maintain an insurance program which adequately protects against liabilities and claims arising out of the performance of this agreement. All coverages are to be primary and non-contributory, and with the exception of Workers' Compensation, Employers Liability and Errors & Omissions, shall name the Parties as additional insureds as respects work performed pursuant to or incidental to this Agreement

VCEA acknowledges that SMUD is a self-insured public entity and agrees that SMUD's program of self-insurance fulfills any and all insurance requirements. SMUD shall provide a letter of self-insurance stating that SMUD's self-insurance program adequately protects against liabilities and claims arising out of the performance of this Agreement.

SMUD acknowledges that VCEA is, or will be prior to the Effective Date, a self-insured public entity through the Yolo County Public Agency Risk Management Insurance Authority, a joint powers agency, and agrees that coverage through YCPARMIA fulfills any and all insurance requirements. VCEA shall provide a letter of self-insurance stating that VCEA's self-insurance program adequately protects against liabilities and claims arising out of the performance of this Agreement.

22 NO LEGAL SERVICES

VCEA acknowledges that, with respect to the services rendered or to be rendered by SMUD under this Agreement, SMUD will not provide and has not provided VCEA legal advice. VCEA represents to SMUD that VCEA (i) has obtained and shall obtain legal advice from VCEA's own legal counsel regarding the legal aspects of any advice given or services performed by SMUD under this Agreement and (ii) has not relied and shall not rely on SMUD for the giving of legal advice. VCEA hereby waives and releases any claim that VCEA may now or hereafter have that VCEA has relied, directly or indirectly, on any advice given by SMUD, or to be given by SMUD, in connection with this Agreement as being in the nature of legal advice, and further waives and releases any claim for damages resulting therefrom.

23 RESETTLEMENT

From time-to-time transactions that may have otherwise been fully completed and settled may be required to be resettled due to market rules (for example markets operated by the California Independent System Operator Corporation, or another Regional Transmission Operator approved by the Federal Energy Regulatory Commission) or order of a court, regulatory authority, or other entity with jurisdiction to order such. If such resettlement related to any transaction, or applicable share of any transaction, performed by SMUD on behalf of VCEA results in a refund to SMUD from a third party, SMUD shall pay to VCEA any such refund, or applicable share of such refund, received by SMUD. If such resettlement related to any transaction performed by SMUD on behalf of VCEA results in SMUD owing an amount to a third party, VCEA shall pay to SMUD any such amount owed by SMUD, or applicable share of such amount, owed by SMUD. Whether such resettlement results in a refund to, or additional amount owed by VCEA, SMUD agrees to provide to VCEA sufficient, timely and reasonable documentation verifying the accuracy and applicability of such resettlement. This provision shall survive the termination of this Agreement.

24 UNCONTROLLABLE FORCE

- 24.1** No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to an Uncontrollable Force.
- 24.2** No Party shall be considered to be in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of an Uncontrollable Force.
- 24.3** Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.
- 24.4** In the event a Party is rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force, such Party shall give prompt written notice of such fact the other Party, and describe in detail the efforts made to remove such inability.

25 TASK ORDERS, EXHIBITS, SCHEDULES, AND CONTROLLING TERMS

All Task Orders, exhibits, schedules and related attachments which are attached to this Agreement are incorporated by reference, as if set out in full herein. The provisions of each Task Order including exhibits, schedules and related attachments are subject to the Terms and Conditions of the Agreement between the Parties. If any provisions of any Task Order including any exhibit, schedule or related attachment conflicts or is inconsistent with any provisions in the Agreement, the provisions of the Task Order shall take precedence unless otherwise expressly stated otherwise.

26 EVENT OF DEFAULT

26.1 Each of the following shall constitute an “Event of Default” with respect to a Party (the “Defaulting Party”) under this Agreement:

26.1.1 the failure to make, when due, any payment or funding obligation required pursuant to this Agreement if such failure is not remedied within ten (10) business days after written notice of such a breach;

26.1.2 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

26.1.3 the failure to perform any covenant or obligation set forth in this Agreement if such failure is not remedied within ten (10) business days after written notice of such as breach;

26.1.4 a Party becomes Bankrupt.

26.2 If an Event of Default with respect to a Defaulting Party has occurred, and if the Event of Default is not caused by an Uncontrollable Force as described in Section 24 hereof, then the non-defaulting Party shall have the right to (i) suspend performance or payment, (ii) designate an early termination date, or (ii) immediately terminate this Agreement subject to any surviving obligations. Both Parties shall continue to perform their obligations or make payments then due or becoming due with respect to performance or payment obligations which arose prior to the date of termination.

27 JUDGMENTS AND DETERMINATIONS

When the terms of this Agreement provide that an action may or must be taken, or that the existence of a condition may be established, based on a judgment or determination of a Party, such action or judgment shall be exercised or such determination shall be made in good faith and where applicable in accordance with Prudent Utility Practice, and shall not be arbitrary or capricious.

28 COMPLIANCE WITH LAW

Each Party shall be responsible for compliance with all laws or regulations applicable to the Scope of Services being provided under this Agreement. If either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the Parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only; the remaining provisions of this Agreement will remain in full force and effect. Any such termination shall not constitute a basis for Termination for Event of Default as defined in Section 4.3.3.

29 NON-WAIVER

Any waiver at any time by a Party of its rights with respect to any default or other matter arising in connection with this Agreement shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay short of the statutory period of limitations in asserting or enforcing any right shall not constitute or be deemed a waiver.

30 SEVERABILITY

If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition shall be held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest, by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.

31 NO DEDICATION OF FACILITIES

Any undertaking by a Party under any provision of this Agreement is rendered strictly as an accommodation and shall not constitute the dedication of its electric system by the undertaking Party to the public, to the other Party, or to any third party, and any such undertaking by a Party shall cease upon the termination of all such Party's obligations under this Agreement. The electric system of a Party shall at all times be, and remain, in the exclusive ownership, possession, and control of that Party, and nothing in this Agreement shall be construed to give the other Party any right of ownership, possession, or control of such electric system.

32 OWNERSHIP AND MAINTENANCE OF RECORDS

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by SMUD and made available at all reasonable times during the contract period and for three (3) years from the date of final payment under this Agreement for inspection by VCEA. Subject to Section 11 and excluding any SMUD Confidential Information, all professional and technical documents and information developed specifically for VCEA under this Agreement, and all work products, including writings, work sheets, reports, and related data, materials, copyrights and all other rights and interests therein (“Work Products”), shall become the property of VCEA, and SMUD agrees to deliver and assign the foregoing to the VCEA upon completion of the services hereunder or upon any earlier termination of this Agreement; provided, however that SMUD has received full payment from VCEA for such services. . Excluding any VCEA Confidential Information, SMUD shall have the right to use any of the Work Products developed by SMUD under this Agreement without restriction or limitation on their use. In addition, data particular to VCEA prepared or obtained under this Agreement shall be made available to the VCEA without restriction or limitation on their use.

33 AUDIT RIGHTS

During the term of this Agreement, and for three (3) years following the effective date of termination, each Party may audit the other Party’s books and records for the sole purpose of verifying the calculation of payments made or received, including the calculation of pricing or compensation due pursuant to this Agreement. Any such audit shall be conducted at the audited Party’s offices during its normal business hours, at the auditing Party’s own expense. The auditing Party shall be responsible for the audited Party’s expenses to accommodate such audit.

Each Party shall maintain the confidentiality of the other Party’s accounting records and supporting documents in compliance with Section 9 (Confidentiality) of this Agreement and shall use them only for the purpose of confirming the accuracy of billings and payments under this Agreement.

34 NOTICES

Any notice, demand, or request in accordance with this Agreement, shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by first class United States mail postage prepaid, by confirmed electronic facsimile, or by prepaid commercial courier service to a Party via its representative or alternate representative at the address set forth in Appendix 1, unless otherwise provided in this Agreement. Any Party may at any time change the designation or address of a person specified in Appendix 1 upon written notice to the other Party designated for such notice. Such a change to Appendix 1 shall not constitute an amendment to this Agreement.

-- Draft --

35 PRESERVATION OF OBLIGATIONS

Upon termination of this Agreement, all unsatisfied obligations of each Party shall be preserved until satisfied.

36 APPENDICES AND EXHIBITS MADE PART OF AGREEMENT

Referenced Appendices and Exhibits shall become a part of this Agreement; however, may be amended as provided individually therein. The initial Appendix 1 and Exhibits A-C are attached hereto, and shall be in force and effect in accordance with their respective terms until superseded by a subsequent appendix or exhibit or modified in accordance with this Agreement and the terms thereof.

37 MULTIPLE COUNTERPARTS

This Agreement and any exhibit or appendix may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

38 SIGNATURE CLAUSE

The signatories to this Agreement represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

-- Draft --

IN WITNESS THEREOF, the Parties have executed this Agreement and it is effective as of the Effective Date set forth in Section 4.1.

VALLEY CLEAN ENERGY ALLIANCE

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

VCEA Legal Counsel

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

SMUD Legal Counsel

Appendix 1 – Notices

Sacramento Municipal Utility District

Primary Project

Representative

Name:	
Title:	
Company:	SMUD
Address:	
City/State/Zip Code:	
Email Address:	
Phone:	

Alternate Project

Representative

Name:	
Title:	
Company:	SMUD
Address:	
City/State/Zip Code:	
Email Address:	
Phone:	

Valley Clean Energy Alliance

Primary Project

Representative

Name:	
Title:	
Company:	
Address:	
City/State/Zip Code:	
Email Address:	
Phone:	

Alternate Project

Representative

Name:	
Title:	
Company:	
Address:	
City/State/Zip Code:	
Email Address:	
Phone:	

This Appendix 1 may be updated as needed by either Party without formal amendment to this Agreement. Any changes will be provided to all individuals listed herein. Email may be used to communicate the revisions.

EXHIBIT A: Scope of Services

A.1 Task Order 1 – Technical and Energy Services

A.2 Task Order 2 – Data Management and Call Center

A.3 Task Order 3 – Placeholder for Wholesale Energy Services

A.4 Placeholder for Additional Task Order(s)

Exhibit A.1 Task Order 1 – Technical and Energy Services

Task Order 1 Technical and Analytical Services

SMUD and VCEA agree to the following services, terms, and conditions described in this Task Order. This Task Order is for Technical and Analytical Services (Task Order 1), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Task Order conflict with any general provisions in the Agreement, the provisions of this Task Order 1 shall take precedence. The Effective Date of this Task Order 1 is the date of last signature below.

Task Order 1 Technical and Analytical Services

SMUD and VCEA agree to the following services, terms, and conditions described in this Task Order. This Task Order is for Technical and Analytical Services (Task Order 1), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Task Order conflict with any general provisions in the Agreement, the provisions of this Task Order 1 shall take precedence.

The Effective Date of this Task Order 1 is the date of last signature below.

1. SCOPE OF WORK

SMUD will provide Technical and Analytical Services to VCEA for Phase 1: Program Development & Launch in order to prepare for and enable the successful launch of VCEA's Community of Choice Energy (CCE) Program and Phase 2, Program Operations. As outlined in detail below, the following services will be delivered to VCEA. Additional or continued technical or analytical services can be provided at any time during the Term of the Agreement through a mutually agreed upon Task Order or Task Order Amendment, subject to Section 6 below.

1.1. CPUC Implementation Plan

The California Public Utilities Commission ("CPUC") requires newly formed CCAs to file an Implementation Plan. It must be certified by the CPUC (within 90 days of submission) before the CCA can begin serving customers. SMUD, in coordination with VCEA staff and consultants, will draft the Implementation Plan in accordance with all CPUC requirements and established best practices for consideration and approval by the VCEA Board and subsequent submittal to the CPUC. The CPUC Implementation Plan will include the following:

- Process and consequences of aggregation
- Organizational structure of the program, its operations and funding

- Rate setting and other costs to participants
- Disclosure and due process in setting rates and allocating costs among participants
- Methods for entering and terminating agreements with other entities
- Participant rights and responsibilities
- Termination of the program
- Description of third parties that will be supplying electricity under the program, including information about financial, technical and operational capabilities

Deliverable(s): CPUC Implementation Plan Filed

Timing: October 2017

1.2. Pro forma Financial Analysis

SMUD will provide a pro forma financial analysis model based on customer count and load data VCEA obtains from PG&E. The model will provide base case and alternative scenario results based on significant financial performance drivers including, but not limited to: load forecasts, wholesale power prices, owned power supply costs, Resource Adequacy charges, REC charges, rooftop and community solar penetration, net-metering and feed-in-tariff rates, administrative start-up and operating costs, PCIA charges, PG&E rates, GHG emissions, opt-out and participation rates by rate class, participating jurisdictions, and reserve accumulation and debt service coverage ratios through time. At a minimum, the pro forma financial analysis model will model 10 full calendar years from date of launch (e.g. 6/1/18 to 12/31/28).

Deliverable(s): Pro forma financial analysis model in Excel

Timing: October 2017 – December 2017 (review and Board Approval)

1.3. Operating Budget

SMUD will leverage several inputs to draft a proposed 1-year and 3-year operating budget for VCEA, including decisions from the pro forma financial analysis, rates and resource portfolio discussions. SMUD will present an operating budget to VCEA for review and VCEA Board approval. The operating budget will include forecasts of:

- Customer accounts based on current data, historical trends and expected opt-out rates, including breakdown by customer class.
- Load based on customer account forecast, weather forecast, historical load data and economic indicators, including breakdown by customer class.
- Revenue based on load forecast and VCEA-selected rates, including breakdown by customer class.
- Energy costs based on VCEA-selected resource portfolio, historical data and forward commodity cost curves.

- Operational costs from VCEA, SMUD and other contractors.

Deliverable(s): 1-year and 3-year operating budget

Timing: October 2017 – March 2018 (review and Board Approval)

1.4. Program Financing and Banking Services

VCEA will require accounting, banking, and auditing services for the CCA program in order to maintain separation of duties and fiduciary oversight. SMUD will assist in comparing accounting products and any financial analysis needed to secure bank or third-party financing. SMUD will provide support needed to VCEA to secure auditing services, to the extent such support does not create a conflict of interest.

Deliverable(s): 3-year Operating Budget

Timing: December 2017 – March 2018 (review and Board Approval)

1.5. Rate Analysis, Design, and Rate Setting Process

SMUD will use the pro forma financial analysis to inform discussions with VCEA to determine overall revenue requirements and make recommendations on rate design. SMUD will use the PG&E rate structures, current rates, and projected future rate growth as the primary basis for constructing a base or standard rate structure for VCEA and determining an expected discount or premium to PG&E's rates through time. Toggles will be available in the pro forma financial analysis to modify supply portfolios and other key variables to determine the rate discount or premium under a variety of scenarios. This will help inform VCEA reserve targets with the goal of maintaining rate stability and near rate parity in the future. Finally, there will be the capability to define multiple service levels with different renewable or carbon attributes and different rates, and estimate the impact on overall revenue based on assumptions about adopted levels for each service. SMUD will design rates to accommodate the following:

- Standard rate schedule and designs for residential and commercial customers following current PG&E rate structures to reflect a default renewable mix.
- Rate design and recommendations on policies that further encourage and support local renewable energy development. Once local renewable options are identified, SMUD will design and recommend a local renewable rate.
- Tariff for the following complementary programs:
 - Net energy metering program tariff.
 - Feed-in-tariff program.
- Rate recommendations on community solar programs.

The rates and financial models will take into account recovery of all expenses, target reserves and debt coverage requirements. All rates will conform to applicable regulations and VCEA policies and restrictions. Upon VCEA request, SMUD will pass through additional rates such as

CARE, PCIA, UUT and franchise fees. VCEA acknowledges that its CCA rates are, in part, subject to charges approved by the CPUC (including but not limited to CARE, PCIA, UUT), which may change during the course of the Term. SMUD has no control of these CPUC-approved charges and SMUD expressly disclaims any responsibility for increases or decreases in VCEA's rates resulting from changes in applicable CPUC-approved charges.

Deliverable(s): Pro forma financial model which includes rate design options

Timing: November 2017 – March 2018 (review and Board Approval)

1.6. VCEA Filings and Regulatory Functions - Phase 1

SMUD will prepare filings and assist VCEA in fulfilling certain regulatory steps during Phase 1: Program Development & Launch of the CCA. SMUD's services will include working with VCEA to correct any deficiencies associated with these filings. This includes the following filings:

- Prepare for CAISO market participant requirements, including identifying agreements between VCEA and CAISO necessary to prepare for Program Operations;
- Submitting a Statement of Intent with the CPUC;
- Meeting CPUC CCA bonding requirements;
- Additional registration requirements with the CPUC;
- Execution of CCA Service Agreement with PG&E;
- Posting of credit collateral with PG&E;
- Submitting a Binding Notice of Intent with PG&E;
- Registration with California Air Resources Board (including CITSS registration); and
- Registration with Western Renewable Energy Generation Information System ("WREGIS").

Additional filings will be completed during Phase 2: Program Operations as defined in Task Order 3: Wholesale Energy Services.

Deliverable(s): All filings listed in the bulleted list in sub-section 1.6 above.

Timing: October 2017 – May 2018

1.7. Initial Integrated Resource Plan

SMUD will prepare for VCEA an Integrated Resource Plan ("IRP"), consistent with the requirements of the Clean Energy and Pollution Reduction Act of 2015 ("SB350"), which requires any load serving entity with annual electricity consumption exceeding 700 gigawatt-hours per year, to adopt an IRP and a process for updating the plan at least once every five years

to ensure, among other things, that each CPUC jurisdictional load-serving entity (including CCAs) meet California's greenhouse gas emission reduction targets and procures resources to meet the 50% RPS by 2030 target. SMUD's services will include working with VCEA to submit the IRP to the CEC and correct any deficiencies identified by the CEC.

- Complete all necessary reporting of planning documents with the CPUC and the California Energy Commission (CEC)
- Prepare an initial IRP and complete related regulatory reporting for the purpose of launching and early operation of VCEA

Ongoing support and updates following completion of the initial IRP is not included in this Task Order 1 but may be provided, as mutually agreed by the Parties separately as part of the Task Order 3: Wholesale Energy Services.

Deliverable(s): Initial IRP

Timing: October 2017 – May 2018

1.8. Additional Phase 1 Work Efforts

The Parties acknowledge that each particular preparatory task necessary and ancillary to position VCEA for its scheduled June 1, 2018 launch may not have been specifically identified in this Task Order 1. Nonetheless, SMUD agrees to perform such necessary and ancillary tasks as may be identified by SMUD and or VCEA, and which are within SMUD's technical and utility expertise, in order to achieve timely commencement of VCEA's commercial operations, and which SMUD and VCEA mutually agree are required. VCEA agrees to accordingly compensate SMUD pursuant to this Task Order 1 for any such tasks performed by SMUD in accordance with Section 4, below.

2. APPROVAL PROCESS / ACCEPTANCE

Both Parties agree to perform tasks, review, and approve in a timely manner in order to maintain agreed upon timelines as set forth in the Deliverables Schedule (Appendix A) to this Task Order. SMUD will provide deliverables to VCEA's Interim General Manager or other designated staff for review by VCEA. Deliverables that require VCEA Board approval will be identified and time will be appropriately allocated in the project schedule.

3. TERM AND TERMINATION

3.1. Term of Task Order 1

Task Order 1 scope of services for Program Development will commence on the Effective Date of the Agreement and will be complete 60 days after the Launch Date which is currently scheduled for June 1, 2018.

The expiration or termination of this Task Order 1 shall not affect the term of the Agreement.

3.2. Termination

Either Party may terminate this Task Order 1 pursuant to Section 4, (“Term and Termination”) of the Agreement.

3.3. Transition

In the event of termination of the Agreement or this Task Order 1, subject to the terms of the Agreement, SMUD shall provide to VCEA all such information and data prepared or collected by SMUD for VCEA under Task Order 1, kept in the ordinary course of business. The exact data, format and method of return will be reasonably agreed by the Parties.

4. COMPENSATION FOR SERVICES

4.1. Technical and Analytical Services

Services performed under this Task Order 1 are based on “time and materials” compensation structure with a not to exceed amount of \$92,000. This not to exceed amount does not include: travel or expenses defined in Section 4.2 of this Task Order 1, or any regulatory and market expenses as set forth in Section 8.2 of the Agreement or other pass through expenses as may be mutually agreed by the Parties .SMUD shall receive compensation, including authorized reimbursements, for services rendered under this Task Order at the rates set forth in Section 4.2. Additional Phase 1 work may be authorized by VCEA, and if authorized, will be compensated at the rates and manner set forth in Section 4.2 of this Task Order 1 Hourly Rates

The SMUD hourly billing rates in the schedule below are applicable to any work performed by SMUD under Task Order 1. Hourly rates are fixed through June 30, 2019 and are subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, “Consumer Price Index- All Urban Consumers less food and energy” Series ID: CUUR0000SA0LIE thereafter.

Resources	Hourly Rate
SMUD CEO/VP	\$250.00
Principal	\$190.00
Senior Analyst/Specialist	\$150.00
Analyst/Specialist	\$100.00
Administrative	\$80.00

4.2. Travel Expenses and Reimbursement

Travel within Sacramento and Yolo counties is included at no cost to VCEA.

Other out-of-pocket expenses for travel and participation in on-site meetings outside Sacramento and Yolo Counties are in addition to the compensation outlined in Section 4.1 of this Task Order 1. Travel costs such as airfare, hotel, ground transportation, reasonable meals and/or per diem (Expenses) will be billed in the amount incurred by SMUD for actual out-of-pocket cost, without any additional mark-up by SMUD. Any Expenses incurred shall be invoiced, in arrears, for the month in which the Expenses are incurred. Expense reports detailing all Expenses, along with receipts, will be presented to VCEA for reimbursement.

5. PAYMENT TERMS

Prior to the Launch Date, SMUD will record hours expended for the services of this Task Order 1, and provide a monthly statement to VCEA for review and validation. Invoicing will commence in accordance with the Agreement.

For services under this Task Order 1, VCEA shall pay all undisputed invoices within thirty (30) calendar days of the date of the invoice.

6. TASK AMENDMENT

This Task Order 1 may be amended or otherwise modified by the Parties as provided in the Agreement.

It is mutually understood that business requirements, resources, and dates may change subject to the applicable terms of Task Order 1. Any changes to the scope defined in Task Order 1 will be addressed through a task order amendment process, which will not require signatures of the Parties. This is intended to provide flexibility for scope, schedule, budget or resource changes as required to meet Launch date

7. SIGNATURES

The Parties have executed this Task Order 1 and it is effective as of the date of last signature below.

Valley Clean Energy Alliance

By:

Name:

Title:

Date: _____

**Approved as
to Form:** _____

Sacramento Municipal Utility District

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A: DELIVERABLES SCHEDULE

#	Deliverable	Timing
1	CPUC Implementation Plan Filed	October 2017
2	Pro forma financial analysis model in Excel (including rate options)	October 2017 – December 2017 (review and Board Approval)
3	1-year and 3-year operating budget	October 2017 – March 2018 (review and Board Approval)
4	All filings listed in the bulleted list in sub-section 1.6 above.	October 2017 – May 2018
5	Initial IRP	October 2017 – May 2018

Exhibit A.2 Task Order 2 – Data Management and Call Center

Task Order 2 Data Management and Customer Call Center Services

SMUD and VCEA agree to the following services, terms and conditions described in this Task Order. This Task Order 2 is for Data Management and Customer Call Center Services (“Task Order 2”), the provisions of which are subject to the terms and conditions of the Agreement between the Parties. If any provisions of this Task Order 2 conflict with any provisions in the Agreement, the provisions of this Task Order 2 shall take precedence.

The Effective Date of this Task Order 2 is the date of last signature below.

1. SCOPE OF WORK

SMUD will provide Data Management and Call Center Services to VCEA for Phase I: Program Development and Launch and Phase II: Program Operations. As outlined in detail below, the following services will be delivered to VCEA. Additional or continued Data Management and Call Center Services can be provided at any time during the Term of the Agreement through a mutually agreed upon Task Order or Task Order Amendment, subject to Section 6 below.

1.1. Electronic Data Exchange Services

- 1.1.1. Coordinate with PG&E to initiate VCEA’s Community Choice Aggregation Program (“Program”) within PG&E’s territory including meetings and calls as needed to ensure timely set up, data transfer, and billing services.
- 1.1.2. Establish electronic interfaces and communication protocols with PG&E to exchange full set of EDI files (including 810, 814, 820, 867, and 997) and interval and load data files (Items 16 and 17). Unless otherwise determined, data from PG&E will be received by SMUD which will process and apply VCEA rates and then generate EDI transaction files to be sent back to PG&E for billing and enrollment services.
- 1.1.3. Process CCESRs from/to PG&E which specify the changes to a customer’s choice of service for customer enrollment, or customer initiated returns to bundled utility service (814 Electronic Data Interchange Files). Changes will be reflected in the CRM.
- 1.1.4. Obtain customer usage data from PG&E’s Enterprise Secure File Transfer server to timely bill each customer according to PG&E requirements (867 Electronic Data Interchange Files). SMUD will work with PG&E to establish protocols required to transfer said customer usage data.
- 1.1.5. Maintain and communicate the amount to be billed by PG&E for services provided by VCEA (810 Electronic Data Interchange Files). SMUD will maintain a rate table of VCEA rates and apply applicable rate tariffs to calculate the amount to

be billed by PG&E for services provided by VCEA. SMUD will work with PG&E to establish the transactions required to transfer the billing amounts to PG&E via the 820 EDI files and requirements specified by PG&E.

- 1.1.6. Receive and maintain data related to payment transactions toward Program charges from PG&E after payment is received by PG&E from VCEA customers (820 Electronic Data Interchange Files). SMUD will work with PG&E to establish the transactions required to transfer the payment transactions toward CCE charges from PG&E after payment is received from customers via the 820 EDI files. SMUD will store this payment data as required by VCEA.
- 1.1.7. Conduct integration testing and data validation with PG & E

Deliverable(s): PG&E customer billing, and usage data successfully received from/delivered to PG&E following PG&E transaction requirements to establish an effective and timely system of electronic data transfer.

Timing: First Quarter 2018

1.2. Customer Information System

- 1.2.1. SMUD will provide and operate scalable and robust software systems to manage customer data via Customer Relationship Management (CRM) software, that will enable VCEA and its customers to manage program enrollment options online through the Interactive Voice Response (IVR). SMUD will also ensure that the CRM is compatible with the billing engine and data repository for customers' electric usage data. Configure and maintain a cloud-based Customer Relationship Management (CRM) solution that will store accurate information on all eligible accounts located in the Program service area. This data is to include each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history related to billed amount, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer Program services as mutually agreed to by the Parties from time to time. The software solution and system integration services will be provided by subcontractors to this Agreement.
- 1.2.2. Design VCEA's on-line database so that in addition to the service provider, VCEA has functional access to the online customer database. Implement role-based access to allow VCEA, SMUD Call Center Representatives, and SMUD's Community Choice Energy team to view customer interactions, edit account notes and view other information fields as necessary.
- 1.2.3. Store customer email and (scanned) written letter correspondence to allow easy access and visibility through the CRM user interface.
- 1.2.4. Obtain from PG&E and store historical usage data for all customers from the start of VCEA's Program for a period of no less than five years. SMUD will store the

historical usage data in a cloud-based database. Data stored will be in line with the data provided by PG&E via EDI standards.

- 1.2.5. Obtain from PG&E and store historical PG&E bills for all customers from the start of VCEA's Program for a period of no less than five years. Viewing access will be available to appropriate VCEA staff and an archive of billing records shall be maintained to support intuitive parsing and labeling as may be needed.
- 1.2.6. Maintain a record of customers' enrollments status. This includes customers who have been offered Program service but have elected to opt out, either before or after starting service. SMUD will provide status reports to VCEA staff on a weekly basis or other frequency as may be requested by VCEA. Call center representatives will have access to this information as needed to support customer service calls.
- 1.2.7. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
- 1.2.8. When requested by VCEA, perform quarterly program reviews to assess appropriate customer charge level, as identified by Service Agreement ID (SAID). SMUD will ensure that program charges can be applied to the relevant customer account based on SAID.
- 1.2.9. Maintain all customer data according to VCEA's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process. SMUD will collect only the minimum Confidential Information(CI that is directly relevant and necessary to accomplish specific authorized purpose(s). and will retain CI for only as long as is necessary to fulfill the authorized purpose(s). CI that is no longer needed will be destroyed in accordance with the terms of the Agreement.
- 1.2.10. Develop, implement, maintain and adhere to a Data Management Security Breach Policy for VCEA that is based on SMUD's existing policy and procedures related to data breaches.

Deliverable(s): CRM configured to VCEA's requirements, Security Breach Policy

Timing: Available April 2018 – Program Operations

1.3. Customer Call Center

SMUD will provide professional and dedicated staffing for a VCEA customer call center at the Silver Service level, including the option for customers to access self-service through an interactive voice response system. The call center will provide services in both English and Spanish, and regular metrics will be provided to VCEA in order to maintain and track high levels of customer service.

- 1.3.1. Configure a professional Interactive Voice Response (IVR) tool for the Program customer call center based on best IVR practices from other CCE programs and from SMUD. The software solution and system integration services will be provided by subcontractors to this Agreement. Create and maintain professional IVR recordings (based on scripts received from VCEA) for the Program customer

call center; VCEA may update recordings as business needs dictate. The IVR tool will include custom prompts and recordings to align with the VCEA customer base and needs.

- 1.3.2. Track how many customers start and complete IVR self-service options without live-agent assistance and provide regular reports to show the success rate of completed transactions through the IVR platform, as well as other reports related to customer usage of the IVR platform.
- 1.3.3. Provide sufficient Customer Call Center staff during the Program Statutory Enrollment Period to process Program service enrollment and answer questions related to Program services, generation-related billing and other Program-related inquiries via phone or email.
 - 1.3.3.1. Call Center staff will be available between the hours of 7:00AM to 7:00PM Pacific Standard Time, Monday through Friday, excluding VCEA and PG&E holidays.
 - 1.3.3.2. SMUD will provide staff, and a third-party contractor (a subcontractor to this Agreement), to support translation services on an as-needed basis. The translation services will include Spanish, as well as many other different languages, and will be available during SMUD business hours of 7:00 A.M to 7:00 P.M., Monday through Friday (excluding holidays).
 - 1.3.3.3. 100% of voicemail messages answered within one (1) business day.
 - 1.3.3.4. 100% of emails receive an immediate automated acknowledgement. 95% of emails receive a customized response within one (1) business day. 100% of emails receive a customized response within three (3) business days.
- 1.3.4. Provide sufficient Customer Call Center staff during the non-enrollment period to process Program service enrollment and answer questions related to Program services, generation-related billing and other Program-related inquiries via phone or email. SMUD will provide “Silver” service level as defined below.
 - 1.3.4.1. Call Center Staff will be available between the hours of 7:00AM to 7:00PM Pacific Standard Time, Monday through Friday, excluding VCEA and PG&E holidays. Six months following the Launch Date, the Parties may mutually agree to modify call center staffing hours based on an assessment of hourly call volumes.
 - 1.3.4.2. During non-enrollment periods, VCEA has selected the “Silver” level of service, which includes 60 second average speed of answer with an abandon rate of 3%

- 1.3.4.3. Data manager experts will be available to manage escalated calls between the hours of 7:00AM to 7:00PM Pacific Standard Time, Monday through Friday, excluding VCEA and PG&E holidays.
- 1.3.4.4. Bi-lingual staff will be available to help Spanish-speaking customers. SMUD will provide staff, and a third-party contractor (a subcontractor to this Agreement), to support translation services on an as-needed basis. The translation services will include Spanish, as well as many other different languages, and will be available during SMUD business hours of 7:00 A.M to 7:00 P.M., Monday through Friday (excluding holidays).100% of voicemail messages answered within one (1) business day.
- 1.3.4.5. 100% of emails receive an immediate automated acknowledgement. 95% of emails receive a customized response within one (1) business day. 100% of emails receive a customized response within three (3) business days.
- 1.3.5. Provide callers with the estimated hold time, if applicable.
 - 1.3.5.1. Provide an automated ‘call back’ option for callers who will be put on hold for an estimated five minutes or longer (although this is not anticipated to be used very often).
- 1.3.6. Record all inbound calls and make recordings available to VCEA staff upon request. Maintain an archive of such recorded calls on a WFO Platform provided by SMUD for a minimum period of 24 months. The software solution and any system integration services required will be provided by subcontractors to this Agreement. Track Call Center contact quality with criteria including:
 - 1.3.6.1. Use of appropriate greetings and other call center scripts
 - 1.3.6.2. Courtesy and professionalism
 - 1.3.6.3. Capturing key customer data
 - 1.3.6.4. Providing customers with correct and relevant information
 - 1.3.6.5. First-contact resolution
 - 1.3.6.6. Accuracy in data entry and call coding
 - 1.3.6.7. Grammar and spelling in email communications
- 1.3.7. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received. These surveys will be tailored to VCEA’s needs and reports will be made available to VCEA staff and leadership.
- 1.3.8. SMUD will have dedicated CSR’s who will response to 100% of VCEA customer inquiries. SMUD will forward to VCEA staff as may be required to serve customer needs. Receive calls from Program customers referred to VCEA by PG&E and receive calls from Program customers choosing to contact VCEA directly

without referral from PG&E. SMUD will “warm transfer” the customer to PG&E or VCEA as needed to serve the customer’s needs.

- 1.3.9. Provide a toll-free number that will be placed on VCEA’s website and PG&E invoices allowing VCEA customers to contact the call center.
- 1.3.10. Request and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound calls.
- 1.3.11. Request permission (via live calls, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
- 1.3.12. Respond to phone inquiries from Program customers using a script developed and updated as often as quarterly by VCEA. For questions not addressed within the script, refer inquiries back to PG&E or VCEA.
- 1.3.13. Offer bi-annual cross training to PG&E call center representatives in coordination with VCEA in order to accurately reflect VCEA information.
- 1.3.14. Unless otherwise specified by VCEA, SMUD will provide call center status reports during the first week of each month; weekly during the customer enrollment periods.
- 1.3.15. As requested by VCEA, host quarterly meetings with call center management and representatives to review call center metrics, deal with recurring customer concerns, and address any other issues that may arise.

Deliverable(s): Call Center available to receive phone, IVR, and email messages from VCEA customers

Timing: Available April 2018 – Program Operations

1.4. Customer Enrollment Forms

- 1.4.1. Create and maintain user-friendly forms for the VCEA Program website so that customers may change Program account status (opt-out or opt-in) or participate in available renewable energy product options.
- 1.4.2. Collaborate with VCEA’s website provider to integrate customer enrollment forms to provide an easy and intuitive experience for customers.

Deliverable(s): iFrame forms provided to Circlepoint for integration into VCEA website

Timing: TBD

1.5. Billing Administration – PG&E “Bill-Ready Option”

SMUD will deliver billing services to VCEA by building efficient and automated processes that focus on data validation accuracy with quality assurance measures. However, the billing services are dependent on the accuracy of PG&E’s data, and therefore, SMUD’s quality assurance and data accuracy are subject to PG&E’s data accuracy.

- 1.5.1. Maintain a table of Program rate schedules provided by VCEA to ensure that all data are accurate and consistent in all VCEA systems provided by SMUD.
- 1.5.2. Send Program service charges as a separate line item to PG&E for placement on monthly bill. This could include but is not limited to: non-electrical charges, special programs, collective billing, energy assistance programs, and net energy metering. I
- 1.5.3. Apply PG&E account usage for each VCEA customer against applicable rates to allow for customer billing. This includes but is not limited to line item charges ranging from non-electric charges, special programs and contracts, collective billing, energy assistance programs and net energy metering.
- 1.5.4. Review application of Program service rates to PG&E accounts to ensure that the proper rates are applied to the accounts. This includes use of SMUD's quality assurance process and audits to ensure accuracy of data and rates.
- 1.5.5. Timely submit billing information for each customer to PG&E to meet PG&E's standard billing window
- 1.5.6. Use commercially reasonable efforts along with SMUD's billing quality assurance measures to remedy billing errors for any customer(s) in a timely manner (no more than two billing cycles).
- 1.5.7. Assist with annual settlement processes for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing a corresponding mailing list to VCEA's designated printer. SMUD will work with VCEA to provide a monthly settlement option, if VCEA so chooses for an additional fee to be mutually agreed.
- 1.5.8. Provide customer mailing list to VCEA's designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
- 1.5.9. Send a VCEA-provided letter to customers with delinquent accounts stating that failure to pay will result in customer being returned to PG&E. If no payment is received from the customer after a certain amount of time, SMUD will issue a CCESR to return customer to PG&E. VCEA shall identify the length of delinquency that triggers such notice, as well as the time period allowed to bring the account current.

Deliverable(s): Billing Engine configured to VCEA's requirements

Timing: TBD

1.6. Settlement Quality Meter Data (SQMD) Services

- 1.6.1. SMUD will obtain VCEA load data from PG&E and ensure it complies with CAISO requirements for SQMD. SMUD will forward VCEA load SQMD to the CAISO at the required frequency for load settlement purposes.

Deliverable(s): SQMD data provided to CAISO

Timing: Provided at required frequency during Program Operations

1.7. Reporting

SMUD shall assist VCEA as needed in compiling various customer sales and usage statistics that may be necessary to facilitate VCEA's completion of requisite external reporting activities. Such statistics will likely include annual retail sales for VCEA customers, including year-end customer counts and retail electricity sales for each retail service option offered by VCEA.

1.7.1. Subject to change by mutual agreement of the Parties, SMUD will provide the following reports to VCEA via the listed frequency and delivery method.

Report	Frequency	Delivery Method
AR Aging	Weekly, Monthly	SFTP
Call Center Statistics	Weekly, Monthly	Email
Payment Receipts	Weekly, Monthly	SFTP
Invoice Summary Reports Includes: Days to invoice	Weekly, Monthly, and mid-month	SFTP
Monthly Transaction Summary Includes: Opt-up, Opt- down, Opt-in and Opt-out	Monthly	Email
Program Opt Up with Address	Weekly, Monthly	SFTP
Opt Out with Rate Class	Weekly, Monthly	SFTP
Utility User Tax (UUT) where applicable	Monthly	Email
Opt Out with Rate Class	Weekly, Monthly	SFTP
Unbilled Usage	Monthly	SFTP
Retroactive returns	Monthly	Email
Sent to Collections	Monthly	Email
Snapshot	Weekly	SFTP

Snapshot with Addresses	Weekly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP

1.7.2. Ensure monthly status reports are provided during the first week of each month

1.7.3. Ensure weekly status reports are provided during all enrollment periods.

Deliverable(s): Reports will be provided to VCEA as defined in the table above.

Timing: Provided at stated frequency during Program Operations, Monthly Status Reports, Weekly Status Reports during Statutory Enrollment Periods.

2. APPROVAL PROCESS / ACCEPTANCE

Both Parties agree to perform tasks, reviews, and approvals in a timely manner in order to maintain agreed upon timelines as set forth in the Deliverables Schedule (“Appendix A”) to this Task Order 2. SMUD will provide deliverables to VCEA’s Interim General Manager for review by VCEA. Deliverables that require VCEA Board review and approval will be identified and sufficient time will be allocated in the project schedule.

3. TERM AND TERMINATION

3.1. Term of Task Order 2

Task Order 2 is effective on the Effective Date of this Task Order and shall remain in effect for a period of five (5) years from the Launch Date.

The commencement of services hereunder is subject to two phases:

- Phase I: Program Development and Launch will commence on the Effective Date of the Agreement and will generally be completed by 60 days after the Launch Date.
- Phase II: Program Operations will commence on Launch Date of June 1, 2018, or a date mutually agreed to by the Parties. SMUD will provide all services on a time schedule as necessary to meet the Launch Date.

The expiration of this Task Order 2 shall not affect the term of the Agreement.

3.2. Termination

This Task Order 2 may be terminated pursuant to Section 4 (“Term and Termination”) of the Agreement. In the event that VCEA chooses to terminate this Task Order 2 prior to the end of the five (5) year term, VCEA will pay SMUD a Termination Fee equal to fifty percent (50%) of the fee for services for the remaining portion of the five (5) year term, based on the SMUD rates then in effect as of the termination effective date. Such Termination Fee shall be due and payable thirty (30) calendar days after the date of invoice by SMUD to VCEA.

3.3. Transition

VCEA retains sole ownership of account, communication notes and letters, usage and billing information for customers of the Program. In the event of termination of the Agreement or this Task Order 2, subject to the terms of the Agreement, SMUD shall provide to VCEA all such information and data requested by VCEA as reasonably agreed to by the Parties at a transition fee not to exceed \$200,000. SMUD will send requested data to VCEA within 30 days after the Termination Date. SMUD will work with VCEA to coordinate transfer to VCEA, or a VCEA contractor, the designated Call Center phone number. SMUD will coordinate with VCEA or VCEA contractor on how to seamlessly transition customers to web forms provided by another vendor. All other services will terminate upon the Termination Date.

If VCEA chooses to terminate Data Management and Call Center Services prior to year five (5), SMUD will be required to implement a separate method for retrieving Settlement Quality Meter Data (SQMD) from PG&E to be provided to CAISO under Task Order 3: Wholesale and Energy Services (which may not be terminated prior to year five (5)). This transition would include a fee not to exceed fifty-thousand dollars (\$50,000). This not to exceed amount is the estimate of costs required to adjust existing infrastructure to continue to support Wholesale Energy Services independent of the Services in this Task Order 2.

4. COMPENSATION FOR SERVICES

4.1. Data Management and Call Center Services

Data Management and Call Center Services at the selected “Silver” service level will be charged a fixed monthly fee per customer meter enrolled in Program service of \$1.00. The first invoice will be for services starting the month of the Launch Date on June 1, 2018, or as otherwise agreed to by the Parties, and continue through Phase III: Customer Operations. Monthly service fees are fixed through June 30, 2019 and are thereafter annually subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, “Consumer Price Index-All Urban Consumers less food and energy” Series ID: CUUR0000SA0LIE for the immediately prior 12-month period.

4.2. Hourly Rates

This Task Order 2 can be amended to include additional deliverables at the SMUD hourly billing rates in the schedule below. Hourly billing rates are fixed through June 30, 2019 and are thereafter annually subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, “Consumer Price Index-All Urban Consumers less food and energy” Series ID: CUUR0000SA0LIE for the immediately prior 12-month period.

Resources	Hourly Rate
SMUD CEO/VP	\$250.00
Principal	\$190.00
Senior Analyst/Specialist	\$150.00
Analyst/Specialist	\$100.00
Administrative	\$80.00

5. PAYMENT TERMS

Fees incurred under this Task Order 2 will be invoiced monthly. Payment for these fees will be deferred until October 1, 2018, subject to Section 7.9 of the Agreement. For services under this Task Order 2, VCEA shall pay all undisputed invoices within thirty (30) calendar days of date of the invoice.

6. TASK AMENDMENT

This Task Order 2 may only be amended or otherwise modified with the written agreement of the Parties, and approved by each Party’s governing body where required by law or policy.

It is mutually understood that business requirements, resources, and dates may change subject to the applicable terms of Task Order 2. Any changes to the scope defined in Task Order 2 will be addressed through a task amendment process. Material changes that require a formal task amendment, are those which will specifically impact defined scope, schedule, budget, or resources.

7. SIGNATURES

The Parties have executed this Task Order 2 and it is effective as of the date of last signature below.

Valley Clean Energy Alliance

By: _____

Name: _____

Title: _____

Date: _____

Sacramento Municipal Utility District

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A: DELIVERABLES SCHEDULE

#	Deliverable	Timing
1	PG&E customer, billing, and usage data successfully received from PG&E	First Quarter 2018
2	CRM configured to VCEA's requirements	Available April 2018 – Program Operations
3	Call Center available to receive phone, IVR, and email messages from VCEA customers	Available April 2018 – Program Operations
4	iFrame forms provided to Circlepoint for integration into VCEA website	TBD
5	Billing Engine configured to VCEA's requirements	TBD
6	SQMD data provided to CAISO	Provided at required frequency during Program Operations
7	Reports will be provided to VCEA as defined in the table above.	Provided at stated frequency during Program Operations

EXHIBIT B: VCEA Enterprise Risk Policy

To be developed after Agreement execution.

Amendments

This Exhibit B may be amended by mutual agreement of the Parties without formal amendment to this Agreement. Any amendment to this Exhibit B shall be reflected in the version history below.

Version History

VERSION	CHANGE	DATE
1.0	Post-Execution Version	XXXXX