

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 9

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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:  
Task Order 3 – Wholesale Energy Services

Date: November 16, 2017

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### RECOMMENDATION

Adopt a resolution authorizing the VCEA Interim General Manager, in consultation with VCEA Legal Counsel, to finalize Professional Services Agreement Task Order 3 with SMUD for Wholesale Energy Services, in substantial conformance with the attached Task Order 3, for signature by the VCEA Board Chair.

### BACKGROUND AND ANALYSIS

On October 12, 2017 the VCEA Board approved a Professional Services Agreement with the Sacramento Municipal Utility District (SMUD) to provide launch and operational services for VCEA. The action include the approval of Task Order 1 for technical and energy services, and Task Order 2 for data management/ call center services. The current recommended action would approve Task Order 3 for wholesale energy services. In summary, this Task Order provides the following services to VCEA:

- 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
- Energy procurement credit support service

If approved, Task Order 3 will be added as an attachment to the Professional Services Agreement between VCEA and SMUD.

VCEA staff, legal counsel, and consultants have negotiated the attached draft Task Order 3 with SMUD's executive and legal team. Additional feedback on the draft Task Order was provided by a subcommittee of the VCEA Community Advisory Committee which helped shape the final draft Agreement.

The draft Task Order 3 is structured and timed to run with the overall Professional Services Agreement. The overall cost to VCEA for the services contained in Task Order 3 is within the price of services included in the SMUD proposal which were 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.

#### **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 Task Orders 3, in substantially the same form as attached. Staff believes that the overall Agreement and Task Orders provide a reasonable and stable foundation for the successful launch and operations of VCEA.

#### **Attachments:**

1. Resolution Approving VCEA-SMUD Master Services Agreement Task Order 3
  - Resolution Exhibit A – Form Master Services Agreement Task Order 3

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2017- \_\_\_\_\_

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING PROFESSIONAL SERVICES AGREEMENT FOR IMPLEMENTATION AND OPERATIONAL SERVICES TASK ORDER 3 – WHOLESALE ENERGY SERVICES

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

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

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

WHEREAS, On October 12, 2017 the VCEA Board approved the Master Professional Services Agreement and Task Order 1 and Task Order 2 to provide program launch and operational services consistent with the SMUD proposal and VCEA Board direction; and

WHEREAS, VCEA and SMUD staff negotiated the attached draft Task Order 3 to provide Wholesale Energy Services to VCEA.

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

1. VCEA Interim General Manager, in consultation with VCEA Legal Counsel, is hereby directed to finalize Task Order 3 for Wholesale Energy Services, in substantial conformance with the attached Task Order 3, for signature by the VCEA Board Chair under the following terms:
  - a. Scope. Any significant changes to the scope, budget, schedule, or length of contract will be brought back to the VCEA Board for consideration.

2. The Chair of the Board is hereby authorized to approve and execute on behalf of VCEA Task Order 3 in substantial conformance with the attached Task Order 3 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 Task Order 3 between VCEA and SMUD

EXHIBIT A

Form Master Professional Services Agreement Task Order 3 between VCEA and SMUD

**Task Order 3  
Wholesale Energy Services**

SMUD and VCEA agree to the following services, terms and conditions as described in this Task Order. This Task Order 3 is for Wholesale Energy Services (“Task Order 3”), 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 3 conflict with any general provisions in the Agreement, the provisions of this Task Order 3 shall take precedence.

The Effective Date of this Task Order 3 is the date of last signature below.

**1. SCOPE OF WORK**

SMUD will provide Wholesale Energy 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 Wholesale Energy 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. Load Forecast Models Development**

SMUD will develop two load forecast models for VCEA. A long-term (10 year) load forecast model will be developed to forecast both total energy usage and peak demand by customer load class out into future years, to use for planning and budgeting. The initial forecast will be performed during Phase I: Program Development and Launch, with annual updates performed during Phase II: Program Operations. A short-term load forecast model will also be developed for daily load forecasting activities associated with scheduling of resources and load.

- 1.1.1. SMUD will evaluate actual historical PG&E customer data for interval loads and rate class information as the basis for creating a VCEA specific forecast of loads expected from the transfer (opt in) of PG&E customers to VCEA’s program.
- 1.1.2. SMUD will work with VCEA to develop assumptions about the number of customers expected within each rate class based upon the number of customers expected to be enrolled in VCEA’s Program (as opposed to customers choosing to opt out).
- 1.1.3. Historic or modeled loads will be adjusted for factors impacting changes in expected customer loads. These factors can include: changes in population, economic health and employment per household, usage due to the impacts of energy efficiency and electricity demand and use caused by major shifts in customer end use, such as increased penetration of electric vehicles. This will

form the basis of the retail load forecast for purposes of projecting expected VCEA revenues.

- 1.1.4. The wholesale load forecast will be developed from the retail load forecast by applying and adjusting for transmission and distribution loss factors as appropriate.
- 1.1.5. SMUD will develop a short term forecast model to use for wholesale scheduling of loads and resources. The model will take key weather variables, weekday type, season, and other relevant variable as inputs to forecast daily VCEA load by hour.
- 1.1.6. SMUD will provide the long-term load forecast results in an Excel-based template with charts to visualize the load data.

**Deliverable(s):** Long-Term (10 year) Load Forecast

**Timing:** November 2017

## **1.2. Wholesale Power Procurement and Risk Policy and Reporting**

SMUD will work with VCEA to develop a Wholesale Power Procurement and Risk Policy (“Policy”). Energy commodity price volatility risk can be significant without adequate hedging practices to help control that risk. VCEA’s adoption of a Policy will guide SMUD in the Power Portfolio Purchase Service and Market Risk Instruments Management tasks.

- 1.2.1. Work with VCEA to develop a Policy for adoption by the VCEA Board. Upon mutual agreement, this policy shall be included as Appendix B to this Task Order 3.
- 1.2.2. Develop a Power Supply Risk Model based on the Policy developed in 1.2.1 to assess and monitor VCEA’s exposure to price volatility risk including developing appropriate risk exposure metrics.
- 1.2.3. Set up reporting structures and tools to use for monthly risk reporting to VCEA. Such reporting mechanisms are to include any deviations from adopted risk policies together with suggested remediation measures if deemed necessary by either SMUD or VCEA.

**Deliverable(s):** Wholesale Power Procurement and Risk Policy

**Timing:** December 2017 (review and Board Approval)

## **1.3. Resource Portfolio Modeling and Power Supply Budget**

SMUD will model the proposed resource mix in an optimization production cost dispatch simulation model in order to assess the estimated cost impacts of the resource mix on overall

power supply portfolio cost. The model output will form the basis for the power supply budget and input into the financial model to determine VCEA target revenue requirements.

- 1.3.1. Develop a detailed resource model using an optimization dispatch simulation model for evaluating power supply options.
- 1.3.2. Obtain indicative pricing offers from suppliers and other relevant sources to inform the modeling.
- 1.3.3. Assess the impact of different hedging strategies to estimate and manage volumetric, price, and locational risks on power supply cost.
- 1.3.4. Provide an assessment to VCEA of the potential benefits and burdens of alternative hedging approaches. Consistent with typical utility practice, the results of the assessment may be expressed as a portfolio risk certainty of 95% confidence level based on past price and volume volatility.
- 1.3.5. Produce a VCEA power supply budget based on the resource portfolio modeling.
- 1.3.6. Work with VCEA to determine power content targets beyond RPS reporting requirements.

#### **1.4. Resource-Related Launch Filings/Registrations/Agreements**

SMUD will assist VCEA by managing all of the necessary pre-launch filings required to run wholesale energy services. The filings include, but are not limited to:

- 1.4.1. CAISO Market Participant Filings
- 1.4.2. SQMD Data Plan Filing with CAISO
- 1.4.3. California Air Resources Board registration
- 1.4.4. CAISO agreements, registration and deposits
- 1.4.5. WREGIS registration
- 1.4.6. Develop and file Initial Integrated Resource Plan
- 1.4.7. CITSS registration
- 1.4.8. Develop and file Resource Adequacy Plans
- 1.4.9. CAISO Scheduling Coordinator filings
- 1.4.10. VCEA OATI registration

**Deliverable(s):** Resource-Related Launch Filings/Registrations/Agreements Submitted

**Timing:** May 2018

#### **1.5. Scheduling Coordinator Service**

SMUD will use its existing relationship as a registered Scheduling Coordinator with the CAISO to act as VCEA's Scheduling Coordinator. This includes maintaining the appropriate credit facilities with the CAISO to include VCEA transactions with other transactions already managed



by SMUD. SMUD will serve as Scheduling Coordinator for both the VCEA wholesale load and the VCEA resource portfolio. This service includes:

- 1.5.1. Maintaining CAISO Scheduling Coordinator certification.
- 1.5.2. Directing CAISO Day-ahead (DA) and Real-time (RT) market activities.
- 1.5.3. Coordinating VCEA load and resource portfolio as a balanced wholesale energy market plan.
- 1.5.4. Verifying market awards for DA and RT load schedules.
- 1.5.5. Coordinating e-tagging for power imports and exports.
- 1.5.6. Submitting forward market Inter-Scheduling Coordinator Trades transactions for energy supply purchases from contracting parties serving as their own Scheduling Coordinator.
- 1.5.7. Performing Scheduling Coordinator roles and responsibilities as indicated in CAISO Tariff Section 4.5.
- 1.5.8. Communicating wholesale market activities with CAISO and counterparties.

#### **1.6. Load and Resource Portfolio Operation Service**

SMUD will provide additional support services for managing the scheduling of wholesale load and power supply resources. These services include:

- 1.6.1. Coordinating with supplying generating power plant operators on outages to adequately factor outages into the VCEA wholesale scheduling needs.
- 1.6.2. Communicating relevant outage information to the CAISO for those generating plants for which SMUD serves as scheduling coordinator.
- 1.6.3. Updating the wholesale load forecast model on a semi-annual basis to account for the number and type of customers added to (or leaving) VCEA's service, and updated information on how VCEA loads may be impacted by climate conditions and other key variables.
- 1.6.4. Coordinating resource activities resulting from material changes to resource portfolio plans.
- 1.6.5. Congestion Revenue Rights (CRRs). SMUD will coordinate on behalf of VCEA in the relevant CAISO processes for allocation of CRRs, to acquire a CRR portfolio for VCEA to maximize VCEA's expected CRR revenues in view of VCEA's planned energy procurement portfolio.

#### **1.7. Wholesale Load and Resource Settlements and Verification**

SMUD will perform all wholesale settlement activities for VCEA, including calculating shadow settlements for all VCEA load and power supplies. This will ensure that complex CAISO invoices are validated. Additionally, SMUD will flag any invoice that appears unusual and which

may be a potential candidate for dispute with the counterparty (whether the CAISO or any other counterparty that supplies load and/or resources to VCEA). SMUD will dispute materially inaccurate settlements and work directly with the counterparty as necessary to resolve any invoice related discrepancy.

#### 1.7.1. WREGIS Coordination and Submittals

- 1.7.1.1. Make all WREGIS filings and submittals required for renewable resources supplying renewable energy for VCEA's power supply.
- 1.7.1.2. Coordinate REC transfers into VCEA's WREGIS account for renewable power purchases in the power supply portfolio.
- 1.7.1.3. Register any VCEA feed-in-tariff (FIT) project into VCEA's WREGIS account as VCEA generators.
- 1.7.1.4. As a key part of WREGIS settlement activities, SMUD will manage and coordinate Qualified Reporting Entity (QRE) services for collection, verification, and reporting of renewable resource meter data to WREGIS as appropriate. Many renewable power project owners directly contract for QRE services for their projects, and in such instances SMUD would not separately provide QRE services.
- 1.7.1.5. For VCEA FIT projects, SMUD will perform or contract for QRE services for those projects. As the CAISO Scheduling Coordinator for VCEA FIT projects, SMUD will have access to the CAISO verified meter data through the Market Results Interface – Settlements (MRIS) system, and can pull meter data from that system for reporting to WREGIS. Alternatively, SMUD will obtain data from PG&E and VCEA FIT project meter data, in accordance with the applicable PG&E meter servicing agreement.
- 1.7.1.6. SMUD will upload data to WREGIS on a monthly basis, as required in accordance with WREGIS procedures, for the creation of Renewable Energy Certificates (RECs) for VCEA power supply, and will use data on the VCEA FIT projects for power purchase settlement purposes.

#### 1.7.2. Settlement Quality Meter Data (SQMD) for VCEA Wholesale Load Settlement

- 1.7.2.1. 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.

### **1.8. Power Portfolio Purchase Service**

SMUD shall provide power portfolio purchase services to and on behalf of VCEA. Many of the transactions will be executed using existing “enabling” agreements that SMUD has with

many parties trading energy in the western United States. SMUD will use its status as an existing CAISO Market Participant to execute CAISO trades on VCEA's behalf. The types of products that SMUD will procure using these existing agreements include but are not limited to: power, ancillary services, resource adequacy capacity, renewable energy (PCC-1 and PCC-2, and as VCEA may determine, PCC-3 to the extent required to manage volumetric risk), carbon allowances, carbon offsets and financial swaps (for power cost hedging) if determined to be appropriate for VCEA

- 1.8.1. SMUD will use its status and credit as an active market participant in western energy markets and the CAISO managed market, to execute specific transactions for the VCEA power portfolio in SMUD's name. It is likely that transactions using SMUD's name will yield more and lower cost power proposals from suppliers than if the transactions are directly in VCEA's name, because of SMUD's established history and credit position with western energy market trading partners.
- 1.8.2. VCEA will have full transparency and approval authority over, in accordance with the Policy, procurement efforts including the counterparties from whom SMUD receives bids on behalf of VCEA and the ultimate prices paid by SMUD for the various components of VCEA's power supply.

**Deliverable(s):** Power Agreements Executed

**Timing:** March 2018

## **1.9. Market Risk Instruments Management**

Following the Policy established in Task 1.2, SMUD will manage hedging of the power supply portfolio (such as Congestion Revenue Rights (CRRs), in addition to any applicable fixed price power supply agreements) which will be part of the VCEA power supply. SMUD will coordinate the use of hedging instruments with VCEA so that any hedging instrument is procured with VCEA's approval or prior authorization.

### **1.10. Update Portfolio Model and Report Power Supply Risk Metrics**

SMUD will update the power supply portfolio model on a monthly basis to reflect changing conditions so that the power supply budget and power supply risk metrics can be updated. SMUD will report this in accordance with the Policy. As part of this process SMUD may recommend changes to the then current Policy.

### **1.11. CAISO Market Monitoring**

SMUD will follow CAISO market trends, issues and rules changes, participate in CAISO stakeholder meetings (in person or remotely), and provide a summary to VCEA of any issues or rule changes that SMUD reasonably believes may impact VCEA's operations.

## **1.12. Resource Portfolio Compliance Reporting**

SMUD will manage all wholesale load and resource portfolio compliance reporting. This is expected to include, but is not limited to:

- 1.12.1. Power Content Label Reporting
- 1.12.2. RPS Compliance Reporting
- 1.12.3. Annual Emission Performance Standard Attestations
- 1.12.4. Annual SSP filings
- 1.12.5. CEC Integrated Energy Policy Report
- 1.12.6. Biennial Storage Progress Report
- 1.12.7. California Air Resources Board (CARB) Compliance Reporting
- 1.12.8. CEC filings and reports

## **1.13. Credit Support Service**

SMUD will provide Credit Support Services to facilitate transactions associated with VCEA's power supply. To implement the power supply for VCEA's customers, with the exception of long-term power purchase agreements executed in VCEA's name, procurement will be in SMUD's name. Provision of Credit Support Services is contingent upon certain facilities being established and maintained. Establishment of the Lock Box Pledge Account and Reserve Account are conditions precedent for SMUD to provide Credit Support Services.

### **1.13.1. Operating Funds**

Prior to the Launch Date, VCEA will establish a Board approved policy for the accumulation of operating funds and prioritizing payments, sufficient to i) fund payments to SMUD for billed power purchases for prior month(s) and current month activity for power purchases; ii) monthly VCEA administrative overhead; iii) payments for services fees to SMUD; iv) amounts owed to VCEA direct counterparties for energy purchases; and v) deposit funds into the Reserve Account. VCEA shall not make prepayments to any third party prior to meeting Reserve Account funding requirements.

### **1.13.2. Lock Box Pledge Account**

VCEA shall set up a Lock Box Pledge Account and establish the related revenue deposit arrangements. However, SMUD will not immediately require VCEA to have PG&E deposit revenue payments directed to the Lock Box Pledge Account. As long as VCEA pays for power supply charges according to the payment timelines in this Task Order 3, SMUD will not call for PG&E to deposit revenues into the Lock Box Pledge Account. If at any time VCEA has not timely paid the billed monthly power supply charge payments in full, then SMUD may exercise its right to have PG&E revenues directed to the Lock

Box Pledge Account, and SMUD's priority rights on such Lock Box funds will be enforced.

- 1.13.2.1. Bank Requirements for Lock Box Pledge Account. The Lock Box Pledge Account shall be set up and held at a commercial bank regulated by the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC") (the "VCEA Bank") and mutually agreed by the Parties. In addition, at all times the VCEA Bank shall have assets of at least \$500 million.
- 1.13.2.2. Lock Box Control and Priority. VCEA shall execute and deliver a deposit account control agreement, substantially in the form attached hereto as Appendix "C" (the "Lock Box Control Agreement"). VCEA hereby grants a present and continuing first priority security interest in and lien upon any funds which may be deposited by PG&E from payments by VCEA customers into the Lock Box Pledge Account as funding for ongoing energy purchases made by SMUD on behalf of VCEA and any fees owed to SMUD for SMUD services. VCEA agrees that the priority of disbursement of funds from the Lock Box Pledge Account is such that no disbursement of funds shall be made prior to sufficient funding of the electronic withdrawals (i.e., direct debit or ACH payment) by SMUD for billed power purchases (i.e. for weekly CAISO transactions and monthly bilateral transactions) for prior month(s) activity and the current month estimated transactions ("Power Payments"). Payments shall be applied to oldest aged invoices first. On a monthly basis, VCEA shall not make payments or pre-payments to any third party prior to paying SMUD for Power Payments and other services.
- 1.13.2.3. Revenue Deposit Agreement. VCEA, SMUD and PG&E shall execute a Revenue Deposit Agreement establishing that SMUD has the right to direct PG&E to deposit all revenue into the Lock Box Pledge Account should VCEA fail to pay undisputed SMUD invoiced power supply charges in a timely manner, triggering the Lock Box Control and Priority deposit provisions.

### **1.13.3. Reserve Account**

VCEA will establish a Reserve Account at a bank, meeting financial strength requirements acceptable to SMUD in accordance with the Reserve Account Control Agreement for the purpose of security for the Power Supply purchase commitments made by SMUD on VCEA's behalf ("Reserve Account"). SMUD will require that VCEA fund the Reserve Account in the amount of \$1.00 for each MWh of wholesale energy procured in SMUD's name and delivered to VCEA, the first of such Reserve Account deposits

beginning when power payments to SMUD commence. The Reserve Account funding shall accumulate at this rate for the term of this Task Order 3. VCEA may request a call on Reserve Account monies for purposes other than specified by the Reserve Account Control Agreement; however SMUD has sole discretion to deny or to accept such request and may add specific conditions to any such use of funds.

1.13.3.1. Bank Requirements for Reserve Account. The Reserve Account shall be set up and held at a commercial bank regulated by the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”) (the “VCEA Bank”). In addition, at all times the VCEA Bank shall have assets of at least \$500 million.

1.13.3.2. Reserve Account Control and Priority. VCEA shall execute and deliver a deposit account control agreement, substantially in the form attached hereto as the “Reserve Account Control Agreement” (Appendix D). VCEA hereby grants a present and continuing first priority security interest in and lien upon any funds which will be deposited by VCEA into the Reserve Account as required by the Task Order 3. The Reserve Account Control Agreement shall limit the use of funds in such Reserve Account (i) to support counterparty or CAISO requests for collateral, (ii) for reimbursement in the event of a third party default, (iii) in the event the Lock Box Account is not sufficiently funded to pay for monthly Transactions; (iv) SMUD’s request for collateral in the event of a material adverse change in VCEA’s financial condition; or (v) for other purpose as mutually agreed by the Parties in writing.

1.13.3.3. Reserve Account Funding. Procedurally, the reserve requirement shall be funded by VCEA on a monthly basis from CCA revenue available after payment of the prior month’s billed and owed obligations for (i) PG&E power related fees, if any; (ii) SMUD power purchases and related charges, including SMUD obligations to CAISO; (iii) monthly VCEA administrative overhead (based on annual budgeted amounts related to CCA activities); (iv) payment of service fees to SMUD; and (v) amounts owed to direct VCEA counterparties for energy purchases. VCEA shall not make pre-payments to any third party, including direct VCEA counterparties prior to funding the monthly reserve requirement.

#### **1.14. Enterprise Risk Management Program Support**

SMUD will work with VCEA to develop an Enterprise Risk Management Program to reduce the chance of loss, identify and take advantage of opportunities, and create greater financial stability for the CCA.

- 1.14.1. Work with VCEA to define risk governance structures and accountability for adoption by the VCEA Board. This will include the facilitation of discussions to establish corporate risk policies, working procedures, escalation processes, and development of a risk organizational chart.
- 1.14.2. Facilitate development of a target reserve policy.
- 1.14.3. Perform an enterprise-wide risk assessment to identify key organizational risks. This includes the facilitation of stakeholder meetings and risk surveys to identify and assess current risks, document current controls and provide recommended risk responses. SMUD will work with VCEA to identify new and emerging risks impacting VCEA's strategic objectives and develop guidelines to empower management and staff to make risk decisions within Board established risk and tolerance levels.
- 1.14.4. Develop risk tools including an enterprise-wide risk-scoring guide that rates risks on likelihood, impact and velocity, both before and after consideration of organizational controls. In addition, SMUD will develop risk assessment templates and risk response guidelines.
- 1.14.5. Develop standardized risk reporting for VCEA Board and stakeholders. This includes bi-annual reporting on the Enterprise Risk Portfolio and quarterly reporting on the Commodity Risk, highlighting performance, exposure, and trajectory.

**Deliverable(s):** Enterprise Risk Management Policy

**Timing:** March 2018

## **2. APPROVAL PROCESS / ACCEPTANCE**

Both parties agree to perform tasks, reviews, and any necessary 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. SMUD will provide deliverables to VCEA's Chief Executive Officer and/or other designated staff for review by VCEA. Deliverables that may require VCEA Board approval will be identified and sufficient time will be allocated in the project schedule to review and attain such approval.

### **3. TERM AND TERMINATION**

#### **3.1. Term of Task Order 3**

This Task Order 3 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, currently scheduled for June 1, 2018.

The commencement of services hereunder consists of two phases:

- Phase I: Program Development and Launch will commence on the Effective Date of the Agreement and will generally be completed on the Phase II: Program Operations commencement date.
- Phase II: Program Operations will commence on the delivery date for power (“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 3 shall not affect the term of the Agreement.

#### **3.2. Transition**

In the event of termination of the Agreement or this Task Order 3, subject to the terms of the Agreement, SMUD shall provide to VCEA all such information and data requested by VCEA as kept in the ordinary course of business, and prepared or collected by SMUD for VCEA Task Order 3 services. SMUD will work with VCEA to confirm the transfer of licenses required to be held as part of the procurement and reporting of Wholesale Energy Services.

### **4. COMPENSATION FOR SERVICES**

#### **4.1. Wholesale Energy Services**

Wholesale Energy Services will be charged at a fixed monthly service fee of \$46,000. The first invoice will be for services starting on the Effective Date of the Agreement and continue through Phase II: Program Operations. Monthly service fees are fixed through June 30, 2019 and are thereafter subject to annual escalation at U.S. Department of Commerce, Bureau of Labor Statistics, “Consumer Price Index-All Urban Consumers less food and energy” Series ID: CUUR0000SA0LIE(12 month period immediately prior).

#### **4.2. Credit Support Service**

Credit Support Services will be charged at a fixed monthly fee of \$0.80 per megawatt hour multiplied by wholesale load supplied less the energy supplied in such month from contracts VCEA has executed in its own name, starting on the Launch Date or a date mutually agreed to by the Parties.



### 4.3. Hourly Rate

This Task Order 3 can be amended to include additional deliverables at the hourly billing rates listed below. Hourly billing rates are fixed through June 30, 2019 and are subject to annual escalation at U.S. Department of Commerce, Bureau of Labor Statistics, “Consumer Price Index- All Urban Consumers less food and energy” Series ID: CUUR0000SA0LIE(12 month period immediately prior)..

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

### 4.4. VCEA Energy Products Cost

VCEA obligations to pay SMUD for Energy Products on behalf of VCEA are separate from any fees owed to SMUD for SMUD Services. Energy Product costs will be passed through to VCEA without mark up. In the month following power delivery, SMUD will invoice VCEA on the 10<sup>th</sup> of the month. Payment from VCEA will be required on the 19<sup>th</sup> of the month, or nine (9) calendar days after VCEA receives SMUD’s invoice, whichever is later. SMUD will pay the Energy Product obligation on the 20<sup>th</sup> of the month.

Notwithstanding VCEA’s right to dispute invoices under Section 8.4 of the Agreement, VCEA shall remit payment for the entire Energy Products cost invoiced even if VCEA disputes a portion (or all) of the Energy Products costs. Accordingly, for avoidance of doubt, VCEA shall not withhold payment for Energy Product costs invoiced to VCEA for the portion that VCEA disputes.

## 5. PAYMENT TERMS

Fees incurred under this Task Order 3 will be invoiced monthly. Payment for these fees (exclusive of: registration fees and deposits associated with resource-related launch filings/registrations/agreements identified in Section 1.4; and, Energy Products costs addressed in Section 4.4) will be deferred until October 1, 2018, as described in the Agreement.

## 6. TASK ORDER 3 AMENDMENT

This Task Order 3 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 3. Any changes to the scope defined in Task Order 3 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. POTENTIAL CONFLICTS**

### **7.1. NON-DISCRIMINATORY TRADES**

VCEA recognizes that there may be periods when VCEA, SMUD, and other CCA entities to which SMUD may be providing Wholesale Energy Services are competing for the same or similar Energy Products. Decisions by SMUD to transact for VCEA will be made on a non-discriminatory basis and will be based on the same methods and procedures used to transact on behalf of SMUD or other clients that hold agreements similar to this Task Order 3.

- 7.1.1. Pooling of Trades. Where possible, SMUD will pool the total requirement of VCEA, SMUD, and other CCAs into a single bid or auction for Energy Products. Energy Product volumes and the associated costs will be allocated pro-rata to each of the entities (SMUD, and/or VCEA, and/or other CCAs) participating in the pooled bid or auction so that each entity will incur the same unit transaction cost.
- 7.1.2. Non-Pooled Trades. There may be periods where SMUD does not pool the Energy Product requirement between VCEA, SMUD, and other CCAs into a single bid or auction for Energy Products, which may include times when VCEA specifically requests a separate bid or auction for Energy Products, or when VCEA, SMUD, or other CCAs have set different bid or auction limits and/or requirements for requested Energy Products. For such separate bids or auctions, SMUD will maintain strategy confidentiality for the auctions/bids between VCEA and other CCAs.
- 7.1.3. In the event VCEA seeks more information regarding the consistency and or objectivity associated with any pooled or non-pooled trades undertaken by SMUD on behalf of VCEA, VCEA shall submit a written request to SMUD for further explanation within 15 business days of VCEA's first learning of such activities or trades. SMUD shall then have 15 business days to provide a written response to VCEA identifying and explaining the specifics of the particular event, the parties involved, and the estimated cost or operational impacts on VCEA. If after receiving such SMUD response VCEA believes SMUD's action might have discriminated

against VCEA in a material manner, VCEA shall have the right to initiate a dispute pursuant to Section 13 of the Agreement.

## **7.2. NON-EXCLUSIVE RELATIONSHIP**

VCEA hereby expressly acknowledges that SMUD may provide the same or similar services as contemplated under this Task Order 3 to other CCA entities. VCEA specifically acknowledges that SMUD is not precluded from representing or performing similar or related services for other persons, companies or organizations.

7.2.1. In performing such activities, SMUD will, subject to the terms and conditions set forth in this Task Order 3, be entitled to enter into matching purchase and or sale transactions with VCEA and other transaction counterparties from or to which SMUD may purchase or sell Energy Products. (any such transactions will be identified and reported).

7.2.1.1. Unless otherwise mutually agreed to by the Parties, any transactions between SMUD and VCEA under a matching transaction shall be on the same cost and delivery terms and conditions (except for billing and payment, which shall be pursuant to this Task Order 3) as the terms and conditions of the applicable matching transaction. SMUD shall resell matching transactions at the same price as SMUD paid for the transaction and VCEA shall pay to SMUD the corresponding amount payable by SMUD to the transaction counterparty and any amounts payable to any third party related entities, including but not limited to transmission service charges, transmission loss payments costs, CAISO fees and assessments and the like incurred by SMUD.

7.2.1.2. Notwithstanding any other provision of this Task Order or the Agreement, if the transaction counterparty is another SMUD client for which SMUD is providing similar wholesale energy services, the price of the transaction shall be set at market prices utilizing published indices as applicable to the transaction and where available.

7.2.2. VCEA acknowledges that SMUD owns certain power generation resources and has established, or may establish, contractual relationships with third party power generators or producers for its own load-serving purposes. VCEA further acknowledges that SMUD purchases and sells Energy Products in its normal course of business for its own load-serving purposes. Notwithstanding the existence of such arrangements, VCEA and SMUD both represent that that the existence of such

arrangements for SMUD's load serving purposes does not in and of itself create a conflict of interest.

7.2.3. The Parties specifically recognize and accept that there may be purchases and sales of Energy Products between and among SMUD clients, including VCEA, and that such transactions are the normal course of business in providing wholesale services, and that such transactions do not create any conflict of interest for SMUD in carrying out its obligations to VCEA pursuant to this Task Order 3.

### **7.3. EXCLUSIONS**

7.3.1. Notwithstanding any terms of the Agreement or Task Order 3 to the contrary, in no event is SMUD obligated to enter into, or to provide any services respecting any transaction that is regulated as a "swap" pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

7.3.2. SMUD shall not be liable to VCEA for the failure of any counterparty, including but not limited to any transaction counterparties (i.e. when SMUD is trading as principal in the transaction), to pay or perform on its obligations. In the event of such failure by transaction counterparty, SMUD shall pursue any action against such defaulting entity at the direction of VCEA, at VCEA's sole cost and expense.

7.3.3. Under no circumstances shall SMUD be liable to VCEA for the failure of CAISO to pay, or for assessments made by the CAISO for VCEA, unless failure to pay or assessments result from SMUD's breach of this Task Order 3, subject in all cases to the limitations contained in the Agreement.

7.3.4. Unless otherwise mutually agreed to by the Parties in writing, SMUD shall have no obligation to enter into transactions on behalf of VCEA utilizing SMUD's trading agreements that extend beyond the current termination date of this Task Order 3, which termination date shall be the last day of the current initial term, or the renewal term if applicable. If the term of this Agreement is terminated early due to an event of default other than bankruptcy, then for existing transactions, SMUD and VCEA will continue to operate under the terms of the Agreement with regard to such transactions until such time as the individual transactions terminate or are fully settled. Nothing in this Task Order or Agreement shall prevent SMUD and VCEA from agreeing to settle any such transaction prior to the previously agreed settlement date of the transaction.

7.3.5. SMUD will make all reasonable efforts consistent with Prudent Utility Practice to meet VCEA's Policy and VCEA's bid offers, but the Parties recognize that market, power system or other conditions may from time to time be such that deviations from VCEA's Policy and or bid offers may occur. SMUD shall report within three (3) business days any such deviations to VCEA together with an explanation of how and why such deviations occurred and the estimated cost impacts on VCEA's power cost.

## **8. DEFINITIONS**

**Volumetric Risk:** Risk associated with MWh volume changes as compared to expected volumes. Examples include budget load forecast as compared to actual as well as day ahead load forecast as compared to actual. These differences may create the need for short term buys or sells into the market at unhedged prices. This risk can be difficult to manage a priori as load deviations are typically weather driven and present themselves in the short-term / real-time operations window.

**Price Risk:** Risk associated with market price volatility for that portion of expected load that is not firmly priced. It is possible to fix prices for much if not all of a portfolio on a forward-looking basis. However, price volatility and volumetric changes will inevitably occur on a short-term basis.

**Locational Risk:** Risk associated with locational differences between where a generator places energy onto the grid and the place where a load serving entity pulls energy off the grid. In the CAISO, this is reflected as the Losses and Congestion components of published prices at each node. This risk can be managed with products in the market, however, volumetric risk remains on a short-term basis.

**Energy Products:** Means all commodities and commodity related products, both physical delivery and financial instruments, related to meeting the wholesale energy, regulatory, hedging, and or risk management needs of VCEA. The types of products include, but are not limited to: Energy; Capacity; Resource Adequacy; Local Capacity; System Capacity; Ancillary Services; Environmental Attributes (including but not limited to RECs, Carbon Allowances, and other required environmental attributes); Forwards; Futures; Swaps; Options; Congestion Revenue Rights; and other energy and commodity related products as needed.

**9. SIGNATURES**

The Parties have executed this Task Order 3 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:** \_\_\_\_\_

Approved as to form: \_\_\_\_\_

## APPENDIX A: DELIVERABLES SCHEDULE

#	Deliverable	Timing
1	Long-Term (10 year) Load Forecast	November 2017
2	Wholesale Power Procurement and Risk Policy	December 2017 (review and Board Approval)
3	Resource-Related Launch Filings/Registrations/Agreements Submitted	May 2018
4	Power Agreements Executed	March 2018
5	Enterprise Risk Management Policy	March 2018

**APPENDIX B: WHOLESALE POWER PROCUREMENT AND RISK POLICY**

**To be developed after Task Order 3 execution.**

**Amendments**

This Appendix B may be amended by mutual agreement of the Parties. Any amendment to this Appendix B shall be reflected in the version history below.

**Version History**

<b>VERSION</b>	<b>CHANGE</b>	<b>DATE</b>
1.0	Post-Execution Version	XXXXXX



**APPENDIX C: LOCK BOX CONTROL AGREEMENT**

**LOCK BOX CONTROL AGREEMENT**

Date: The \_\_\_ day of \_\_\_\_\_, 201\_\_

Debtor: Valley Clean Energy Alliance  
("VCEA")

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

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

Depository Institution: \_\_\_\_\_

Address:  
Attention: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

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

several, and joint and several.

(d) “Depository Institution” means the Depository Institution shown above.

(e) “Secured Party” means the Secured Party shown above.

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

2. **Agreement of the Parties.** The VCEA, SMUD and the Depository Institution agree to all of the provisions in this Agreement.

3. **Security Interest.** VCEA has given SMUD a first priority security interest in, and has pledged and assigned to SMUD, the following property (the “Collateral”):

All of VCEA’s existing and future accounts with the Depository Institution identified below, and all amendments, extensions, renewals and replacements of the accounts (all called the “Account”), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

Account number(s)\_\_\_\_\_with the Depository Institution, and all amendments, extensions, renewals and replacements of the account(s) (all called the “Account”), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

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

4. **Control.** If the Collateral is one or more deposit accounts under Article 9, by signing this Agreement VCEA, SMUD, and the Depository Institution are giving SMUD Control over the Collateral, and are perfecting the Security Interest in the Collateral by Control. Whether or not the Collateral is a deposit account under Article 9, the Depository Institution will comply with all instructions and other directions originated by SMUD. This means that the Depository Institution will comply with all orders, notices, requests and other instructions of SMUD relating

to the Collateral, including but not limited to orders, notices, requests and other instructions to withdraw or transfer any Collateral, and to pay or transfer any Collateral to SMUD in the manner provided herein. The Depository Institution will promptly mark its records to register SMUD's Security Interest in the Collateral. SMUD and VCEA agree that the Collateral will be dispersed as follows: 1) SMUD will retain all monies due and payable to SMUD 2) SMUD will fund the Reserve Account, and 3) SMUD will retain \$275,000, which will be applied as a credit toward the current month's services 4) the remaining Collateral will be transferred back to VCEA's operating account.

5. **Rights of VCEA and Others.** Until the Depository Institution receives SMUD's notice that VCEA's rights in the Account are suspended (the "Shifting Control Notice"), the Depository Institution will comply with all notices, requests and other instructions from VCEA for disposition of funds in the Account. This includes but is not limited to orders, notices, requests or instructions to withdraw or transfer any of the Collateral, and to pay or transfer any of the Collateral to VCEA or any other person or entity, but not to redeem or terminate the Account. After the delivery by SMUD of the Shifting Control Notice to the Depository Institution, unless SMUD agrees in writing: (a) the Depository Institution will not permit VCEA or any other person or entity except SMUD to withdraw or transfer any of the

Collateral, and (b) the Depository Institution will not comply with any order, notice, request or other instruction from VCEA or any other person or entity except SMUD relating to any of the Collateral, and (c) the Depository Institution will not pay or transfer any of the Collateral to VCEA or any other person or entity except SMUD, or to any other account except the Account. At all times after the Depository Institution receives the Shifting Control Notice, unless SMUD agrees or unless SMUD withdraws the Shifting Control Notice, the Depository Institution will not honor any check or other item drawn by VCEA on the Account or any other withdrawal or transfer by VCEA from the Account, except to SMUD. The form of Shifting Control Notice is attached hereto as Schedule A.

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

- (a) No person or entity except SMUD has Control over any of the Collateral. Neither VCEA nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCEA nor the Depository Institution will permit any person or entity except SMUD to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCEA nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless SMUD otherwise requests or agrees in writing, VCEA is and will remain the sole account holder of the Account.
  
- (b) No person or entity (except VCEA, SMUD, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. VCEA and the Depository Institution will immediately notify SMUD if any person or entity (other than VCEA, the Seemed Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.

- (c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and will not give, any Security for any of the Collateral to VCEA or any other person or entity.
- (d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. SMUD is not personally liable to the Depository Institution for any fees, return checks, or other return items.
- (e) The Depository Institution is a bank, as defined in Article 9. The State of \_\_\_\_\_ is the Depository Institution's jurisdiction for purposes of Article 9.
- (f) VCEA hereby instructs Depository Institution, and Depository Institution hereby agrees, to furnish to SMUD statements of the Account as well as online access to enable SMUD to monitor activity in the Account, all as customarily provided to customers of Depository Institution at the times such statements and access are normally provided to customers of Depository Institution, through the normal method of transmission, at VCEA's expense. Additionally, VCEA hereby instructs Depository Institution, and Depository Institution agrees, to make available to SMUD and VCEA copies of all daily debit and credit advices of the Account and any other item reasonably requested by SMUD. If Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to VCEA, Depository Institution shall make a reasonable effort to give notice to SMUD and VCEA of such legal process.

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

orders, and other legal process.

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

Valley Clean Energy Authority

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

Sacramento Municipal Utility  
District

By: Arlen Orchard  
Title: CEO and General  
Manager

---

Depository Institution

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

9.1. **Schedule A**

**SHIFTING CONTROL NOTICE**

To: [Depository Institution]  
[Address]

**9.2.Re: Depository Account Control Agreement dated \_\_\_\_\_ by and Valley Clean Energy Authority, Sacramento Municipal Utility District and [Depository Institution]**

Ladies and Gentlemen:

This constitutes a Shifting Control Notice as referred to in Section 5 of the above referenced agreement.

Sacramento Municipal Utility District

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By:

Date:



**APPENDIX D: RESERVE ACCOUNT CONTROL AGREEMENT**

**RESERVE ACCOUNT CONTROL  
AGREEMENT**

Date: The \_\_\_ day of \_\_\_\_\_, 201\_\_

Debtor: Valley Clean Energy Alliance

Address:

Fax No.: \_\_\_\_\_

Secured Party: Sacramento Municipal Utility District

Address:

Depository Institution: \_\_\_\_\_

Address: Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax No.: \_\_\_\_\_

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

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

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

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

All of VCEA’s existing and future accounts with the Depository Institution identified below, and all amendments, extensions, renewals and replacements of the accounts (all called the “Account”), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

Account number(s) \_\_\_\_\_ with the Depository Institution, and all amendments, extensions, renewals and replacements of the account(s) (all called the “Account”), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

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

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

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

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

- (a) No person or entity except SMUD has Control over any of the Collateral. Neither VCEA nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCEA nor the Depository Institution will permit any person or entity except SMUD to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCEA nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except SMUD (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless SMUD otherwise requests or agrees in writing, VCEA is and will remain the sole account holder of the Account.
- (b) No person or entity (except VCEA, SMUD, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. VCEA and the Depository Institution will immediately notify SMUD if any person or entity (other than VCEA, the Seemed Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.

- (c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and will not give, any Security for any of the Collateral to VCEA or any other person or entity.
- (d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. SMUD is not personally liable to the Depository Institution for any fees, return checks, or other return items.
- (e) The Depository Institution is a bank, as defined in Article 9. The State of \_\_\_\_\_ is the Depository Institution's jurisdiction for purposes of Article 9.
- (f) VCEA hereby instructs Depository Institution, and Depository Institution hereby agrees, to furnish to SMUD statements of the Account as well as online access to enable SMUD to monitor activity in the Account, all as customarily provided to customers of Depository Institution at the times such statements and access are normally provided to customers of Depository Institution, through the normal method of transmission, at VCEA's expense. Additionally, VCEA hereby instructs Depository Institution, and Depository Institution agrees, to make available to SMUD and VCEA copies of all daily debit and credit advices of the Account and any other item reasonably requested by SMUD. If Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to VCEA, Depository Institution shall make a reasonable effort to give notice to SMUD and VCEA of such legal process.

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

8. **Tax Reporting.** Until SMUD notifies the Depository Institution to use a

different name and number, the Depository Institution will make all reports relating to the Collateral to all federal, state and focal tax authorities under the name and tax identification number of VCEA.

9. **Waiver, Changes, and Cancellation.** Nothing in this Agreement can be waived, changed, or cancelled, except by a writing executed by VCEA, SMUD, and the Depository Institution, and except that this Agreement may be cancelled by a writing signed by SMUD and sent to the Depository Institution in which SMUD releases the Depository Institution from any

further obligation to comply with instructions and other directions originated by SMUD with respect to all of the Collateral. Except under the previous sentence, nothing in this Agreement will be affected by any act or omission by any person or entity.

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

Valley Clean Energy Alliance

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

Sacramento Municipal Utility  
District

By: Arlen Orchard  
CEO and General Manager

---

Depository Institution

By: \_\_ Title: