Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, February 9, 2023 at 5:30 p.m.
City of Davis Community Chambers
23 Russell Blvd., Davis, CA 95616

A 30 minute reception, open to the public, will begin at 5 p.m.

The February 9, 2023 Board meeting will be in-person. Zoom participation will not be supported or available to the public at this meeting. VCE will, to the best of its ability, provide hybrid and remote options for VCE meeting participants and to the public; however, VCE cannot guarantee these options will be available due to technical limitations outside of our control. For assurance of public comment, VCE encourages in-person and written public comments to be submitted as described below when possible. VCE, to the best of its abilities, will **provide** participation via the Zoom platform at future meetings.

Pursuant to Assembly Bill 361 (AB 361), legislative bodies may meet remotely without listing the location of each remote attendee, posting agendas at each remote location, or allowing the public to access each location, with the adoption of certain findings. The Board of Directors have found that the local health official recommended measures to promote social distancing and authorized the continuation of remote meetings. On January 31, 2023, Governor Newsom confirmed his previously stated intent to end the state's COVID-19 State of Emergency effective February 28, 2023, as announced by the Governor on October 17, 2022.

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Alisa Lembke, VCEA Board Clerk/Administrative Analyst, at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@valleycleanenergy.org.

If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of VCEA staff who will distribute the information to the Board members and other staff.

Please note that the numerical order of items is for convenience of reference. Items may be taken out of order on the request of any Board member with the concurrence of the Board. Staff recommendations are advisory to the Board. The Board may take any action it deems appropriate on any item on the agenda even if it varies from the staff recommendation.

Board Members: Tom Stallard (Chair, City of Woodland), Gary Sandy (Vice Chair, Yolo County), Jesse Loren (City of Winters), Will Arnold (City of Davis), Mayra Vega (City of Woodland), Lucas Frerichs (Yolo County), Richard Casavecchia (City of Winters), Bapu Vaitla (City of Davis)

5:30 p.m. Call to Order

1. **Welcome.**
2. **Board Clerk to Administer Oath of Office to new Board Members (Government Code § 1362)**
3. **Public Comment:** This item is reserved for persons wishing to address the Board on any VCE-related matters that are not otherwise on this meeting agenda or are listed on the Consent portion of the agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, electronically submitted comments should be limited to approximately 300 words. Comments that are longer than 300 words will only be read for two minutes. All electronically submitted comments, whether read in their entirety or not, will be posted to the VCE website within 24 hours of the conclusion of the meeting. See below under **PUBLIC PARTICIPATION** on how to provide your public comment.

CONSENT AGENDA

4. **Authorization to continue remote public meetings as authorized by Assembly Bill 361.**
5. **Approve January 19, 2023 special Board meeting Minutes.**
6. **Receive 2023 Long Range Calendar.**
7. **Receive Financial Updates December 31, 2022 financials (unaudited) financial statements.**
8. **Receive Legislative update provided by Pacific Policy Group.**
9. **Receive February 1, 2023 Regulatory update provided by Keyes & Fox.**
10. **Receive Community Advisory Committee January 26, 2023 meeting summary.**
11. **Receive SACOG Grant – Electrify Yolo Project update.**
12. **Receive 2023 Power Charge Indifference Adjustment (PCIA) and Rates update.**
13. **Approve Employee Handbook updates. (Action)**
14. **Approve amendment to Polaris agreement regarding the AgFIT dynamic pricing pilot. (Action)**
15. **Approve First Principles Advisory (FPA) agreement to provide portfolio modeling services to assess increased renewables. (Action)**
16. **Approve VCE-Redwood Coast Energy Authority (RCEA) Resource Adequacy (RA) swap agreements to satisfy a portion of RCEA's mid-term reliability requirement. (Action)**

REGULAR AGENDA

17. **Receive Legislative and Regulatory updates. (Information)**
18. **Receive and discuss Wholesale Energy Risk Management Policy proposed modifications. (Information/Discussion)**
19. **Receive annual Strategic Plan update. (Information/Discussion)**
20. **Board Member and Staff Announcements:** Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members of VCEA expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.

21. **Adjournment/Announcement:** The Board will adjourn to the next regular meeting scheduled for Thursday, March 9, 2023 at 5 p.m.

PUBLIC PARTICIPATION: **Public Comments:** Public participation for this meeting will be done electronically via e-mail and during the meeting as described below.

Public participation via e-mail: If you have anything that you wish to be distributed to the Board and included in the official record, please e-mail it to VCE staff at Meetings@ValleyCleanEnergy.org . If information is received by 3:00 p.m. on the day of the Board meeting it will be e-mailed to the Board members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting. Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Board and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 3, Public Comment. Written public comment on individual agenda items should include the item number in the "Subject" line for the e-mail and the Clerk will read the comment during the item. Items read cannot exceed 300 words or approximately two (2) minutes in length. All written comments received will be posted to the VCE website.

Verbal public participation during the meeting: If participating during the meeting, please complete a **Comment Card and return to the Board Clerk**. **VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.**

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: https://valleycleanenergy.org/board-meetings/.

Accommodations for Persons with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Alisa Lembke, VCE Board Clerk/Administrative Analyst, as soon as possible and preferably at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@ValleyCleanEnergy.org.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 4

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Renew Authorization to continue Remote Public Meetings as authorized by Assembly Bill 361

DATE: February 9, 2023

Recommendation

VCE Board renew authorization for remote (video/teleconference) meetings, including any standing or future committee(s) meetings and Community Advisory Committee meetings, by finding:

1. Pursuant to Assembly Bill 361 (AB 361), that the COVID-19 pandemic state of emergency is ongoing.

Background/Summary of AB 361

Pursuant to Government Code Section 54953(b)(3) legislative bodies may meet by "teleconference" only if the agenda lists each location a member remotely accesses a meeting from, the agenda is posted at all remote locations, and the public may access any of the remote locations. Additionally, a quorum of the legislative body must be within the legislative body's jurisdiction.

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote locations, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body's jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021, the Governor signed AB 361, which kept some of the provisions of Executive Order N-29-20. Pursuant to Government Code Section 54953(e), legislative bodies may meet remotely and do not need to list the location of each remote attendee, post agendas at each remote locations, or allow the public to access each location.

However, legislative bodies must first find either that: (1) the legislative body is meeting during a state of emergency and determine by majority vote that meeting in person would present an imminent risk to the health or safety of attendees; or (2) state or local health officials impose or recommend social distancing measures. Government Code Section 54953(e)(1). The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing. Government Code Section 54953(e)(3). On January 1, 2024, Government Code Section 54953(e) is repealed.

The recommended action is required by AB 361 to continue meeting remotely during a declared state of emergency. Since March 1, 2022, the Yolo County Health Officer is no longer expressly recommending social distancing, although she still encourages the use of facial coverings/masks indoors. The VCE Board retains discretion under AB 361 to independently determine that remote meetings should continue because meeting in person would present imminent risks to the health and safety of attendees. Staff recommends that the Board make a finding that holding meetings in person would present an imminent risk to the public for the following reasons:

- The facilities in which the VCE Board meet were not designed to prevent the spread of infection by promoting mask usage, social distancing (including between Board members), or by use of increased ventilation/air filtration or other sanitary measures.
- Some staff, Board members, and community members who would otherwise participate in VCE meetings to participate in Board meetings, and some of these community members are likely at high risk for serious illness from COVID-19 and/or live with someone who is high risk.

On January 31, 2023, Governor Newsom confirmed his previously stated intent to end the state's COVID-19 State of Emergency effective February 28, 2023, as announced by the Governor on October 17, 2022.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 5

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Approval of Minutes from January 19, 2023 Special meeting

DATE: February 9, 2023

RECOMMENDATION

Receive, review and approve the attached January 19, 2023 special meeting Minutes.

MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS SPECIAL MEETING
THURSDAY, JANUARY 19, 2023

The Board of Directors of the Valley Clean Energy Alliance duly noticed their special meeting scheduled for Thursday, January 19, 2023 at 5:00 p.m., to be held via Zoom webinar. Chair Jesse Loren established that there was a quorum present and began the meeting at 5:04 p.m.

Board Members Present:	Jesse Loren (departed at 5:46 p.m.), Tom Stallard, Gary Sandy, Lucas Frerichs, Will Arnold, Bapu Vaitla, Mayra Vega (arrived at 5:26 p.m.)
Members Absent:	Richard Casavecchia

Welcome and Board Clerk Administering the Oath of Office	Chair Loren welcomed the Board and new members. The Board Clerk administered the Oath of Office to the following: Lucas Frerichs, Will Arnold, and Bapu Vaitla.
Elections of Officers for 2023	Director Frerichs made a motion to nominate Tom Stallard as Chair and Gary Sandy as Vice Chair, seconded by Director Arnold. Both accepted the nomination. Motion passed with Vega and Casavecchia absent. Director Loren congratulated both.
Public Comment – General and Consent	Chair Stallard opened the floor for public comment on both the general and Consent agenda items. Board Clerk Alisa Lembke informed those present that a written public comment was received from James Skeen on January 14, 2023. Mr. Skeen's public comment was read into the record. Ms. Lembke informed those present that there are several verbal public comments. <u>Verbal Public Comments</u>: Mark Aulman Introduce himself as the new Community Advisory Committee (CAC) Chair for 2023. Rahul Athalye introduced himself as the new CAC Vice Chair for 2023.
Approval of Consent Agenda	Motion made by Director Frerichs to approve the consent agenda items, seconded by Director Sandy. Motion passed with Vega and Casavecchia absent. The following items were:

4. Authorized to continue remote public meetings as authorized by Assembly Bill 361;
5. Approved December 8, 2022 Board meeting Minutes;
6. Received 2023 Long Range Calendar;
7. Received Financial updates November 30, 2022 (unaudited) financial statement;
8. Received Legislative update provided by Pacific Policy Group;
9. Received December 2022 Regulatory update dated January 11, 2023 provided by Keyes & Fox;
10. Received Community Advisory Committee December 15, 2022 meeting summary;
11. Received quarterly Customer Participation update; and,
12. Board supported proposed 2023 legislation to remove Assembly Bill 843 Sunset Limit for Bioenergy Market Adjusting Tariff (BioMAT) program.

Item 13: Receive update on VCE's long-term power portfolio (Information)

Executive Officer Mitch Sears introduced this item, and VCE Staff Gordon Samuel provided an overview of VCE's long-term power portfolio.

(Mayra Vega arrived at 5:26 p.m.)

Concerns were raised by the Board about security around the photovoltaic and battery storage systems -facilities that VCE purchases power from. Staff informed those present that it is up to the individual project owners to secure their facilities.

There were no verbal or written public comments.

Item 14: Receive 2022 Customer year-end review presentation. (Information)

Mr. Sears introduced this item and VCE Staff Rebecca Boyles. Ms. Boyles thanked VCE Staff and both the CAC Outreach and Program Task Groups for all of their assistance and work this past year.

(Jesse Loren departed the meeting at 5:46 p.m.)

Ms. Boyles provided a 2022 customer year-end review by presenting slides. There were no verbal or written public comments.

Item 15: Discuss Board meetings and Brown Act / Assembly Bill 2449 rules regarding teleconferencing meetings.

Mr. Sears introduced this item. Staff is seeking a recommendation from the Board. Staff's recommendation is to return to in-person meetings beginning in February 2023 and to explore options for "hybrid" public meetings to allow flexibility for remote participation by the public and agency staff/consultants. Mr. Sears informed those present that the February 9th regular Board meeting will have a 30 minute reception prior to the meeting. The Board directed Staff to pursue hybrid meetings and to look into the possibility of

(Discussion/ Action)	rotating the meetings around the County within Member jurisdictions. Chair Stallard confirmed with the Board Members present that the VCE Board will continue with monthly meetings on the second Thursday of the month starting at 5 p.m. He also announced the Board's February 9th regular meeting will be held at the City of Davis Community Chambers. There were no verbal or written public comments.
Item 16: Board Member and Staff Announcements	Director Frerichs asked for a SACOG Electrify Yolo Grant Project update at the Board's next meeting. He also suggested that the update include background information on the grant to bring new Board Members up to speed. Mr. Sears reminded those present that CalCCA's Annual meeting is scheduled mid-year to be held in San Diego. Staff will provide information to "save the date". Mr. Sears noted that the Governor's budget proposal came out last week. Although the news is not favorable to climate and energy activities planned, noting that they are looking at an approximate 10% cut across these programs. However, it was good to see a reference to strategic investments in agricultural and water sectors that reduce both peak electricity consumption and water use. VCE has been participating in the California Energy Commission's (CEC) process. He informed those present that CC Power, the Joint Powers Agency of several CCAs, is beginning to look at off shore wind can be incorporated into the overall portfolio for California and CC Power will be engaged in those discussions. Lastly, VCE has been invited to do a presentation to the Graduate School of Management at UC Davis, their energy tract, on CCAs and the AgFIT Dynamic Pricing Pilot program. VCE is also giving the same presentation on AgFIT program to the California Public Utilities Commission (CPUC). Lastly, he announced that VCE received a call from UC Davis law school, who are forming an Energy Society on campus and have asked VCE to talk to some of the students who are interested in energy law.
Announcement and Adjournment	Chair Stallard adjourned the regular Board meeting at 6:16 p.m.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 6

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Board and Community Advisory Committee 2023 Long-Range Calendar

DATE: February 9, 2023

Recommendation

Receive and file the 2023 Board and Community Advisory Committee long-range calendar listing proposed meeting topics.

VALLEY CLEAN ENERGY

2023 Meeting Dates and *Proposed* Topics
Board and Community Advisory Committee (CAC)
(CAC: Topics and Discussion Dates may change as needed)

MEETING DATE		TOPICS	ACTION
~~January 12, 2023~~ **Special Meeting scheduled for January 19, 2023 (3rd Thursday) (REMOTE)**	**Board**	• Oaths of Office for Board Members (Annual - new Members only) • Election of Officers for 2023 (Annual) • Brown Act / AB 2449 – New Legislation on Teleconferencing Meetings • 2022 Year End Review: Customer Care and Marketing • Support Legislation to extend sunset (BioMAT program) • Long-term Power Portfolio Update • Quarterly Customer Participation Update	• Action • Nominations • Discussion/Action • Information • Action • Information • Information
January 26, 2023 **(In Person or Remote)**	**Advisory Committee**	• Legislative Summary/Update (Pacific Policy Group) • 2023 Customer Rate update • Forecasting Customer Ag Energy using hydrological conditions (research results) presentation • Task Group Formation • Quarterly Customer Participation Update	• Information • Information • Information • Discussion/Action • Information
February 9, 2023 **(In person)**	**Board**	• Legislative Summary/Update (Pacific Policy Group) • Update on 2023 PCIA and Rates • Update on SACOG Grant – Electrify Yolo • Strategic Plan Update (Annual) • Enterprise Risk Oversight Committee (EROC) proposed modifications	• Information • Information • Information • Information • Discussion/Action
February 23, 2023 **(Remote)**	**Advisory Committee**	• Power Procurement / Renewable Portfolio Standard Update • Strategic Plan update • Update on 2023 PCIA and Rates	• Information • Information • Information
March 9, 2023	**Board (IN PERSON)**	• Receive Enterprise Risk Management Report (Bi-Annual) • Update on customer programs development • SMUD: Amendment to update Agreement (placeholder)	• Information • Information • Action

March 23, 2023	**Advisory Committee (IN PERSON)**	•	• Information/Discussion • Discussion/Action
April 13, 2023	**Board (IN PERSON)**	• Update on SACOG Grant – Electrify Yolo • Calendar Year 2023 Audited Financial Statements (James Marta & Co.) • SMUD: Amendment to update Agreement (placeholder) • Quarterly Customer Participation Update	• Information • Action • Discussion/Action • Action
April 27, 2023	**Advisory Committee (IN PERSON)**	• Update on Customer Dividend and Programs Allocation • • Quarterly Customer Participation Update • Carbon Neutral by 2030	• Information • Information
May 11, 2023	**Board (IN PERSON)**	• Update on Customer Dividend and Programs Allocation • • Carbon Neutral by 2030	• Information • Action
May 25, 2023	**Advisory Committee (IN PERSON)**	• Net Energy Metering (NEM) 3.0 Update	• Information • Information
June 8, 2023	**Board (IN PERSON)**	• Opt-Out Fees • Update on 3-Year Programs Plan • Forecasting • Net Energy Metering (NEM) 3.0 Update	• Information • Information • Information • Information
June 22, 2023	**Advisory Committee (IN PERSON)**	• Update 3-Year Programs Plan • Review CAC Charge (Annual) • Power Portfolio Renewable Content (*placeholder*)	• Information/Discussion • Discussion • Information/Discussion
July 13, 2023	**Board (IN PERSON)**	• Re/Appointment of Members to Community Advisory Committee (Annual) • Update on SACOG Grant – Electrify Yolo • Quarterly Customer Participation Update • Power Portfolio Renewable Content (*placeholder*)	• Action • Information • Information • Information/Discussion
July 27, 2023	**Advisory Committee (IN PERSON)**		
August 10, 2023	**Board (IN PERSON)**		

August 24, 2023	**Advisory Committee (IN PERSON)**	• Power Procurement / Renewable Portfolio Standard update • Mid-year 2023 rates update • Quarterly Customer Participation Update	• Information • Information • Information
September 14, 2023	**Board (IN PERSON)**	• Certification of Standard and UltraGreen Products / 2022 Power Content Label (Annual) • Enterprise Risk Management Report (Bi-Annual) • Mid-year 2023 Customer rates review	• Action • Information • Information/Discussion
September 28, 2023	**Advisory Committee (IN PERSON)**	• Legislative End of Session update • Update on Programs Plan and 2024 program concepts •	• Information • Information/Discussion • Information/Discussion • Information/Discussion
October 12, 2023	**Board (IN PERSON)**	• Update on SACOG Grant – Electrify Yolo • Update on 2024 draft Operating Budget • Quarterly Customer Participation Update • Strategic Plan update • Update on Programs Plan and 2024 program concepts	• Information • Information • Information • Information/Discussion • Discussion/Action • Information
October 26, 2023	**Advisory Committee (IN PERSON)**	• Update on Power Content Label Customer Mailer • SACOG Update • Quarterly Customer Participation Update • Review CAC Task Group Year-end Reports • Draft 2024 Legislative Platform	• Information • Information • Information • Discussion • Discussion/Action
November 9, 2023	**Board (IN PERSON)**	• 2024 Operating Budget Update • 2024 Legislative Platform	• Information/Discussion • Discussion/Action
November 23, 2023 **(reschedule to November 16th due to the Thanksgiving holiday on Nov. 23rd.)**	**Advisory Committee (IN PERSON)**	• GHG Free Attributes • Power Procurement / Renewable Portfolio Standard Update	• Information • Information
December 14, 2023	**Board (IN PERSON)**	• Approve 2024 Operating Budget (Annual) and 2024 Customer Rates • GHG Free Attributes • Receive CAC Year-end Task Group Reports • Election of Officers for 2024 (Annual)	• Discussion/Action • Action • Discussion • Information

			• Nominations
December 28, 2023 (reschedule?)	**Advisory Committee (IN PERSON)**	• 2024 CAC Task Group(s) formation (Annual)	• Discussion/Action
January 11, 2024	**Board (IN PERSON)**	• Oaths of Office for Board Members (Annual - new Members only) • Election of Officers for 2024 (Annual) • Update on SACOG Grant – Electrify Yolo • Strategic Plan update (Annual) • 2023 Year End Review: Customer Care and Marketing	• Action • Nominations • Information • Discussion/Action • Information
January 25, 2024	**Advisory Committee (IN PERSON)**	• Legislative Summary/Update (Pacific Policy Group) • 2024 Customer Rate update • Strategic Plan update	• Information • Information • Information

Notes: 1. CalCCA Annual Meeting scheduled (tentatively) for May 17 - 19, 2023 (San Diego).
2. Starting in March 2023 all meetings will be held in person.

CAC *PROPOSED* FUTURE TOPICS **Topics and Discussion dates may change as needed**	**ESTIMATED MEETING DATE(S)**
Net Energy Metering (NEM) 3.0 (Information/Discussion/Action)	As needed
Self Generation Incentive Program (SGIP)	TBD
2023 Customer Rates update (Information)	January 2023 / TBD
VCE Forecasting Overview (road map)	Quarter 3
Time of Use (TOU) / Bill Protection update	TBD
Agri-voltaics	
Improving Resiliency through Power Outages	
Legislative Items (as needed)	
Strategic Plan additional updates (as needed)	
Time of Use (TOU) (as needed)	
SACOG Update (as needed)	

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

TO: Board of Directors

FROM: Edward Burnham, Finance and Operations Director
Mitch Sears, Executive Officer

SUBJECT: Financial Update – December 31, 2022 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending December 31, 2022

DATE: February 9, 2023

RECOMMENDATION

Accept VCE Financial Statements (unaudited) for the period of December 1, 2022 to December 31, 2022 (with comparative year to date information) and Actual vs. Budget year to date ending December 31, 2022.

BACKGROUND & DISCUSSION

The attached financial statements are prepared in a form to satisfy the debt covenants with River City Bank pursuant to the Line of Credit and are required to be prepared monthly.

The Financial Statements include the following reports:

- Statement of Net Position
- Statement of Revenues, Expenditures and Changes in Net Position
- Statement of Cash Flows

In addition, Staff is reporting the Actual vs. Budget variances year to date ending December 31, 2022.

Financial Statements for the period December 1, 2022 – December 31, 2022

In the Statement of Net Position, VCEA, as of December 31, 2022, has a total of $8,497,996 in its checking, money market and lockbox accounts, $1,100,000 restricted assets for the Debt Service Reserve account, $1,998,276 restricted assets related to supplier deposits, and $2,709,273 restricted assets for the Power Purchases Reserve account.

The term loan with River City Bank includes a current portion of $712,255. The line of credit with the County of Yolo was paid in full on December 29, 2022. On December 31, 2022, VCE's net position is $15,848,882.

In the Statement of Revenues, Expenditures, and Changes in Net Position, VCEA recorded $5,710,078 of revenue (net of allowance for doubtful accounts), of which $6,588,058 was billed in December, and $3,430,397 represent estimated unbilled revenue. The cost of electricity for the December revenue amount totaled $4,578,927. For December, VCE's gross margin was approximately 13% and net income totaled $599,073. The year-to-date change in net position was $6,114,633.

In the Statement of Cash Flows, VCEA cash flows from operations were $7,616,356 due to December cash receipts of revenues being more than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending December 31, 2022
Below are the financial statement line items with variances >$50,000 and 5%

- Electric Revenue – ($4,422,520) and -5% – Unfavorable variance due to the 2022 Budget incorporated revenues associated with extreme temperatures and drought conditions. These revenues have not fully materialized in the actuals for 2022.

- Purchased Power – ($7,409,799) and -11% – Unfavorable variance due to warmer weather than forecast during the winter months, heat storms in June and September, and gas prices driving short-term power market increases.

- Marketing Collateral – 59,200 and 25% – favorable variance related to the delay of engagement activities related normalization post COVID-19.

- Contingency – $240,000 and 100% – favorable variance to budget is due to not having a need yet to utilize the contingency funds set aside in the budget.

Attachments

1. Financial Statements (Unaudited) December 1, 2022 to December 31, 2022 (with comparative year to date information.)
2. Actual vs. Budget for the year to date ending December 31, 2022

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF NOVEMBER 1 TO DECEMBER 31, 2022

PREPARED ON FEBRUARY 1, 2023

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
DECEMBER 31, 2022
(UNAUDITED)

ASSETS		
Current assets:		
Cash and cash equivalents	$	8,497,996
Accounts receivable, net of allowance		11,085,080
Accrued revenue		3,430,397
Prepaid expenses		53,420
Other current assets and deposits		2,139,195
Total current assets		25,206,088
Restricted assets:		
Debt service reserve fund		1,100,000
Power purchase reserve fund		2,709,273
Total restricted assets		3,809,273
TOTAL ASSETS	$	29,015,361
LIABILITIES		
Current liabilities:		
Accounts payable	$	5,486,908
Accrued payroll		96,998
Interest payable		3,985
Due to member agencies		(28)
Accrued cost of electricity		3,878,641
Other accrued liabilities		948,991
Security deposits - energy supplies		1,980,000
User taxes and energy surcharges		58,729
Limited Term Loan		712,255
Loan - County of Yolo		-
Total current liabilities		13,166,479
Total noncurrent liabilities		-
TOTAL LIABILITIES	$	13,166,479
NET POSITION		
Restricted		
Local Programs Reserve		224,500
Restricted		3,809,273
Unrestricted		11,815,109
TOTAL NET POSITION	$	15,848,882

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF DECEMBER 1, 2022 TO DECEMBER 31, 2022
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING DECEMBER 31, 2022	YEAR TO DATE
OPERATING REVENUE		
Electricity sales, net	$ 5,710,078	$ 85,327,479
Other revenue	-	$ 1,158,974
TOTAL OPERATING REVENUES	5,710,078	$ 86,486,453
OPERATING EXPENSES		
Cost of electricity	4,578,927	$ 74,399,899
Contract services	328,355	$ 2,814,742
Staff compensation	103,712	$ 1,265,933
General, administration, and other	59,031	$ 1,849,431
TOTAL OPERATING EXPENSES	5,070,025	$ 80,330,005
TOTAL OPERATING INCOME (LOSS)	640,054	$ 6,156,448
NONOPERATING REVENUES (EXPENSES)		
Interest income	11,251	$ 46,501
Interest and related expenses	(52,232)	$ (88,316)
TOTAL NONOPERATING REVENUES (EXPENSES)	(40,981)	$ (41,815)
CHANGE IN NET POSITION	599,073	$ 6,114,633
Net position at beginning of period	15,249,809	$ 9,734,249
Net position at end of period	$ 15,848,882	$ 15,848,882

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF DECEMBER 1 TO DECEMBER 31, 2022
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING DECEMBER 31, 2022	YEAR TO DATE
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	$ 6,863,810	$ 71,111,107
Payments received from other revenue sources	-	1,158,283
Payments to purchase electricity	(3,581,110)	(70,929,352)
Payments for contract services, general, and adminstration	4,431,290	937,409
Payments for staff compensation	(97,634)	(1,141,963)
Net cash provided (used) by operating activities	7,616,356	1,135,484
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of Debt	(2,043,417)	602,439
Interest and related expenses	(52,440)	(84,661)
Net cash provided (used) by non-capital financing activities	(2,095,857)	517,778
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	11,251	38,070
Net cash provided (used) by investing activities	11,251	38,070
NET CHANGE IN CASH AND CASH EQUIVALENTS	5,531,750	1,550,413
Cash and cash equivalents at beginning of period	6,775,519	3,292,458
Cash and cash equivalents at end of period	$ 12,307,269	$ 6,088,653
Cash and cash equivalents included in:		
Cash and cash equivalents	8,497,996	8,497,996
Restricted assets	3,809,273	3,809,273
Cash and cash equivalents at end of period	$ 12,307,269	$ 12,307,269

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF DECEMBER 1 TO DECEMBER 31, 2022
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING DECEMBER 31, 2022	YEAR TO DATE
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	$ 640,054	$ 4,423,697
(Increase) decrease in net accounts receivable	336,852.06	(4,114,087.47)
(Increase) decrease in accrued revenue	802,209	(2,464,412.74)
(Increase) decrease in prepaid expenses	(21,338)	853,148.00
Increase (decrease) in accounts payable	4,916,644	125,522.43
Increase (decrease) in accrued payroll	6,078	27,011.00
Increase (decrease) in due to member agencies	-	(117,973.00)
Increase (decrease) in accrued cost of electricity	997,817	(2,451,345.00)
Increase (decrease) in other accrued liabilities	(76,630)	739,870.78
Increase (decrease) in user taxes and energy surcharges	14,671	(74,704.90)
Net cash provided (used) by operating activities	$ 7,616,356	$ 2,322,202

VALLEY CLEAN ENERGY
2022 YTD ACTUAL VS. BUDGET
FOR THE YEAR TO DATE ENDING 12/31/22

Description	YTD Actuals	YTD Budget	YTD Variance	% over/-under
Electric Revenue	$ 85,327,480	$ 89,750,000	$ (4,422,520)	-5%
Other Revenues - Programs	$ 1,158,974	$ -	$ 1,158,974	100%
Interest Revenues	$ 46,826	$ 18,000	$ 28,826	160%
Purchased Power	$ 74,399,899	$ 66,990,100	$ (7,409,799)	-11%
Purchased Power Base	$ 74,399,899	$ 65,669,600	$ (8,730,299)	-13%
Purchased Power Contingency 2%	$ -	$ 1,320,500	$ 1,320,500	100%
Labor & Benefits	$ 1,265,933	$ 1,300,800	$ 34,867	3%
Salaries & Wages/Benefits	$ 1,052,440	$ 1,089,600	$ 37,160	3%
Contract Labor (SMUD Staff Aug)	$ -	$ 40,800	$ 40,800	100%
Human Resources & Payroll	$ 213,493	$ 170,400	$ (43,093)	-25%
Office Supplies & Other Expenses	$ 213,850	$ 201,400	$ (12,450)	-6%
Technology Costs	$ 59,311	$ 39,400	$ (19,911)	-51%
Office Supplies	$ 10,343	$ 2,400	$ (7,943)	-331%
Travel	$ 2,183	$ 6,000	$ 3,817	64%
CalCCA Dues	$ 114,123	$ 127,200	$ 13,077	10%
CC Power	$ 26,891	$ 24,000	$ (2,891)	-12%
Memberships	$ 1,000	$ 2,400	$ 1,400	58%
Contractual Services	$ 2,590,526	$ 2,643,300	$ 52,774	2%
Other Contract Services	$ -	$ 25,200	$ 25,200	100%
Don Dame	$ 9,491	$ 10,200	$ 709	7%
SMUD - Credit Support	$ 531,707	$ 580,600	$ 48,893	8%
SMUD - Wholesale Energy Services	$ 603,594	$ 593,400	$ (10,194)	-2%
SMUD - Call Center	$ 868,431	$ 799,100	$ (69,331)	-9%
SMUD - Operating Services	$ 77,877	$ 60,600	$ (17,277)	-29%
Commercial Legal Support	$ 15,324	$ -	$ (15,324)	100%
Legal General Counsel	$ 106,550	$ 154,800	$ 48,250	31%
Regulatory Counsel	$ 198,318	$ 199,200	$ 882	0%
Joint CCA Regulatory counsel	$ 45,314	$ 32,400	$ (12,914)	-40%
Legislative - (Lobbyist)	$ 60,000	$ 60,600	$ 600	1%
Accounting Services	$ 9,138	$ 26,400	$ 17,262	65%
Financial Consultant	$ -	$ 25,200	$ 25,200	100%
Audit Fees	$ 64,783	$ 75,600	$ 10,817	14%
Marketing	$ 181,000	$ 246,000	$ 65,000	26%
Marketing Collateral	$ 180,800	$ 240,000	$ 59,200	25%
Community Engagement Activities & Sponsorships	$ 200	$ 6,000	$ 5,800	97%
Programs	$ 1,217,082	$ 174,000	$ (1,043,082)	-599%
Program Costs	$ 126,317	$ 174,000	$ 47,683	27%
Programs - AgFIT	$ 1,090,765	$ -	$ (1,090,765)	100%
Rents & Leases	$ 17,600	$ 21,600	$ 4,000	19%
Hunt Boyer Mansion	$ 17,600	$ 21,600	$ 4,000	19%
Other A&G	$ 444,263	$ 369,200	$ (75,063)	-20%
Development - New Members	$ -	$ 25,200	$ 25,200	100%
Strategic Plan Implementation	$ 6,078	$ 51,000	$ 44,922	88%
PG&E Data Fees	$ 282,343	$ 276,000	$ (6,343)	-2%
Insurance	$ 12,249	$ 8,400	$ (3,849)	-46%
Banking Fees	$ 143,592	$ 8,600	$ (134,992)	-1570%
Miscellaneous Operating Expenses	$ 176	$ 7,200	$ 7,024	98%
Contingency	$ -	$ 240,000	$ 240,000	100%
TOTAL OPERATING EXPENSES	$ 80,330,330	$ 72,193,600	$ (8,136,730)	-11%
Interest on RCB loan	$ 35,629	$ 33,600	$ 2,029	6%
Interest Expense - Bridge Loan	$ 52,688	$ 72,900	$ (20,212)	-28%
NET INCOME	$ 6,114,633	$ 17,467,900	$ (11,353,267)	-65%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Board of Directors

From: Mark Fenstermaker, Pacific Policy Group

Subject: Legislative Update – Pacific Policy Group

Date: February 9, 2023

Staff, VCE's lobby services consultant at Pacific Policy Group, and the Community Advisory Committee's Legislative - Regulatory Task Group continue to meet and discuss legislative matters. Below is a summary of recent activities in the California Legislature and Administration.

The first significant deadline looms large at the moment as legislators have until February 17 to introduce bills for consideration in 2023. There have been roughly 600-700 pieces of legislation introduced to date between the Senate and the Assembly and the volume of introduced legislation will increase as the February 17 deadline draws nearer. The majority of legislation introduced so far has been in "spot bill" or "intent bill" form where the bill is seeking to carve out a certain policy space but does not have substantive language or detail for VCE to make an informed decision on how to engage at this time. Legislators will have to amend these types of bills early in March in order to get a referral to a policy committee and continue to advance through the process. It is anticipated that policy committees will begin hearing bills in early to mid-March with the most intense period of hearings occurring the latter half of April.

On the budget side of the equation, activity is mostly taking place behind the scenes as the budget committees and consultants, as well as lobbyists and advocates, firm up their grasp on what's in and what's out of the Governor's proposed 2023-24 budget. The budget committees and subcommittees have just released schedules for hearings to discuss the various proposals from the Administration with subcommittees beginning the first week of March. Our efforts in the budget are focused on Energy Commission's proposed expenditures of the first $100 million of what is slated to be a $1 billion Clean Energy Reliability Investment Plan. The budget proposal from the Administration to the Legislature references investing in the agricultural and water sectors to reduce peak electricity consumption and water use. This creates an opening in the budget process to message about the benefits and opportunities of the AgFIT program and staff, Pacific Policy Group, and the Leg/Reg Task Group are developing strategies for such outreach. VCE is also coordinating with CalCCA's legislative staff and lobbyists on this effort.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

To: Board of Directors

From: Keyes & Fox, Regulatory Consultant

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: February 9, 2023

Please find attached Keyes & Fox's January 2023 Regulatory Memorandum dated February 1, 2023, an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

Attachment: Keyes & Fox Regulatory Memorandum dated February 23, 2023.

KEYES&FOX LLP

EQ Research

Valley Clean Energy Alliance

Regulatory Monitoring Report

To:	Valley Clean Energy Alliance (VCE) Board of Directors
From:	Sheridan Pauker, Partner, Keyes & Fox LLP Tim Lindl, Partner, Keyes & Fox LLP Jason Hoyle, Principal Analyst, EQ Research, LLC
Subject:	Monthly Regulatory Update
Date:	February 1, 2023

Keyes & Fox LLP and EQ Research LLC are pleased to provide VCE's Board of Directors with this monthly informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC) over the past month.

IRP Rulemaking

Background: This proceeding governs the biennial Integrated Resource Plan (IRP) process, including load serving entity (LSE) procurement requirements, the establishment of a variety of state- and LSE-level load and procurement forecasts, greenhouse gas (GHG) reduction targets, and ongoing reliability obligations.

Recent Developments: On January 13, the CPUC issued a Proposed Decision (Attachment A) that would order additional supplemental mid-term reliability procurement of 4,000 megawatts (MWs) of net qualifying capacity (NQC) from non-emitting, storage, and/or renewable resources by June 1, 2026 and June 1, 2027 with penalties associated with failure to comply with the requirements of Decision 21-06-035 or the Proposed Decision based on a calculation of the "net cost of new entry." The Proposed Decision would also recommend electric resource portfolios to the CAISO for the 2023-2024 transmission planning process based on a 30 million metric ton (MMT) by 2030 GHG base case portfolio. **VCE's share of the proposed new supplemental procurement would be 8 MW in 2026 and 8 MW in 2027.** On January 17, the CPUC issued Resolution E-5239 approving PG&E's plan to implement the Modified Cost Allocation Mechanism established in D.19-11-016 and D. 21-06-035 by PG&E AL 6654-E and AL 6654-E-A. On January 19, the CPUC issued Draft Comment Resolution E-5238 (PG&E AL 6686-E) on PG&E's request to revise its bundled procurement plan.

Analysis: The new supplemental procurement being proposed is in addition to the 11,500 MW ordered previously in D.21-06-035 and reflects updated California Energy Commission (CEC) load forecasting, climate change, the retirement of fossil-generated assets and projected delays in the procurement of long lead-time resources. The proposal would require LSEs to make procurement data filings on February 1 and August 1 of each year and provides that the CPUC would evaluate compliance with backstop procurement orders every year. The Proposed Decision would postpone requirements for long lead-time resources under D.21-06-035 to 2028. The recommended 30 MMT portfolio assumes 85 gigawatts (GW) of new resources will be built by 2035.

Next Steps: Comments on Draft Resolution E-5252 are due on **February 13**. Comments on the Proposed Decision are due **February 2** and reply comments are due **February 7**, and the matter may be heard as early as the **February 23** Commission meeting. Comments on Draft Comment Resolution E-5238 are due **February 8**.

Additional Information: Draft Comment Resolution E-5238 (Jan. 19, 2023); E-5239 on the Transmission Project Review Process (Jan. 17, 2022); Proposed Decision (Attachment A) on Procurement (Jan. 13, 2023); Draft Comment Resolution E-5252 (Dec. 13, 2023); ALJ Ruling & Attachment (Oct. 7, 2022); ALJ Ruling & Reliable and Clean Power Procurement Program: Staff Options Paper (Sep. 8, 2022); 2022 Incremental Procurement Compliance Filing (Aug. 1, 2022); Docket No. R.20-05-003.

RPS Rulemaking

Background: This proceeding addresses ongoing Renewables Portfolio Standard (RPS) requirements, aspects of the new Voluntary Allocation/Market Offer (VAMO) process, and other tariffs for the purchase of renewable energy.

Recent Developments: On January 9, CalCCA submitted a Protest to PG&E's AL 6794-E Regarding Long-Term Market Offer, requesting that the Commission not approve the Advice Letter unless it is revised to incorporate the detailed schedule as proposed by CalCCA in its Protest. On January 17, PG&E filed a Reply to CalCCA's Protest. VCE filed its Final 2022 RPS Procurement Plan on January 18.

Analysis: D.22-11-021 makes resources made available through the Market Offer (i.e., those resources remaining after the Voluntary Allocation process) somewhat more favorable to LSEs by increasing access to long-term contracts and removing the requirement for 10% incremental slices, but still requires procurement of slices of the available IOU portfolio. PG&E's AL 6794-E provides more favorable terms for LSE purchase of these renewable resources than the previous market offer process which could result in a reduced Power Charge Indifference Adjustment cost for VCE customers.

Next Steps: A Decision approving Final 2022 RPS Procurement Plans and a Ruling on 2023 RPS Procurement plans is expected during the next few months.

Additional Information: VCE's Final 2022 RPS Procurement Plan (Jan. 18, 2023); PG&E Reply to the Protest (Jan. 17, 2023); CalCCA Protest (Jan. 9, 2023); D.22-12-030 (Dec. 19, 2022); PG&E AL 6794-E (Dec. 19, 2022); D.22-11-021 (Nov. 18, 2022); Proposed Decision on RPS Plans (Nov. 9, 2022); Ruling identifying RPS Plan requirements (Apr. 11, 2022); Docket No. R.18-07-003.

RA Rulemaking (2023-2024)

Background: This proceeding considers resource adequacy (RA) requirements for LSEs and introduced the Central Procurement Entity (CPE). The proceeding is divided into an implementation track and a reform track.

Recent Developments: On January 11, PG&E, acting as the Central Procurement Entity (CPE), announced the upcoming issuance of its annual process to procure local Resource Adequacy (RA) or obtain self-shown commitments for local RA in PG&E's distribution service area. On January 20, the ALJ issued a Ruling filing three Energy Division proposals for Implementation Track Phase 3, and other parties filed proposals on this track as well. On January 31, the CPUC released the Final Report of the Qualifying Capacity of Supply-Side Demand Response Working Group.

Analysis: The upcoming changes to resource adequacy will impact how resources are credited for contribution to resource adequacy, how resource adequacy is counted for specific resources, and provide additional tools for planning, tracking, and compliance filing. Specifically, new resource counting approaches for wind will be based in part on the location of the resource, solar and hybrid resources will be adjusted based on the exceedance methodology and account for efficiency losses in battery charging, and energy storage resources may be counted using a modified UCAP-light mechanism. Forthcoming decisions will provide clarity on the specific changes and their potential impact on VCE.

Next Steps: A proposed decision on Reform Track Phase 2 is expected in Q1 2023. A workshop on proposals in Implementation Track Phase 3 is expected in early **February 2023**, and comments on the proposals are due **February 17**. The CAISO draft 2024 Local Capacity Requirements report is expected in **April 2023**. In late Q1 2023 PG&E as CPE is expected to issue its annual competitive solicitation process.

Additional Information: Final Report of the Qualifying Capacity of Supply-Side Demand Response Working Group (Jan. 31, 2023); ALJ Ruling (Jan. 20, 2023); (LIP) Filing Guide V3.0 (Jan. 6, 2023); D.22-12-028 (Dec. 19, 2022); PG&E AL 6501-E and substitute sheets (Dec. 15, 2022); Notice of Availability for final Report on RA Reform Workshop Proposals (Nov. 15, 2022); Proposed Decision on CalCCA Petition (Nov. 9, 2022); PG&E Advice Letter 6706-E-A (disposition letter) (Nov. 4, 2022); CalCCA Petition (Sep. 30, 2022); Ruling on Motion to Shorten Time (Sep. 20, 2022); Motion to Shorten Time / Joint Motion for Clarification (Sep. 16, 2022); Amended Scoping Memo and Ruling (Sep. 2, 2022); Docket No. R.21-10-002.

Demand Flexibility

Background: This rulemaking was opened to update the CPUC's rate design principles and guidance for advancing demand flexibility, and may also modify, consolidate, or eliminate existing dynamic rate pilots. VCE is a party to this proceeding as its scope relates to the AgFIT Pilot. Phase 1-Track A will establish an income-graduated fixed charge for residential rates for all investor-owned electric utilities in accordance with Assembly Bill 205 (Stats. 2022, ch. 61). Phase 1-Track B will first adopt demand flexibility principles and consider expansion of the AgFIT Pilot.

Recent Developments: On January 17, the ALJ issued a Ruling (Attachment) providing guidance for Phase 1 Track A party proposals on income-graduated fixed charges.

Analysis: This proceeding will implement income-graduated fixed charge reform required by AB 205 and the development of principles to guide future dynamic rates and other demand flexibility measures. Expansion of the AgFIT Pilot capacity cap and application to other LSE territories was supported and opposed by several parties. Such expansion would likely unlock more load shifting in the agricultural sector, building upon the initial strong success of AgFIT.

Next Steps: Comments on a CPUC staff proposal to fund consulting services to assist staff with modifying a spreadsheet tool and assessing Track A fixed charge proposals are due **February 3** and replies are due **February 13**. Reply briefs on the ALJ's Ruling (issued December 9) on statutory interpretation in Track A of the Demand Flexibility proceedings are due **February 6**. Parties may serve Track A proposals through concurrent opening testimony by

March 17. Track A opening briefs are due **February 13**. A Track B proposed decision on electric rate design principles and demand flexibility design principles is expected in **March 2023**. A workshop on expanding existing pilots, including AgFIT, and an opportunity for the filing of post-workshop comments is expected in Q2 2023.

Additional Information: ALJ Ruling (Jan. 17, 2023); CalCCA Reply Comments on Scoping Memo (Jan. 4, 2023); Ruling Requesting Briefs (Dec. 9, 2022); CalCCA Comments on Scoping Memo (Dec. 7, 2022); Phase 1 Scoping Memo and Ruling (Nov. 2, 2022); VCE and Polaris Ex Parte Notice (Oct. 10, 2022); OIR (Jul. 22, 2022); Docket No. R.22-07-005.

PG&E Asset Transfer

Background: This proceeding addresses PG&E's Application to transfer its non-nuclear generating assets to a new subsidiary, Pacific Generation, and sell up to 49.9% of its equity interest to third-party investors.

Recent Developments: On January 20, the Assigned Commissioner issued a Scoping Memo and Ruling setting forth the issues to be addressed, denying the applicant's request for an expedited schedule, and establishing a procedural schedule.

Analysis: The Scoping Memo indicates that the CPUC intends this proceeding to be scoped broadly to include all the issues raised in parties' protests. CalCCAs' primary issues, which include ensuring that there are no negative impacts to ratepayers or disparate impacts to CCA ratepayers, are therefore within scope.

Next Steps: Intervenor direct testimony is due **May 16**, and rebuttal testimony is due June 6. Evidentiary hearings are scheduled July 17-21, and opening briefs are due August 11.

Additional Information: Scoping Memo and Ruling (Jan. 20, 2023); ALJ Ruling on prehearing conference (Nov. 15, 2022); PG&E Application (Sep. 28, 2022); Docket No. A.22-09-018.

Transportation Electrification

Background: This rulemaking implements transportation electrification (TE) programs, tariffs, and policies. D.22-11-040 established a $1 Billion rebate program for behind-the-meter EV charging equipment, focused on medium-duty/heavy-duty vehicles and disadvantaged communities and a $25 million pilot program for innovative, equity-focused TE programs administered by CCAs and community-based organizations.

Recent Developments: On January 20, PG&E submitted AL 6837-E on Modification of Transportation Electrification Balancing Account to Add a New Subaccount for Cost Tracking of the Funding Cycle 1 program, per OP 4 of D.22-11-040.

Analysis: PG&E's AL 6837-E is a continuation of the ongoing process to implement EV submetering and grid-integration. These programs may be available for CCA customers, and as additional aspects of the metering and interconnection protocols become available CCAs have the opportunity to establish the foundation for customers' enhanced use of grid-integrated EVs in anticipation of future incentive programs.

Next Steps: The Program Administrator for the rebate program will be selected during the first quarter of 2023.

Additional Information: PG&E AL 6837-E (Jan. 20, 2023); PG&E AL 6797-E (Dec. 21, 2022); Resolution E-5247 (Dec. 16, 2022); PG&E AL 6778-E (Dec. 5, 2022); D.22-11-040 (Nov. 21, 2022); PG&E's Advice Letter 6259-E (Oct. 13, 2022); Ruling entering Staff Proposal on Transportation Electrification Framework to record (Feb. 25, 2022); Docket No. R.18-12-006.

Demand Response Programs (2023-2027)

Background: This proceeding addresses the IOUs' Demand Response (DR) Portfolio Applications required under D.17-12-003 for the years 2023-2027.

Recent Developments: On January 13, the CPUC issued D.23-01-006 approving the Demand Response Auction Mechanism (DRAM) pilot for pilot year 2024 deliveries, and approving and funding continued demand response research. On January 17, the Joint IOUs submitted their Statewide Residential Emergency Load Reduction Program (ELRP) Baseline Evaluation Report to the CPUC. On January 27, the Assigned Commissioner issued a Ruling directing a response to Phase 2 questions, requesting comments on Energy Division staff proposals for changes to the demand response program, providing the Statewide Residential Emergency Load Reduction Program Baseline Evaluation report, and modifying the procedural schedule.

Analysis: 2023 Bridge Year funding plays an important role in maintaining DR program continuity and providing market stability for customer-participants and third-party providers while the future nature and level of DR programs from 2024-2027 will be decided in Phase 2. D.23-01-006 provides continuity in the DR programs while maintaining research funding without making substantive changes to the DRAM pilot.

Next Steps: Opening testimony on the DRAM is due **May 31**, opening briefs are due September 30, and a proposed decision is expected in January 2024. In Phase 2, supplemental and intervenor testimony is due between **February 3** and May 5, opening briefs on Phase 2 are now due June 30, and a proposed decision is expected in October 2023 for the 2024-2027 DR Program.

Additional Information: Assigned Commissioner's Ruling (Jan. 27, 2023); D.23-01-006 (Jan. 13, 2023); Scoping Memo and Ruling (Dec. 19, 2022); Proposed Decision (Dec. 9, 2022); D.22-12-009 (Dec. 6, 2022); Ruling (Sep. 22, 2022); Assigned Commissioner's Scoping Memo and Ruling and DRAM Evaluation report (Jul. 5, 2022); Ruling consolidating Applications (May 25, 2022); PG&E Application (May 2, 2022); Docket No. A.22-05-002.

PG&E 2023 Phase 1 GRC

Background: Phase 1 General Rate Case (GRC) proceedings set PG&E's revenue requirement, including functionalizing costs into categories such as electric distribution or generation, and impact the costs recovered through rates from customers (e.g., bundled, unbundled, or both) for 2023-2026. Phase 2 GRC proceedings determine cost allocation among customer classes (e.g., Residential, Agricultural) and rate design issues. The proceeding is divided into two tracks. Track 1 addresses most matters, including PG&E's requested revenue requirement together with safety and environmental and social justice issues. Track 2 addresses the narrower matters of the reasonableness of the 2019-2021 actual costs recorded in the named memorandum accounts and balancing accounts and, to the extent relevant, safety and environmental and social justice.

Recent Developments: On January 17, the CPUC issued D.23-01-005 (Appendix 1 - Settlement Agreement) that approves the settlement regarding wildfire liability insurance coverage, establishes a revenue requirement of $400 million per year for wildfire liability insurance coverage from 2023 through 2026, and approves coverage which consists entirely of self-insurance for third-party wildfire claims of less than $1 billion per year. On January 20, the ALJ issued a Ruling that adopts procedures for the production of computer model information, including model runs, using the results of operations and rates models of PG&E to generate the tables needed to support confidential decision-making in this proceeding.

Analysis: The decision on wildfire liability insurance coverage will impact electric service costs and allocate financial risks associated with wildfire events as a self-insurance liability to PG&E.

Next Steps: In Track 1, a Proposed Decision is expected in Q2 2023. The Track 2 schedule is currently held in abeyance per an email ruling issued December 13.

Additional Information: ALJ Ruling (Jan. 20, 2023); D.23-01-005 (Appendix 1 - Settlement Agreement) (Jan. 17, 2023); ALJ Ruling (Oct. 21, 2022); PG&E's Amended Application (Mar. 10, 2022); PG&E Affordability Metrics Report (Feb. 23, 2022); PG&E Application (Jun. 30, 2021); Docket No. A.21-06-021.

PG&E 2019 ERRA Compliance

Background: The annual ERRA Compliance proceeding reviews the utility's compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the prior year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries. Phase 1 of the proceeding was resolved with issuance of D.21-07-013. Phase 2 is ongoing and is addressing issues related to the 2019 Public Safety Power Shutoff (PSPS) events.

Recent Developments: On December 19, the CPUC issued a Proposed Decision that would prohibit the Joint Utilities from adjusting future rates to collect any revenue shortfalls, recorded as undercollections in their respective balancing accounts, caused by PSPS events in 2019 – requiring utility shareholders to fund lost revenues from PSPS events. The Proposed Decision would also adopt a methodology to calculate the estimated unrealized revenues the Joint Utilities incurred in 2019 or will incur during future PSPS events.

Analysis: This Proposed Decision would impose the costs of unrealized revenue resulting from PSPS events in 2019 on utility shareholders rather than ratepayers and establish an ongoing accounting methodology applicable to future PSPS events. The result would be lower costs for customers, greater incentives for utility management of infrastructure to prevent and avoid the need for PSPS events while maintaining service to customers, and resolution regarding the backlog of ERRA Compliance proceedings and associated cost recovery.

Next Steps: The Proposed Decision is scheduled to be heard at the **February 2** Commission meeting.

Additional Information: Proposed Decision (Dec. 19, 2022); D.22-07-009 extending statutory deadline (Jul. 18, 2022); Ruling amending schedule (Apr. 6, 2022); Joint Case Management Statement (Feb. 25, 2022); D.21-07-013 resolving Phase 1 (Jul. 16, 2021); PG&E's Application and Testimony (Feb. 28, 2020); Docket No. A.20-02-009.

PG&E 2020 ERRA Compliance

Background: The annual ERRA Compliance proceeding reviews the utility's compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the prior year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries. Phase 1 of this proceeding concluded in April 2022 with issuance of D.22-04-041 approving a settlement agreement. Phase 2 issues related to unrealized sales and revenues resulting from PG&E's Public Safety Power Shutoff (PSPS) events in 2020 has yet to begin.

Recent Developments: No recent developments in the past month.

Analysis: N/A

Next Steps: Phase 2 will not begin until after the Commission resolves issues related to the establishment of a common accounting methodology for PSPS events in Phase 2 of the 2019 ERRA Compliance proceeding (see above).

Additional Information: D.22-08-009 extending statutory deadline (Aug. 11, 2022); Scoping Memo and Ruling (Jun. 21, 2021); Application (Mar, 1, 2021); Docket No. A.21-03-008.

PG&E 2021 ERRA Compliance

Background: The annual ERRA Compliance proceeding reviews the utility's compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the prior year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries.

Recent Developments: No recent developments this month.

Analysis: N/A

Next Steps: Opening Briefs are now due **February 27** and a target date for a Proposed Decision is Q3 2023. The parties will file testimony regarding unrealized PSPS sales and revenue in 2021 on **April 3**.

Additional Information: ALJ Ruling on schedule (Jan. 6, 2023); Assigned Commissioner's Scoping Memo and Ruling (Aug. 9, 2022); PG&E 2021 ERRA Compliance Application (Feb. 28, 2022); Docket No. A.22-02-015.

Building Decarbonization

Background: This proceeding explores reduction of greenhouse gas (GHG) emissions associated with energy use in buildings. D.20-03-027 established the Building Initiative for Low-Emissions Development and the Technology and Equipment for Clean Heating program. D.21-11-002 adopted guiding principles for layering building decarbonization incentives, adopted incentives to help wildfire victims rebuild all-electric, and directed the IOUs to study bill impacts from electrification. D.22-09-026 eliminated gas line extension allowances and subsidies for all customers, in all classes by July 1.

Recent Developments: On January 31, the CPUC issued a Revised Proposed Decision on the Technology and Equipment for Clean Heating (TECH) Initiative that would increase the focus on equity customers, adopt a performance-based approach regarding GHG emission reduction baselines instead of a product-based approach, and clarify that incentive layering is encouraged to leverage the benefits of multiple building decarbonization programs.

Analysis: The revisions to the Proposed Decision provide a greater focus on using the additional funding to aid people who would most benefit from and who may be least able to adapt to the state's climate change mitigation activities, while the encouragement of incentive layering will maximize the value from all building decarbonization programs and support broader program coverage.

Next Steps: The Proposed Decision may be heard at the **February 2** Commission meeting.

Additional Information: Revised Proposed Decision (Jan. 31, 2023); Proposed Decision (Dec. 23, 2022); D.22-09-026 (Sep. 20, 2022); Scoping Memo (Mar. 22, 2022); D.21-11-002 (Appendices A-E) Decision on Building Decarb Phase II (Nov. 9, 2021); D.20-03-027 Establishing Building Decarbonization Pilot Programs (Apr. 6, 2020); OIR (Feb. 8, 2019); Docket No. R.19-01-011.

Microgrids

Background: This proceeding was opened to implement the requirements of SB 1339 (Stern, 2018), regarding the commercialization of microgrids for distribution customers of the large IOUs. The initial three tracks have concluded, and Track 4 and Track 5 address the establishment of a Microgrid Incentive Program, potential contributions that microgrids can make to mitigating capacity shortages in the near-term, the development of a multi-property microgrid framework, and examination of the value of resiliency from microgrids.

Recent Developments: On January 18, the CPUC adopted Resolution E-5242 on PG&E's plan for remote grids as the sole standard microgrid service offering. On January 20, PG&E submitted Supplemental AL 6364-E-A on proposed modifications suspending the capacity reservation component for eligible microgrid distributed technologies and electric standby rate schedules and forms pursuant to D.21-07-011.

Analysis: Resolution E-5242, which allows PG&E to offer remote grids as its standard microgrid service offering, permits development of remote grids when they are the lowest cost option for providing electric service as a means of reducing ratepayer costs, and by avoiding power line extensions in remote areas will also reduce wildfire risk from the electrical grid.

Next Steps: In Track 4, an ALJ Ruling providing an Energy Division Staff Proposal for a Microgrid Multi-Property Tariff was expected in October 2022 but has been delayed. In Track 5, a staff proposal on Definitions, Metrics, Tools, and Methods and Informing Grid Planning is expected in Q1 2023. An ALJ Ruling establishing 2023 scheduling & activities is expected in Q1 2023. Two half-day workshops on the use of limited-export inverters will be held before **February 17**.

Additional Information: Supplemental AL 6364-E-A (Jan. 20, 2023); Resolution E-5242 (Jan. 18, 2023); Resolution E-5230 (Dec.9, 2022); Disposition Letter/Advice Letter 6730-E (Nov. 7, 2022); Disposition Letter for PG&E Advice Letter 6486-E (Oct. 13, 2022); ALJ Ruling Requesting Comments on attached Staff Proposal for Microgrid Incentive Program (Jul. 6, 2022); Scoping Memo (Dec. 17, 2021); Docket No. R.19-09-009.

Commercial EV Real-Time Pricing Pilot

Background: This proceeding approved PG&E's proposed commercial EV rate pilot featuring day-ahead hourly real-time pricing. This pilot includes real-time pricing for both imports from and exports to the grid by commercial EVs.

Recent Developments: On January 30, PG&E submitted AL 6850-E providing its measurement and evaluation study proposal for its real-time pricing pilots, pursuant to D.22-08-002.

Analysis: PG&E's interim evaluation report of its real-time pricing pilot programs will inform the decision on allowing dual participation in the Stage 1 real-time pricing pilot and other load-management programs such as demand response, as well as support a recommendation regarding the extension of the Stage 1 pilot beyond the initial 24-month period.

Next Steps: Opt-in enrollment for the real-time pricing export compensation pilot begins October 1. The proceeding was previously closed but reopened to address PG&E's Petition.

Additional Information: PG&E AL 6850-E (Jan. 30, 2023); PG&E Petition for Modification (Nov. 14, 2022); D.22-10-024 (Export Compensation Settlement) (Oct. 26, 2022); PG&E Proposal (Mar. 24, 2022); Corrected MGCC Study (Mar. 17, 2022); Application & Testimony (Oct. 23, 2020); Docket No. A.20-10-011.

Utility Safety Culture Assessments

Background: This rulemaking will define safety culture concepts and determine how the safety culture of PG&E and other utilities in California will be assessed and evaluated. The CPUC's Office of Energy Infrastructure Safety will conduct annual wildfire safety-specific assessments of investor-owned utilities as required by AB 1054, and an independent third-party evaluator will conduct safety culture assessments every five years per SB 901. Currently, this proceeding is focused on developing the rules, policies, and procedures for these safety culture assessments.

Recent Developments: No recent developments in the past month.

Analysis: N/A

Next Steps: A Proposed Decision on the Staff Proposal (Safety Culture Concept Paper attached to the September 13, 2022 Ruling) is expected in early 2023.

Additional Information: Draft Resolution SPD-3 (Sep. 16, 2022); ALJ Ruling (Sep. 13, 2022); Scoping Ruling with procedural schedule (April 28, 2022); Order Instituting Rulemaking (Oct. 7, 2021); Docket No. R.21-10-001.

Provider of Last Resort Rulemaking

Background: A Provider of Last Resort (POLR) is the utility or other entity that has the obligation to serve all customers (PG&E currently serves in this role for VCE's territory). Phase 1 of this proceeding will address POLR service requirements, cost recovery, and options to maintain GHG emission reductions in the event of an unplanned customer migration to the POLR. Phase 2 will build on the Phase 1 to set the requirements and application process for non-IOU entities to serve as the POLR. Phase 3 will address specific issues not resolved in Phase 1 or 2.

Recent Developments: No recent developments this month.

Analysis: The Staff Proposal includes topics such as financial monitoring of CCAs, cost recovery associated with customers returning to POLR service, and the LSE deregistration process related to procurement requirements. These topics present potential financial review and monitoring standards for VCE as well as potential new costs related to providing POLR financial security.

Next Steps: Opening comments on the Staff Proposal and example FSR calculations are due **March 21**, and reply comments are due **April 7**. A workshop for IOUIs to walk-through examples of financial security requirement calculations will be held on **March 7**. A proposed decision is expected in Q3-Q4 2023.

Additional Information: ALJ Ruling and Staff Proposal (Jan. 6, 2023); PG&E Advice Letter 6758-E (Nov. 10, 2022); PG&E Advice Letter 6589-E-B and Disposition Letter (Jul. 7, 2022); Scoping Memo and Ruling (Sep. 16, 2021); OIR (Mar. 25, 2021); Docket No. R.21-03-011.

PCIA Rulemaking

Background: The Power Charge Indifference Adjustment (PCIA) is a nonbypassable charge levied on electric bills of customers who have departed from IOU service, such as CCA customers, to compensate IOUs for resources procured on behalf of former customers prior to their departure. The new Voluntary Allocation/Market Offer process was authorized in D.21-05-030. Phase 2 issues related to PCIA data access and voluntary allocations in market-price

benchmark (MPB) calculations were resolved in D.22-07-008. Currently, the proceeding is evaluating the calculation of the MPB charges.

Recent Developments: No recent developments this month.

Analysis: N/A

Next Steps: A proposed decision on long-term RPS transactions and MPB calculations and GHG-free resources is expected in early 2023.

Additional Information: PG&E AL 6779-E (Dec. 5, 2022); Ruling Requesting Comments and Staff Proposal for Long-Term RPS Transactions (Aug. 4, 2022); D.22-01-023 on Phase 2 (Jan. 27, 2021); D.18-09-013 Track 1 Decision approving PG&E Settlement Agreement (Sep. 20, 2018); Docket No. R.17-06-026.

Other Dockets

The following table identifies other tracked dockets that are closed or inactive.

Docket	Name	Status
I.15-08-019	Investigation into PG&E Organization, Culture, and Governance	This proceeding was opened as part of an investigation into whether PG&E's organizational culture and governance prioritize safety, and currently serves to monitor the progress of PG&E in improving its safety culture. The Final Report from consultant NorthStar will be considered in a future decision.
A.20-06-011	PG&E Regionalization Plan	D.22-06-028 closed the proceeding. PG&E will continue to convene quarterly "town hall" meetings in each region and conduct broader meetings with the Regionalization Stakeholder Group. Town Hall Report Q3 (Oct. 28, 2022)
R.21-03-001	Wildfire Fund NBC (2022-2023) Rulemaking	On December 6, the CPUC issued D.22-12-007 adopting a 2023 Wildfire NBC of $5.30/MWh ($0.00530/kWh) effective as of January 1, 2023. The 2023 Wildfire NBC is $1.22/MWh, or 18.7%, less than the current 2022 Wildfire NBC of $6.52/MWh. This reduction is mostly due to the fund having completed recovery of all prior period under-collections.
R.20-11-003	Ensuring Summer 2021 Reliability	D.22-06-005 closed the proceeding.
A.19-11-019	PG&E 2020 Phase 2 GRC	D.22-08-002 closed the docket; all current activity is now covered under the Commercial EV Real-Time Pricing docket.
A.21-06-001	PG&E 2020 ERRA Forecast	D.22-02-002 closed the proceeding, and the Rehearing Request (filed March 14, 2022) was denied by D.22-11-019 issued on November 7.
R.19-03-009	Direct Access Rulemaking	D.21-06-033 closed the proceeding, and on December 19 the CPUC issued D.22-12-058 denying the Application for Rehearing (July 29, 2021).
A.22-05-029	PG&E ERRA Forecast (2023)	D.22-12-044 closed the proceeding, and PG&E's 2024 ERRA Forecast is expected in Q2 2023.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee January 26, 2023 Meeting Summary

DATE: February 9, 2023

This report summarizes the Community Advisory Committee's meeting held via Zoom webinar on Thursday, January 26, 2023.

A. **Legislative Summary / Update from Pacific Policy Group.** Mark Fenstermaker of Pacific Policy Group, VCE's lobbyist consultant, provided highlights of his staff report. He reviewed upcoming legislative dates and deadlines, committee changes in seats on the Senate Energy: Utilities & Communications and the Assembly Utilities & Energy committees, and, proposed budget cuts highlighting energy programs.

B. **Received presentation on forecasting customer Ag energy using hydrological conditions (research results).** VCE Staff Gordon Samuel introduced this item and reviewed VCE's retail load by customer class. He introduced VCE's Intern Scott Adler who looked at whether agriculture (Ag) energy demand (load) could be forecasted using hydrological conditions. VCE's current forecasting methodology primarily uses historical trends and temperature data to forecast load. He provided information that showed that the Ag customers' electricity consumption varies based on water demand, which is influenced by the growing season, reservoir levels, precipitation and drought conditions. Questions were asked about: growth by ag sector and crop, the possibility of using historical trends to forecast, and, recharge potential.

C. **Draft 2023 Community Advisory Committee Task Group Charges.** The CAC reviewed the Legislative/Regulatory Task Group (LRTG) Charge and suggested an addition to clarify that the Task Group is focusing on 2023 legislation. The CAC approved the draft LRTG Charge as amended. (7-0-0) The CAC were informed that the newly formed Customer Experience Task Group has not had an opportunity to meet and will provide a draft charge for review for the CAC's February meeting.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 11

TO: Board of Directors

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

SUBJECT: SACOG Grant - Electrify Yolo Update

DATE: February 9, 2023

RECOMMENDATION
Informational item. The purpose of this report is to give an update on the status of the Electrify Yolo (SACOG grant) project.

BACKGROUND
In December 2018, the Sacramento Area Council of Governments (SACOG) authorized the award of a Green Region grant in the amount of $2,912,000, representing the regional "Electrify Yolo" project, with the purpose of installing publicly accessible electric vehicle (EV) charging stations. The City of Davis distributed funds to each entity once the Memoranda of Understanding (MOUs) were approved by each jurisdiction. All projects are to be finished by December 31, 2023.

The project goals include:

- 15-40 Level 2 chargers
- 2-5 DC Fast Chargers
- 2-10 Mobile Chargers
- Purchase or Lease of One or More Electric Vehicles

UPDATES
As shown in the attached progress reports each jurisdiction is making progress toward meeting its obligations under the grant. All MOUs were signed (Davis, VCE/Winters, Woodland, unincorporated Yolo County) as of April 2021, and some EV charger installation projects have begun, and some are finished.

VCE Staff is working with each jurisdiction to design banners to be hung at each charging station with logos of all project partners, as well as permanent aluminum signs. Temporary banners will inform members of the public that there will be EV chargers coming soon in that location and aim to increase the public's brand association with VCE and electric vehicles. Banners have been hung in Winters at the Community Center charging stations, as well as a permanent aluminum sign.

COVID-19 Pandemic Impacts:

Each jurisdiction experienced impacts related to the COVID-19 pandemic and the shelter-in-place order on Yolo County. Work was delayed as resources were shifted to emergency response and other high priority projects. With the movement of the State to rescind emergency orders and the re-opening of most of the jurisdictions, the project partners are once again moving forward with consultant, siting, procurement and installation efforts.

Fund Expenditures:

PARTNERS	Funding available per MOU	Current Expenditure	Current Balance	Notes
VCE/WINTERS	$ 150,000.00	$ 79,500.00	$ 70,500.00	Payment to VCE for Winters expenditures provided by City of Davis 6/30/22
WOODLAND	$ 150,000.00	$ -	$ 150,000.00	No requests have been made by Woodland as of 1/25/23
YOLO	$ 700,000.00	$ 269,600.00	$ 430,400.00	Payment to Yolo County Provided by City of Davis 6/30/22
DAVIS	$ 1,912,000.00	$ 266,430.00	$ 1,645,570.00	Current cost for Contract for City of Davis and Frontier Energy as of 6/28/22
TOTAL	$ 2,912,000.00	$ 615,530.00	$ 2,296,470.00	

Partner Updates

City of Davis:

During the Fall of 2020, staff issued an RFP to solicit proposals for the City's EV Charging Station project. As a result of that competitive effort, and a thorough review of the proposals, staff recommended Frontier Energy, Inc. as the selected consultant to perform the analysis and design the City's portion of the EV Charging project. On June 1st, 2021, the City Council approved the Professional Services Agreement (PSA) with Frontier Energy, Inc. and also solidified funding within the City's budget to fund this effort. Five sites have been selected, and the City continues to work with PG&E to make improvements on the sites.

City of Winters:

The City of Winters is finished with one of two selected sites. Chargers at the Community Center were installed, are operational, and have permanent signage with the logos of the grant partners. The second site is in progress: the Rule 20A project was completed, so the site has power. PG&E has given the City the design and the transformer has been ordered but there is no definite arrival date.

City of Woodland:

Site selection and feasibility studies are complete. Power supply upgrades are in progress, with an estimated completion in Spring of 2023. PG&E service agreement has been signed, and switch gear orders are in progress. Charging station vendors are under consideration.

County of Yolo:

- 137 N. Cottonwood St. (Bauer Building) Woodland – 2-Dual Chargers. Construction/Installation begins Monday, January 30th. Expected to take 1 week.
- 600 A St. Davis – 1-Dual Charger – In permitting process with County. Expect to start construction/Installation at beginning of March.

- 315 E. 14th St. Davis - 1-Dual Charger – In permitting process with City of Davis. Expect to start construction/Installation at beginning of April. This is dependent on City's permitting process and timeline.
- 25 N. Cottonwood St. (Gonzalez Building) – 2-Dual Chargers. Project on hold. A large Change Order will require additional approval. This project is on hold until other projects are complete or showing significant progress.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Board of Directors

FROM: Edward Burnham, Director of Finance & Internal Operations

SUBJECT: Receive 2023 Customer Rate & PCIA update (Information)

DATE: February 9, 2023

RECOMMENDATION
Informational – no action requested.

BACKGROUND and ANALYSIS

As in past years, staff is providing an update on final PG&E generation and Power Charge Indifference Adjustment (PCIA) rates for the coming year.

The Board adopted the 2023 VCE Budget and Customer Rates on December 8, 2022. The adopted budget included key objectives as highlighted in the staff report linked below. In addition, the Board adopted a Rate Adjustment Policy. The Board staff reports can be found here:

Item 19 - 2023 Operating Budget & Customer Rates (valleycleanenergy.org)
Item 20 - Rate Adjustment Policy (valleycleanenergy.org)

VCE's adopted 2023 Customer Rates and Budget included estimated adjustments based the Energy Resource Recovery Account (ERRA) proceedings used by the California Public Utilities Commission (CPUC) in their review/approval of PG&Es annual bundled rate and PCIA.

On November 28, 2022, the CPUC issued the proposed decision (PD) for PG&E's 2023 bundled rates, inclusive of setting PCIA and generation rates. Based on information from VCE and CalCCA's analysts, VCE incorporated the following assumptions in its Customer Rates and Budget for 2023.

Summary of CPUC ERRA Forecasts for January 2023

- PCIA: 88% reduction over 2022 PCIA - Approximately $17M in additional net revenue compared to 2022.
- PG&E Bundled rates (PCIA & Generation): 3% increase – Approximately $2M in additional revenue.

In the proposed decision, PG&E was allowed to update the actual financial results for the remainder of 2022 and adjust rates accordingly for 2023. In the November Preliminary filing to the CPUC, PG&E had

indicated they were not planning to update the December filing for additional 2022 actual financials. However, PG&E did file updated balances through November 2022 which has caused the change in the PCIA rates used in the VCE budget adoption process. The adjusted PG&E customer and PCIA rates for 2023:

Summary of updated CPUC ERRA Forecasts for January 2023:

- PCIA: 84% reduction over 2022 PCIA - Approximately $1.5 to $2.25 M less revenue for VCE than forecasted.
- PG&E Bundled rates (PCIA & Generation): 2.5% increase. Approximately $350K to $700K less revenue for VCE than forecasted.

In total, VCE revenues are forecasted to be reduced by 2% to 3% ($1.85M to $2.9M) for 2023. Overall, after accounting for these projected revenue reductions, VCE's financial standing for 2023 remains solid with a projected net income of $28M by the end of the year.

CONCLUSION

At this time, due to the overall healthy financial outlook for 2023, staff does not recommend any rate adjustment(s) to maintain the Board adopted 2023 budget. Staff will continue to monitor actual financial impacts from the updated filings and proceed as directed by the Board in the adopted Rate Adjustment Policy. Staff will return to the Board with a comprehensive financial update mid-year.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Board of Directors

FROM: Edward Burnham, Director of Finance & Internal Operations

SUBJECT: Update to Employer Share of Medical Premiums; and update to Valley Clean Energy Employee Handbook

DATE: February 9, 2023

Recommendation

1. Adopt a resolution approving the updated employer share of medical premiums and associated updates to the Valley Clean Energy (VCE) Employee Handbook (Handbook).

Background & Discussion

As part of its employee benefits package VCE currently contributes up to $1,826 per month per employee towards VCE's medical, dental and vision insurance for a full-time employee and dependents coverage. VCE will contribute a prorated amount for part-time employees based on the average hours worked (for example, if the part-time employee is regularly scheduled to work 30 hours per week, VCE's contribution toward the cost of VCE's medical, dental and vision insurance coverage for the part time employee and his/her eligible dependents would be prorated to 75% of the full-time equivalent, i.e., $1,365.5). The employee is responsible for any premiums due for VCE coverage(s) that are in excess of the VCE contribution amount.

Based on an annual market survey of benefit providers to other local public energy agencies (CCA's SMUD), staff found that the cost to continue its current medical/dental/vision benefit package results in a 17% increase for 2023 (from $1,826/mo to $2,133/mo). This is the approximate amount to cover an employee plus two dependents on a standard Kaiser Gold plan for 2023, including dental and vision. As noted, the recommended increase is in line with other comparative entities (CCAs and SMUD) and available group insurance programs. Note: the total increase to VCE is approximately $15k in 2023.

Staff recommends that the Board approve this change, along with the following redline changes to the employee handbook benefits section to implement the medical benefits increase:

> **Medical, Dental and Vision Insurance**: We provide access to medical, dental & vision insurance plans for eligible employees and their dependents. You may be required to provide adequate proof of the dependent relationship in order to add the dependents to VCE's insurance policies. Typically proof of the relationship may be established through a copy of a birth certificate,

adoption documents, marriage license, or certificate of registered domestic partnership. We cannot guarantee your domestic partner relationship will be kept confidential.

Full-time employees and part-time employees who are regularly scheduled to work a minimum of 30 hours per week are eligible for VCE's medical, dental, and vision insurance coverage. Each employee becomes eligible on the first of the month after the employee has started employment with VCE. VCE will contribute up to ~~**$1,826**~~ **$2,133** per month per employee towards VCE's medical, dental and vision insurance for a full-time employee and dependents coverage. VCE will contribute a prorated amount for part-time employees based on the average hours worked (for example, if the part-time employee is regularly scheduled to work 30 hours per week, VCE's contribution toward the cost of VCE's medical, dental and vision insurance coverage for the part time employee and his/her eligible dependents would be prorated to 75% of the full-time equivalent, i.e**.,** ~~**$1,365.5**~~ **$1,599.75**). The employee is responsible for any premiums due for VCE coverage(s) that are in excess of the VCE contribution amount. Deductions from the employee's paycheck will be made to cover this cost. Information describing medical, dental and vision insurance benefits will be given to you when you become eligible to participate in the program. Eligible employees who elect not to receive medical insurance coverage from VCE must provide proof of adequate medical coverage from an alternate source within 30 days of becoming eligible through VCE for the benefit. Such election will be effective as of the employee's eligibility date and will remain in effect until the start of the next open enrollment period. Employees who have declined VCE medical insurance coverage and want to continue to decline coverage must provide proof of adequate medical coverage once per year, no later than 30 days prior to VCE's open enrollment period. Full time employees who decline to accept VCE medical, dental, and vision insurance benefits shall receive a payment of $550 per month in lieu of coverage; part -time employees who are eligible for VCE medical, dental and vision insurance and decline to accept VCE medical, dental, and vision insurance shall receive a prorated payout based on the employee's regularly scheduled hours (i.e., an employee who is regularly scheduled to work 30 hours per week will receive 75% of the full-time equivalent, or $415.5.)

Attachment

1. Resolution

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2023-___

RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE APPROVING UPDATES TO THE EMPLOYEE HANDBOOK

WHEREAS, on January 18, 2018, the Valley Clean Energy Employee Handbook was adopted;

WHEREAS, on January 23, 2019, the Board approved updates to the employment regulations and edits to payroll operational procedures to the Employee Handbook;

WHEREAS, on July 11, 2019, the Board approved updates to the Employee Handbook incorporating new laws and personnel requirements;

WHEREAS, on February 13, 2020 the Board approved updates to the Employee Handbook to reflect benefits eligibility date; and,

WHEREAS, on February 11, 2021, the Board approved updates to the Employee Handbook to adjust medical contributions amounts.

WHEREAS, on April 14, 2022, the Board approved updates to the Employee Handbook to update the General Manager to Executive Officer, working schedules, discretionary pay for performance, compensation equity adjustments, paid time off payout, retirement loan programs, and annual adjustment to medical contributions to maintain parity to costs.

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

1. Adopt changes to the VCE Employee Handbook, Insurance Benefits (page 35-36), Medical, Dental and Vision Insurance (2 paragraph) as follows:

   Medical, Dental and Vision Insurance: Full-time employees and part-time employees who are regularly scheduled to work a minimum of 30 hours per week are eligible for VCEA's medical, dental, and vision insurance coverage. Each employee becomes eligible on the first of the month after the employee has started employment with VCEA. VCEA will contribute up to ~~$1,826~~ **$2,133** per month per employee towards VCEA's medical, dental and vision insurance for a full-time employee and dependents coverage. VCEA will contribute a prorated amount for part-time employees based on the average hours worked (for example, if the part-time employee is regularly scheduled to work 30 hours per week, VCEA's contribution toward the cost of VCEA's medical, dental and vision insurance coverage for the part time employee and his/her eligible dependents would be prorated to 75% of the full-time equivalent, i.e., ~~$1,365.5~~ **$1,599.75**). The employee is responsible for

any premiums due for VCEA coverage(s) that are in excess of the VCEA contribution amount. Deductions from the employee's paycheck will be made to cover this cost. Information describing medical, dental and vision insurance benefits will be given to you when you become eligible to participate in the program. Eligible employees who elect not to receive medical insurance coverage from VCEA must provide proof of adequate medical coverage from an alternate source within 30 days of becoming eligible through VCEA for the benefit. Such election will be effective as of the employee's eligibility date and will remain in effect until the start of the next open enrollment period. Employees who have declined VCEA medical insurance coverage and want to continue to decline coverage must provide proof of adequate medical coverage once per year, no later than 30 days prior to VCEA's open enrollment period. Full time employees who decline to accept VCEA medical, dental, and vision insurance benefits shall receive a payment of $500 per month in lieu of coverage; part -time employees who are eligible for VCEA medial, dental and vision insurance and decline to accept VCEA medical, dental, and vision insurance shall receive a prorated payout based on the employee's regularly scheduled hours (i.e., an employee who is regularly scheduled to work 30 hours per week will receive 75% of the full-time equivalent, or $375.)

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Tom Stallard, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

TO: Board of Directors

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

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

DATE: February 9, 2023

RECOMMENDATIONS

1. Approve an amended services contract with Polaris Inc. for implementation support of the AgFIT (Flexible Irrigation Technology) dynamic pricing pilot.

2. Authorize the Executive Officer and/or his designee to execute and take all actions necessary to implement the services contract substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel, to approve minor changes to the services contract so long as the term and amount are not changed.

BACKGROUND AND ANALYSIS

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

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

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

The AgFIT pilot is a unique undertaking that requires a combination of technical knowledge, electricity rate structuring that is matched with practical expertise in the agricultural sector that is exceedingly uncommon. Polaris was awarded a grant by the California Energy Commission that is the precursor study for the AgFIT pilot and provides them with the prerequisite skills and knowledge to support the VCE AgFIT pilot.

Pilot Program Consultant Support – Contract Amendment

At its February 10, 2022 meeting the VCE Board approved a contract with Polaris for support services related to the Pilot. As the Pilot has evolved over the past year, amendments to the original contact have been identified. These include amendments to reflect a larger engineering scope, as well as to subtract amounts already spent in the automation incentives budget. The total not-to-exceed amount of this contract with Polaris is reimbursable from the CPUC's awarded $3,940,000 budget for the pilot.

FISCAL IMPACT

The AgFIT program budget is reimbursed by CPUC funds, so there is a net neutral revenue impact on VCE's budget.

CONCLUSION

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

ATTACHMENTS

1. Amended Polaris AgFIT services contract
2. Resolution

AGREEMENT FOR CONSULTANT SERVICES

This **Agreement** is made and entered into as of February 9th, 2023 by and between **Valley Clean Energy Alliance**, a Joint Powers Authority organized and operating under the laws of the State of California with its principal place of business at 604 Second Street, Davis, California, 95616 ("VCE"), and **Polaris Energy Services, Inc.**, a California corporation with its principal place of business at 411 Woodbridge Street, San Luis Obispo, California 93401 (hereinafter referred to as "Consultant"). VCE and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

RECITALS

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

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

NOW, THEREFORE, VCE and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

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

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

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

1.4 Term. The term of this Agreement shall begin on the date VCE Board of Directors approves this Agreement with a term period of February 9th, 2023 through May 1st, 2025 or when terminated as provided in Article 5.

2. PROJECT COORDINATION.

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

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

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

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

3. RESPONSIBILITIES OF CONSULTANT.

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

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

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

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

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

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

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

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

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

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

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

3.10 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. FEES AND PAYMENT.

4.1 Compensation. This is a "time and materials" based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed One Million One Hundred Thirty-Seven Thousand Five Hundred Fifty-Nine Dollars ($1,137,559) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

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

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

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

5. SUSPENSION AND TERMINATION.

5.1 Suspension. VCE may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to the failure on the part of Consultant to perform any material provision of this Agreement. Consultant will be paid for satisfactory services performed hereunder through the date of temporary suspension pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith. In the event that Consultant's services hereunder are delayed for a period in excess of three (3) months due to causes beyond Consultant's reasonable control, Consultant may terminate this Agreement and collect payment for any satisfactory services provided through the date of temporary suspension pro rating for any payment in connection with the next milestone as described above.

5.2 Termination for Cause.

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

5.2.2 If Consultant fails to cure the default within thirty (30) days after written notice thereof, VCE may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared for VCE or used by Consultant exclusively in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the

default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement. Notwithstanding the above, VCE may immediately terminate this Agreement without limitation and without liability if VCE reasonably determines that Consultant fails or has failed to meet its obligations under Exhibit E.

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

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

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, both VCE and Consultant reserve the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to the other Party. In the event of termination without cause, Consultant

shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by VCE pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith, plus (2) payment for Additional Work satisfactorily completed and accepted by the VCE, plus (3) reimbursable expenses actually incurred by Consultant, as approved by the VCE. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deduced from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against VCE or the Project for any additional compensation or damages in the event of such termination and payment. In addition, the VCE's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

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

5.3.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency (a "Force Majeure Event"). The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue

and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. VCE shall be the owner of the following items produced exclusively pursuant to this Agreement, whether or not completed: all data collected, and all documents prepared, of any type whatsoever, whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of VCE. Consultant assumes no liability for VCE's use of Documents in any manner not contemplated in the scope of the Project. Under no circumstances shall VCE acquire any rights to use Consultant's proprietary software products following the termination of this Agreement.

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

6.1.3 Release of Documents to VCE. Consultant shall deliver to VCE all materials prepared by Consultant exclusively in connection with this Agreement, including all drafts, memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from VCE.

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

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

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

6.3 Hold Harmless

a. General Hold Harmless

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

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

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

(C) any sanctions, penalties, or claims of damages resulting from Consultant's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and

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

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

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

b. Intellectual Property Indemnification

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

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

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

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 278 of the California Civil Code.

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

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

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California and any legal actions concerning this Agreement's validity, interpretation and performance shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed

conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq*. prior to filing any lawsuit against the VCE. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by the Parties hereunder. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the VCE.

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

Consultant: Polaris Energy Services, Inc.
411 Woodbridge Street
San Luis Obispo, California 93401
Attn: David Meyers

VCE: Valley Clean Energy Alliance
604 2ND Street
Davis, CA 95616
Attn: Mitch Sears

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

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

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

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

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

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

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

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

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

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

by Consultant in connection with the performance of the Services, to assist VCE in affirming compliance with this Section.

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

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

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

6.19 Authority to Enter Agreement. Each party has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

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

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

[Signatures on following page]

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

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

.

VCE

By: _____
Mitch Sears
VCE Executive Officer Its:

David Meyers(Consultant Name)

By: David Meyers

David Meyers

Printed Name: **CEO**

APPROVED AS TO FORM:

By: _____
Inder Khalsa
VCE Legal Counsel

EXHIBIT A

SCOPE OF SERVICES

Program Design

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

Customer Recruitment

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

Customer Enablement

A. Deploy automation systems (if using Polaris' PAC).
B. Configure and enable customer pump sites and users in the Polaris platform (whether or not they use Polaris' PAC).

C. Establish connection between a TeMix subscription tariff and the customer account and pump site in the Polaris platform.
D. Test end-to-end system.
E. Train customers on use of the system.

Program Execution

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

Program Analysis and Reporting

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

Non-Recurring Engineering

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

Pricing Approach

A. Automation
    a. Customers may participate in the program using Polaris' automation, home-grown or third-party automation, or no automation.
    b. New automation may be paid for in whole or in part out of the automation budget for the program up to $200/kW peak load measured across all participating service accounts for an individual customer.
    c. Where its automation system is selected, Polaris will be paid for the turnkey system (including installation subcontractors, third party equipment, etc.), and a 3-year software subscription out of the automation budget.
    d. Where the customer chooses a third-party automation system or a home-grown automation system, the customer will be reimbursed for the system out of the automation budget and the budget will also include a 3-year subscription to Polaris' 'software only' system that includes the features needed to participate in the program as well as enablement, configuration, training and support throughout the program.
    e. There may be an option to integrate third party systems using Polaris' API, most likely in the second year of the program, which would incur an additional integration fee and API subscription.
B. Recruitment
    a. Based on its expected revenue from (A) Automation, Polaris will <u>not</u> receive compensation for its Account Managers' efforts to recruit customers to the program.
    b. Outreach efforts of the dedicated Program Manager will be part of her overall scope and compensation to Polaris within (C) Program Management.
C. Program Management
    a. All program management services (program design, marketing, customer analysis, program analysis and reporting) will be compensated at a fixed annual rate for the three-year term of the pilot.
    b. This fee includes the dedicated Program Manager and efforts of other non-sales personnel on the program.
D. Systems and Technology
    a. Non-recurring engineering to customize Polaris' platform and apps (web and mobile) for the VCE program will be charged on a one-time basis.
    b. An annual subscription fee for unlimited (users and customers) use of the platform will be charged annually.

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCE

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF SERVICES

NOT APPLICABLE

EXHIBIT D

BUDGET AND COMPENSATION

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" shall not exceed the totals set forth in the tables below for each Task. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to VCE unless previously approved in writing by VCE.

Automation Incentive Payments	**Estimated Budget**
1. **Total**	$692,559

Other Tasks	**Estimated Budget**
1. Program Management a. 2023 b. 2024	 $172,500 $172,500
2. Non-Recurring Engineering a. Support and Management 2023	 $50,000
3. Utility Software License a. Annual License 2023 b. Annual License 2024	 $25,000 $25,000
Total	$1,137,559

Invoices

Invoicing for Incentive Payments: To request payment for the Load Management Measures implemented by Participants in the Project ("Incentive Payments"), Polaris shall submit an Enablement Plan for each Participant for review and approval prior to finalization. The Enablement Plan shall identify, at minimum, the proposed Load Management Measures, estimated load shift, and estimated project costs. Upon installation of the Load Management Measures

Polaris shall submit an invoice to VCE, including receipts or other reasonable documentation of the actual project costs. VCE shall pay all undisputed amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. Upon receipt of payment from VCE, Polaris will reimburse each Project Participant for the Load Management Measures to the extent provided for in the Customer Participation Agreement.

General Invoicing: To request payment for all other tasks, Consultant shall submit annual invoices to VCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). Consultant shall maintain records of billable work throughout the Term of the Agreement and provide such records to VCE upon request.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by VCE.

Additional Services

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

EXHIBIT E

DATA PRIVACY AND INFORMATION SECURITY

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

1.2 Third-Party Data Security Review. Consultant shall undergo an independent third-party security review as required by PG&E, and shall provide a VCE with copy of any findings from such review.

1.3 CPUC Compliance. Consultant shall comply with all applicable consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.

1.4 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of VCE Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of VCE Customer Data, Consultant shall, as applicable: (a) notify VCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with VCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by VCE; (c) in the case of personal information as defined in California Civil Code Section 1798.2(h), (1) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; and (2) provide third-party credit and identity monitoring services to each of the affected individuals who comprise the personal information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (d) perform or take any other actions required to comply with applicable law as a result of the occurrence; (e) without limiting VCE's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless VCE for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from VCE in connection with the occurrence; (f) be responsible for recreating lost VCE Customer Data in the manner and on the schedule set by VCE without charge to VCE; (g) provide to VCE a detailed plan within ten (10) calendar days of the occurrence describing the measures Consultant will undertake to prevent a future occurrence and (h) upon conclusion of the occurrence, or at VCE's request, provide to VCE a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by VCE, which shall be executed by Consultant and may be relied upon by VCE as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps

the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

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

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2023- ___

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

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

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

WHEREAS, at its February 10, 2022 meeting, the Board approved a contract with Polaris for support services related to the Pilot; and

WHEREAS, as the Pilot has evolved over the past year, amendments to the original contact have been identified. These include a larger engineering scope, as well as to subtract amounts already spent in the automation incentives budget; and

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

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

1. Authorize the Executive Officer, in consultation with legal counsel, to execute an amended consulting services agreement with Polaris to provide services necessary to implement the pilot, for an amount not to exceed $1,137,559 and to expire May 1, 2025.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance held on the ____ day of _____, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Tom Stallard, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment A: Amended Polaris Energy Services Agreement

ATTACHMENT A
AMENDED POLARIS ENERGY SERVICES CONTRACT (AGFIT)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: Board of Directors

FROM: Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: Agreement with First Principles Advisory, LLC for Portfolio Modeling

DATE: February 9, 2023

RECOMMENDATION

Authorize the Executive Officer to execute an agreement with First Principles Advisory for portfolio modeling services for an amount not to exceed $50,000 for a term expiring August 31, 2023.

BACKGROUND

In November 2022, VCE submitted its Integrated Resource Plan (IRP) to the California Public Utilities Commission (CPUC) for the period from 2020 to 2030. First Principles Advisory (FPA) is the firm that performed the modeling after being selected from a request for proposal (RFP) VCE conducted in the Spring of 2022. FPA familiarity with the VCE portfolio is a logical reason to have them conduct this additional modeling.

In 2018 the Board adopted policy for VCE's power content to target 80% renewables by 2030, exceeding State mandates by 20. The policy also set a goal that 25% of this amount should be from local resources. At the time this was a very ambitious goal, and some may still consider this to be a stretch or at least a sufficient target. Others may believe this policy does not go far enough. Since this policy was adopted, VCE has entered into several long-term power purchase agreements (PPAs) and has been working towards fulfilling these policy goals.

During the November 17, 2022 Community Advisory Committee (CAC) meeting, the Committee voted unanimously to recommend that the Board modify the existing policy. The CAC recommends that the Board approve a new policy which is 100% renewable by 2030 with 25% of the content sourced from local resources. A key point expressed by several CAC members who spoke in support of increasing the goal believed that it provides a reasonable target for VCE to aspire towards.

Staff has committed to perform an analysis of the advantages/disadvantages associated with modification of the current portfolio policy. Staff will provide the CAC and Board with the results of the study/modeling in the coming months.

NEXT STEPS
The scope of work is to take place over the next four (4) to five (5) months with a planned update being scheduled for the CAC in June and a presentation to the Board in July.

CONCLUSION
Staff is recommending that the Board authorize the Executive Officer to execute the agreement with First Principles Advisory for portfolio modeling services for an amount not to exceed $50,000 for a term expiring August 31, 2023.

ATTACHMENTS
1. Agreement between VCE and First Principles Advisory, LLC
2. Resolution

AGREEMENT BETWEEN THE VALLEY CLEAN ENERGY ALLIANCE AND FIRST PRINCIPLES ADVISORY, LLC FOR PORTFOLIO MODELING

THIS AGREEMENT, is entered into this _____, by and between the VALLEY CLEAN ENERGY ALLIANCE, a Joint Powers Authority organized and operating under the laws of the State of California, with its principal place of business at 604 Second Street, Davis, California, 95616 ("VCE"), and First Principles Advisory, a LLC whose address is 1116 Sills Court #3, Capitola CA 95010 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties" and individually as a "Party").

RECITALS:

A. VCE is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq*.) ("Act") with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. VCE and Consultant desire to enter into an agreement for Portfolio Modeling upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on February 9, 2023 and shall terminate on August 31, 2023 unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Fifty Thousand and no/100 Dollars ($50,000.00) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

Consultant and VCE agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to VCE and agrees that all services shall be performed by qualified and experienced personnel. Consultant shall be responsible to VCE for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to VCE by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by VCE, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, VCE may deduct the cost of such correction from any retention amount held by VCE or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

6. INDEPENDENT PARTIES

VCE and Consultant intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by VCE to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from VCE to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant shall indemnify and hold harmless VCE and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of VCE officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. VCE shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to VCE from Consultant as a result of Consultant's failure to promptly pay to VCE any reimbursement or indemnification arising under this section.

7. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF VCE

VCE is organized as a Joint Powers VCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. VCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of VCE's constituent members in connection with this Agreement.

8. NON-DISCRIMINATION

In the performance of this Agreement, Consultant, and any subconsultant under the Consultant, shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender

expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law, except as provided in Government Code section 12940. Consultant shall have responsibility for compliance with this Section.

9. HOLD HARMLESS AND INDEMNIFICATION

A. Intellectual Property Indemnification. Consultant hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights"), except as otherwise expressly provided by this Agreement. Consultant warrants that the services to be provided pursuant to this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Consultant shall indemnify, defend, and hold Indemnitees, harmless from and against any Liabilities by a third party that the services to be provided pursuant to this Agreement infringe or violate any third-party's IP Rights, provided any such right is enforceable in the United States. Such costs and expenses shall include reasonable attorneys' fees of counsel of VCE's choice, expert fees and all other costs and fees of litigation.

B. The acceptance of the services by VCE shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

C. Consultant's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

10. INSURANCE

A. General Requirements. On or before the commencement of the term of this Agreement, Consultant shall furnish VCE with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to VCE by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to VCE and licensed to do insurance business in the State of California. Endorsements naming VCE as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to VCE, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or VCE with respect to the services of Consultant herein, a waiver

of any right to subrogation which any such insurer of Consultant may acquire against VCE by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, VCE shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. VCE, its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by VCE are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

11. **CONFLICT OF INTEREST**

Consultant warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the VCE Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff VCE, as defined in Title 2, Division 6,

Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of VCE. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from VCE under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to VCE by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. SUBCONTRACTOR APPROVAL

Unless prior written consent from VCE is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and VCE in the same manner and to the same extent as Consultant is bound to VCE under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to VCE.

14. REPORTS

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of VCE. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to VCE the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of VCE, and all publication rights are reserved to VCE. Consultant may

retain a copy of any Report furnished to VCE pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by VCE in execution or implementation of: (1) The original project for which Consultant was hired; (2) Completion of the original project by others; (3) Subsequent additions to the original project; and/or (4) Other VCE projects as VCE deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as VCE may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by VCE.

F. VCE shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

15. RECORDS

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by VCE that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of VCE or its designees at all proper times, and gives VCE the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Consultant receives final payment from VCE for all services required under this agreement

16. PARTY REPRESENTATIVES

The Executive Officer ("VCE Representative") shall represent VCE in all matters pertaining to the services to be performed under this Agreement. James Himelic (Consultant Representative") shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. INFORMATION AND DOCUMENTS

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by

Consultant without prior written authorization by VCE. VCE shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the VCE Representative or unless requested in writing by VCE's counsel, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within VCE. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives VCE notice of such court order or subpoena.

B. Consultant shall promptly notify VCE should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within VCE. VCE may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with VCE and to provide VCE with the opportunity to review any response to discovery requests provided by Consultant. However, VCE's right to review any such response does not imply or mean the right by VCE to control, direct or rewrite the response.

C. In the event VCE gives Consultant written notice of a "litigation hold", then as to all data identified in such notice, Consultant shall, at no additional cost to VCE, isolate and preserve all such data pending receipt of further direction from VCE.

D. Consultant's covenants under this section shall survive the expiration or termination of this Agreement.

18. NOTICES

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and VCE's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO VCE:
Valley Clean Energy Alliance
604 Second Street
Davis, CA 95616
Attention: Executive Officer

TO CONSULTANT:
James Himelic
First Principles Advisory, LLC
1116 Sills Court #3
Capitola, CA 95010

19. **TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified (which shall be determined by VCE but shall be not less than 10 days) and according to the requirements set forth in VCE's written notice of default, and in addition to any other remedy available to VCE by law, the VCE Representative may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The VCE Representative shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance. If VCE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, Consultant shall thereupon have the right to terminate this Agreement if such violation is not corrected within ten (10) days after submitting written notice to VCE. In the event of such termination, Consultant shall be entitled to receive just and equitable compensation, not to exceed the agreed amount for services provided before termination, for any satisfactory work completed on such documents and other materials prior to receipt of notice of default.

In the event of VCE's termination of this Agreement due to no fault or failure of performance by Consultant, VCE shall pay Consultant for services satisfactorily performed up to the effective date of termination. Upon termination, Consultant shall immediately deliver to VCE any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of VCE. Consultant shall have no other claim against VCE by reason of such termination, including any claim for compensation.

20. **COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations. VCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to VCE that it has all licenses, permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

21. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules,

and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Yolo, State of California.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from VCE to do otherwise.

23. **WAIVER**

A waiver by VCE of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both VCE and Consultant.

25. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal authority and authority to do so on behalf of their respective legal entities.

26. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

28. **VCE'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

VCE reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

29. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

30. **FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in VCE's reasonable judgment, that such failure was due to acts of God, pandemics, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

31. **RESERVED**

32. **ATTORNEY FEES**

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

33. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

34. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

35. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

36. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a

facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

37. **DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

RECOMMENDED FOR APPROVAL

FIRST PRINCIPLES ADVISORY LLC	**VALLEY CLEAN ENERGY ALLIANCE** A Joint Powers Authority
By: _____	By: _____
Name: James Himelic	Name: Mitch Sears
Title: Founder	Title: Executive Officer
Date: _____	Date: _____

APPROVED AS TO FORM:

_____
Counsel for VCE

EXHIBIT A

SCOPE OF SERVICES

Task 1: Update long-term price forecasts for WECC trading hubs, including NP15 and SP15.

Description: Provide VCE with an updated set of long-term price forecasts for all major trading hubs in WECC. The Consultant will work with CalCCA to gain access to their proprietary Plexos database and provide VCE with the opportunity to select key input variables of interest. Working on behalf of VCE, the Consultant will execute all the necessary non-confidentiality agreements that CalCCA requires in order for outside parties to access their datasets.

Task 2: Update VCE's local portfolio with agency-specific information and re-run an optimization exercise to calculate the updated costs for VCE's baseline portfolio.

Description: Rather than using the CPUC-defined input values for projections related to load and load-modifying resources (e.g., BTM solar, EVs, etc). VCE will provide the Consultant with updated the necessary inputs to reflect values that are more representative of the agency's actual service territory. The selection of optimal candidate resources will be updated accordingly along with the hourly dispatching of both baseline and candidate resources. The baseline portfolio assumes VCE will remain with their current RPS policy, which is to achieve 80% RPS by 2030.

Task 3: Portfolio Optimization Study to identify least-cost solution for VCE to achieve 100% renewable by 2030

Description: After the successful completion of Task 1 and 2, the Consultant will conduct a portfolio optimization exercise that will calculate the incremental costs for VCE to achieve a portfolio that meets 100% of its demand obligations with RPS-qualified facilities on an annual basis. The incremental costs will be relative to the updated costs assessment identified in Task 2.

Task 4: Portfolio Optimization Study to identify least-cost solution for VCE to achieve 100% renewable by 2030 with a 25% local carveout.

Description: Similar to Task 3, Consultant will conduct a portfolio optimization exercise that identifies a least-cost portfolio that is able to provide 100% of VCE's retail load on an annual basis. However, an additional constraint will be applied to the model to require 25% of the total portfolio will be supplied by "local" resources (i.e., resources that are sourced in Yolo County). VCE will provide the Consultant with the necessary pricing information for these eligible candidate projects optimization exercise. The incremental costs will be compared to the costs identified in Task 3.

EXHIBIT B

SCHEDULE OF PERFORMANCE

This schedule may be modified with the written approval of VCE.

Task	Begin	Complete	Estimated Hours
1. Update long-term price forecasts for WECC trading hubs, including NP15 and SP15	Early March	End of March	Initial: 80-120 Contingency: 40-60
2. Update VCE's local portfolio modeling with agency-specific information.	Mid-March	End of April	Initial: 40-60 Contingency: 20-40 *Note this time estimate assumes VCE can provide the necessary input data to First Principles Advisory such that minimal preprocessing is required to ensure the appropriate degree of data quality.
3. Portfolio Optimization Study to identify least-cost solution for VCE to achieve 100% renewable by 2030	Early May	Mid-May	Initial: 20-40 Contingency: 10-20
4. Portfolio Optimization Study to identify least-cost solution for VCE to achieve 100% renewable by 2030 with a 25% local carveout.	Mid-May	End of May	Initial: 20-40 Contingency: 10-20
5.			
6.			

EXHIBIT C

COMPENSATION

VCE shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation will be based on a time and materials ("T&M") basis and shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below. Prior to performing work for any task described in Exhibit A, the Consultant will provide VCE with an updated estimate of the required hours for the task. Should the Consultant require additional hours to complete the task, the Consultant will notify VCE and the Parties will determine how they wish to proceed.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of Fifty Thousand and no/100 Dollars ($50,000.00), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to VCE unless previously approved in writing by VCE.

Rates

Personnel	**Title**	**Hourly**
James Himelic	Founder	$225/hr

Other Applicable Reimbursement Rates:

Particulars	**Rate**
Air Travel Time	$XX.00 / hour
Auto Travel Time (one hour or more)	$XX.00 / hour
Auto Mileage Rate (or current IRS reimbursement rate)	$0.625 / mile
Actual Direct Expenses (Receipts required above $25.00)	Actual Expense
Phone/postage/printing/office materials	No Charge

Total Not to Exceed Amount: $50,000.00 unless amended by written agreement of both parties.

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to VCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for

which work was performed). VCE shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein. VCE does not pay interest on past due amounts.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by VCE.

Additional Services

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

EXHIBIT D

INSURANCE REQUIREMENTS AND PROOF OF INSURANCE

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE**:

(1) **Workers' Compensation**:
Statutory coverage as required by the State of California.

(2) **Liability**:
Commercial general liability coverage with minimum limits of $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.

(3) **Automotive**:
Comprehensive automotive liability coverage with minimum limits of $1,000,000 per
accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.

(4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least $1,000,000.

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2023- _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE AN AGREEMENT WITH FIRST PRINCIPLES ADVISORY, LLC FOR PORTFOLIO MODELING SERVICES

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, on May 5, 2022, a Request for Proposal (RFP) was released by VCE seeking proposals for Integrated Resource Planning (IRP) portfolio modeling services to assist in the two year update of the IRP to be submitted to the California Public Utilities Commission (CPUC); and,

WHEREAS, VCE staff reviewed and evaluated the RFP responses; and

WHEREAS, the Executive Officer signed the agreement with First Principles Advisory (FPA) effective July 1, 2022; and

WHEREAS, FPA has acquired familiarity with VCE's existing portfolio and will perform additional modeling that will include increasing VCE's renewable content to 100%.

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

1. Approves VCE entering into a services agreement with First Principles Advisory, LLC to prepare portfolio modeling services for VCE's, for an amount not to exceed $50,000 terminating August 31, 2023.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2023 by the following vote:
AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Tom Stallard, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary
Attachment A: First Principles Advisory, LLC agreement

ATTACHMENT A

PORTFOLIO MODELING SERVICES AGREEMENT
WITH FIRST PRINCIPLES ADVISORY, LLC

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

TO: Board of Directors

FROM: Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: VCE - RCEA Resource Adequacy Swap Agreements

DATE: February 9, 2023

RECOMMENDATION

1. Staff recommends that the Board adopt a resolution establishing the following:

    a) Approving the VCE-RCEA MTR RA Agreement between Valley Clean Energy and Redwood Coast Energy Authority.
    b) Approving the RCEA-VCE System RA Agreement between Valley Clean Energy and Redwood Coast Energy Authority.
    c) Authorizing the Executive Director of Valley Clean Energy to execute the Swap Agreements substantially in the forms attached hereto as Attachment 1 and Attachment 2 on behalf of VCE, and, in consultation with legal counsel, is authorized to approve any needed future amendments to the Swap Agreements so long as the term, volume, and price are not changed and the amendment does not fundamentally change the business terms of the Swap Agreements.

BACKGROUND

In June 2021 the California Public Utilities Commission (CPUC) issued Decision 21-06-035 (MTR Decision) to address the mid-term reliability needs of the state's grid in 2023-2026. This decision requires CPUC-jurisdictional load-serving entities (LSEs), including VCE, to develop and procure new generation and storage capacity. The new resources must be non-fossil fuel, and contracts must be for ten years or longer. The projects must also be able to deliver resource adequacy (RA), such that LSEs can claim the resources for general compliance with the RA program over the life of the contracts.

ANALYSIS

Through it's proactive efforts over the past two years, VCE is in a position to satisfy the MTR requirements and in some cases has excess. As a result of the Resurgence project (90 MW PV + 75 MW Battery Storage), VCE is in a position to assist another CCA, Redwood Coast Energy Authority (RCEA), who is short capacity to meet this requirement. RCEA was also on track to satisfy this obligation but unfortunately, due to some circumstances outside of their control, the development timeline of their projects have slipped. VCE has a positive history of working with RCEA and staff believes it is appropriate and prudent to help a fellow CCA satisfy

regulatory requirements provided the cost/benefits to VCE and it's customers are balanced. In this case, staff has determined that VCE is not negatively impacted by the proposed swap.

Note: joint transactions between CCA's are not uncommon. VCE has two existing joint PPA's with RCEA and is a party to four pending PPA's through its membership in the CC Power joint powers authority made up of eight other CCA's in PG&E's service territory.

Transaction

In mid-2022 RCEA reached out to VCE asking if VCE had any extra 2023 capacity that could be sold to RCEA. VCE offered to sell a portion of the expected RA from the Resurgence Solar project to RCEA. VCE requested that the transaction be structured as a swap agreement, where RCEA supplies VCE with generic System RA in exchange for an equivalent amount of VCE's MTR-compliant RA, such that VCE could still claim the full capacity value on their RA compliance showings.

This transaction helps RCEA because generic System RA capacity is easier to procure than the MTR-compliant RA capacity, as the former can come from any resource that is deliverable into the CA Independent System Operator grid, while the latter must come from a new-build resource. VCE does not benefit, nor is VCE harmed from the swap and is offering this deal as a means of assisting a fellow CCA meet a difficult compliance need. Indirect value is derived from the transaction in that more CCA's showing compliance demonstrates to regulators that the CCA model is robust, durable, and stronger due to the diversity and collaboration between the State's CCA programs.

Staff is seeking Board approval for two agreements that together complete the swap transaction. Under one agreement, VCE is the seller and RCEA is the buyer, and under the other agreement, the buyer and seller roles are reversed. The agreements were crafted in conjunction with VCE's legal counsel to limit risk to each CCA and to be administratively streamlined for the staff who will manage them. The contract prices and quantities are the same under both agreements and payment netting is allowed between them such that no money will be exchanged between the CCAs unless there is a shortfall. If one party's delivery obligation is reduced for permitted reasons, then the other party may commensurately reduce its delivery obligation. Similarly, termination of one agreement automatically triggers termination of the other agreement.

Attachments

1. VCE-RCEA MTR RA Agreement
2. RCEA-VCE System RA Agreement
3. Resolution

RESOURCE ADEQUACY AGREEMENT

COVER SHEET

Seller: Valley Clean Energy, a California joint powers authority.

Buyer: Redwood Coast Energy Authority, a California joint powers authority.

Unit Information

Project Name:	Resurgence Solar I, LLC
Resource Type:	Hybrid Solar and BESS
Location:	Boron, CA
CAISO Resource ID:	KRAMER_1_R1BX3
Unit SCID:	TVCE
Unit NQC:	Not available until post CAISO COD
Unit EFC:	Not available until post CAISO COD
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	2
Path 26 (North or South):	South
Local Capacity Area (if any, as of Effective Date):	N/A
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	TBD

RA Product and Attributes: During the Delivery Term, Seller shall provide Buyer with the Contract Quantity of RAR Attributes and, if applicable, LAR Attributes and FCR Attributes, from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

☒ RAR Attributes

☐ LAR Attributes

☐ FCR Attributes

Milestones

Milestone	Expected Date for Completion
Demonstrate Site Control	7/15/2021
Execute Interconnection Agreement	Q1 2023
Procure Major Equipment	On-going

Milestone	Expected Date for Completion
Complete Project Permitting	9/9/2021
Expected Construction Start Date	3/10/2022
Expected Commercial Operation Date	5/15/2023

Delivery Term: 10 years

Contract Quantities: The Contract Quantities for the entire Delivery Term shall be:

RAR Attributes: 12 MW NQC

LAR Attributes: 0 MW, subject to revision pursuant to Section 3.1.

FCR Attributes: 0 MW EFC

Contract Price: $[redacted] per kW-month

Scheduling Coordinator: Seller or Seller's Agent

Initial Delivery Date: 08/01/2023

Performance Security Amount

Performance security shall not be required from either Party in connection with this Agreement.

NOTICES [*to be completed prior to execution*]

Seller **VALLEY CLEAN ENERGY ALLIANCE**	**Buyer**
All Notices: Street: 604 2Nd Street City: Davis, CA 95616 Attn: [redacted] Phone: [redacted] Email: [redacted]	**All Notices:** Street: City: Attn: Phone: Facsimile: Email:
Reference Numbers: Duns: [redacted] Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: Federal Tax ID Number:
Invoices: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Invoices:** Attn: Phone: E-mail:
Scheduling: TBD Attn: Phone: Facsimile: Email:	**Scheduling:** Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: [redacted] Phone: [redacted] Email: [redacted]	**Confirmations:** Attn: Phone: Email:
Payments: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Payments:** Attn: Phone: E-mail:
ACH Wire Transfer: BNK: [redacted] ABA: [redacted] ACCT: [redacted]	**ACH Wire Transfer:** BNK: ABA: ACCT:
Credit and Collections: Attn: Phone: Facsimile: E-mail:	**Credit and Collections:** Attn: Phone: E-mail:
Notice of an Event of Default to: Attn: Phone: Facsimile: Email:	**Notice of an Event of Default to:** Attn: Phone: Email:

Seller **VALLEY CLEAN ENERGY ALLIANCE**	**Buyer**
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	**With additional Notices of an Event of Default to:** Attn: Phone: Email:
Emergency Contact: Attn: Phone: Facsimile: Email:	**Emergency Contact:** Attn: Phone: Email:

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RESOURCE ADEQUACY AGREEMENT

PREAMBLE

This Resource Adequacy Agreement ("**Agreement**") is entered into as of [_____] (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

1.1. Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Agreement**" has the meaning set forth in the Preamble.

"**Alternate Capacity**" means any replacement Product which Seller has elected to provide to Buyer from Replacement Units in accordance with the terms of Section 3.5.

"**Applicable Laws**" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.

"**Availability Incentive Payments**" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

"**Availability Standards**" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

"**Bankrupt**" means with respect to any entity, such entity (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 and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (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.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.

"**Buyer**" has the meaning specified in the introductory paragraph hereof.

"**Buyer Joint Powers Agreement**" means that certain Amended and Restated Joint Powers Agreement dated as of December 15, 2015, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500.

"**CAISO**" means the California Independent System Operator or its successor.

"**CAISO Control Area**" has the meaning set forth in the Tariff.

"**CAISO Controlled Grid**" has the meaning set forth in the Tariff.

"**Capacity Attributes**" means any and all of the following attributes: RAR Attributes, LAR Attributes, FCR Attributes.

"**Capacity Replacement Price**" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.6 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Contract Quantity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

"**Claims**" means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"**Commercially Operable**" with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, and the Project has been released by the Developer to Seller for commercial operations.

"**Commercial Operation Date**" has the meaning set forth in Section 19.2(a).

"**Compliance Showing**" means the applicable LSE's compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"**Construction Start Date**" means the date on which the EPC Contractor commences construction.

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Quantity**" means, the quantities specified on the Cover Sheet.

"**Contract Year**" means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date. The final Contract Year may be a period of less than twelve (12) consecutive months.

"**Contracted Amount**" means the Capacity Attributes Seller procured pursuant to the Seller Supply Agreement.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"COVID-19" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

"**CPUC**" means the California Public Utilities Commission or its successor.

"**CPUC Decisions**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Applicable Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**CPUC Filing Guide**" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

"**Defaulting Party**" has the meaning set forth in Section 11.1.

"**Delivery Point**" has the meaning specified in Section 3.3.

"**Delivery Term**" has the meaning set forth in Section 2.1(b).

"**Developer**" means the project company that owns and operates the Unit subject to the Seller Supply Agreement.

"**Early Termination Date**" has the meaning set forth in Section 11.2.

"**Effective Date**" is the date set forth in the Preamble.

"**Effective Flexible Capacity**" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

"**EPC Contract**" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

"**EPC Contractor**" means Seller's engineering, procurement and construction contractor or such Person performing those functions.

"**Equitable Defenses**" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**FCR Attributes**" means, with respect to a Unit, any and all flexible resource adequacy attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.

"**FCR Showings**" means the FCR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Flexible Capacity Requirements**" or "**FCR**" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"**Force Majeure**" has the meaning set forth in Section 10.1.

"**GADS**" means the Generating Availability Data System or its successor.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

"**Governmental Approvals**" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Project.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided that that "Governmental Authority" shall not in any event include any Party.

"**Governmental Body**" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal; provided that "Governmental Body" shall not in any event include any Party.

"**Governmental Charges**" has the meaning set forth in Section 20.2.

"**Initial Delivery Date**" has the meaning set forth on the Cover Sheet.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Project and Seller's Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Project with the Transmission System in accordance with the Interconnection Agreement.

"**Interest Rate**" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Law.

"**Joint Powers Agreement**" means, as applicable, the Buyer Joint Powers Agreement or the Seller Joint Powers Agreement.

"**LAR**" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement ("LCR") in other regulatory proceedings or legislative actions.

"**LAR Attributes**" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

"**LAR Showings**" means the LAR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

"**LRA**" has the meaning set forth in the Tariff.

"**LSE**" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

"**Mechanical Completion**" means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system

warranties or violate any permits, approvals or Applicable Laws; (b) the Project is ready for testing and commissioning, as applicable; (c) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

"**Milestones**" means the events specified on the Cover Sheet.

"**Monthly Delivery Period**" means each calendar month during the Delivery Term and shall correspond to each Showing Month.

"**Monthly RA Capacity Payment**" has the meaning specified in Section 3.8 hereof.

"**NERC**" means the North American Electric Reliability Corporation, or its successor.

"**NERC Business Day**" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"**NERC/GADS Protocols**" means the GADS protocols established by NERC, as may be updated from time to time.

"**Net Qualifying Capacity**" has the meaning set forth in the Tariff.

"**Non-Availability Charges**" has the meaning set forth in the Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notification Deadline**" is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"**Outage**" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (as defined below).

"**Participating Transmission Owner**" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO grid. The Participating Transmission Owner for purposes of this Agreement is Pacific Gas and Electric Company ("PG&E").

"**Person**" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Body or Governmental Authority.

"**Planned Outage**" means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"**Product**" means the RAR Attributes and, if specified on the Cover Sheet, LAR Attributes and FCR Attributes, for the Delivery Term, Unit, Contract Quantity, Contract Price and other specifications contained on the Cover Sheet.

"**Project**" means the Unit described on the Cover Sheet and in Exhibit B.

"**RA Capacity**" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.

"**RAR**" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"**RAR Attributes**" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.

"**RAR Showings**" means the RAR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

"**Replacement Capacity**" has the meaning specified in Section 3.6 hereof.

"**Replacement Unit**" means a generating unit or energy storage unit meeting the requirements specified in Section 3.5 hereof. A Replacement Unit may not include a coal-fired or nuclear generating resource.

"**Resold Product**" has the meaning set forth in Section 5.1.

"**Resource Category**" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"**Sales Price**" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, (a) in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability, and (b) if Seller is unable to resell the Product not received by Buyer, then the Sales Price shall be deemed to be zero dollars ($0). For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

"**Schedule**" or "**Scheduling**" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

"**Scheduling Coordinator**" has the same meaning as in the Tariff.

"**Seller**" has the meaning specified in the introductory paragraph hereof.

"**Seller Joint Powers Agreement**" means that certain Joint Powers Agreement dated as of October 25, 2016, as amended from time to time, under which Seller is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500 et seq.

"**Seller Supply Agreement**" means the agreement between Seller and the project company that owns and operates the Unit identified in Exhibit B under which Seller purchased product being sold pursuant to this Agreement.

"**Settlement Amount**" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 11.2.

"**Showing Month**" shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions or Tariff. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

"**Site**" means the real property on which the Project is located as identified in Appendix D.

"**Supply Plan**" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.

"**Swap Agreement**" means the Resource Adequacy Agreement by and between Redwood Coast Energy Authority (defined in that agreement as "Seller") and Valley Clean Energy (defined in that agreement as "Buyer") dated as of even date herewith.

"**Swap Reduction Option**" has the meaning set forth in Section 3.4(e).

"**Tariff**" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

"**Tax**" or "**Taxes**" means all U.S. federal, state, local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Delivery Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Transmission Provider**" means the CAISO. "Transmission System" means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.

"**Unit**" or "**Units**" shall mean the generation and/or storage assets described in the Cover Sheet and Exhibit B hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit or Replacement Unit may not include a coal-fired or nuclear generating resource.

"**Unit EFC**" means the Effective Flexible Capacity set by the CAISO for the applicable Unit.

"**Unit NQC**" means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

"**Utility Distribution Company**" has the meaning set forth in the Tariff. The Utility Distribution Company for purposes of this Agreement is PG&E.

ARTICLE 2: DELIVERY TERM AND CONDITIONS PRECEDENT

2.1. Delivery Term.

(a) The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting). All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 16.1 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 18 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The "**Delivery Term**" is the period commencing on the Initial Delivery Date and continuing for the period specified on the Cover Sheet unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The "**Initial Delivery Date**" is set forth on the Cover Sheet.

2.2. Buyer Termination Right. Buyer has the option to terminate this Agreement, provided that Buyer provides Notice of such termination to Seller at least sixty (60) days prior to the Initial Delivery Date, *provided*, that if Buyer exercises its option to terminate the Agreement under this Section 2.2, the Swap Agreement shall terminate automatically pursuant to Section 2.2 therein. If Buyer terminates the Agreement pursuant to this Section

2.2, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section **Error! Reference source not found.**.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1. Resource Adequacy Capacity Product.

(a) **Sale and Delivery of Product**. For each Showing Month of the Delivery Term, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Contract Quantity of the Product from the Unit, less any reductions to Contract Quantity pursuant to Section 3.4; *provided*, notwithstanding anything to the contrary herein:

(i) the Product does not confer to Buyer any right to the electrical output from the Unit, other than the right to include the Contract Quantity in RAR Showings, LAR Showings, and/or FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Agreement;

(ii) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing local capacity areas that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes related to a local capacity area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing RAR or Flexible Capacity Requirements, LAR Attributes or RAR Attributes, or attributes of the Unit, that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iv) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing local capacity areas whereby the Unit subsequently qualifies for a local capacity area, the Product, to the extent specified in the Cover Sheet, shall include all LAR Attributes related to such local capacity area;

(v) the Parties agree that, under this Agreement, no energy or ancillary services associated with the Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity from the Unit that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement;

(vi) Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental, zero-emissions capacity pursuant to D.21-06-035 as subsequently clarified by the CPUC's Energy Division. In accordance with such requirements, Seller represents and warrants that the Project will meet the following requirements throughout the Delivery Term:

(A) the Product qualifies as incremental capacity pursuant to D.21-06-035 and any applicable public guidance documents issued by Energy Division;

(B) the Project is a new resource, which had not become Commercially Operable as of the Effective Date of this Agreement;

(C) no load serving entity other than Buyer is permitted to claim any portion of the Product toward D.21-06-035 compliance obligations.

(b) **Progress Reporting**. Seller shall timely provide to Buyer all development progress reports Developer provides to Seller pursuant to the Seller Supply Agreement, and Seller shall request from Developer such information as Buyer may require to comply with requests for development progress under the Seller Supply Agreement by any regulatory body or other authority.

3.2. Seller's and Buyer's Obligations. Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Contract Quantity of the Product at the Delivery Point, less any reductions to Contract Quantity pursuant to Section 3.4, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.3. Delivery Point. The "Delivery Point" for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

3.4. Reductions to Contract Quantity; Delivery of Product. Seller shall provide Buyer with the Contract Quantity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline applicable to each Showing Month, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Contract Quantity provided to Buyer for each Showing Month of the Delivery Term so that the total amount of Contract Quantity identified and confirmed for such Showing Month equals the Contract Quantity, less any reductions to the Contract Quantity pursuant to this Section 3.4.

(b) Seller's obligation to deliver the Contract Quantity for each Showing Month of the Delivery Term may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; *provided*, (i) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plan(s) in accordance with the Tariff. In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of the Unit, Seller has the option, but not the obligation, to provide

Product up to the amount of the full Contract Quantity for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 3.5.

(c) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Effective Date as determined by the CAISO; *provided*, (i) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for that month as a result of such reduction in Unit NQC or Unit EFC, and (ii) such reduction is able to be reflected on the Supply Plan(s) in accordance with the Tariff. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide Product up to the amount of the full Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 3.5.

(d) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event the Unit fails to deliver the Contracted Amount for any reason, including but not limited to (i) a delay in achieving commercial operation by the Unit; (ii) early termination of the Seller Supply Agreement; or (iii) a reduction in the Contracted Amount in the Seller Supply Agreement; *provided*, (A) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for that month as a result of a reduction in Seller's supply in accordance with this Section 3.4(d), and (B) such reduction is able to be reflected on the Supply Plan(s) in accordance with the Tariff. In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a reduction in Seller's supply in accordance with this Section 3.4(d), Seller has the option, but not the obligation, to provide Product up to the amount of the full Contract Quantity for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 3.5.

(e) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event Buyer fails to deliver or reduces its obligation to deliver, for any reason, the contract quantity of product set forth in the Swap Agreement (such option, the "**Swap Reduction Option**"); *provided*, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Buyer fails to deliver under the Swap Agreement and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Buyer of such reduction no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Agreement.

3.5. <u>Alternate Capacity and Replacement Units</u>. If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no additional cost to Buyer, provide Buyer with equivalent capacity

with RAR Attributes from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case Seller shall notify Buyer of the amount of Product that Seller will provide with Alternate Capacity from identified Replacement Unit(s) meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section **Error! Reference source not found.**, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

3.6. Damages for Failure to Provide Contract Quantity. If Seller fails to provide Buyer with the Contract Quantity of Product for any Showing Month, less any reductions pursuant to Section 3.4, during the Delivery Term, and such failure is not excused under the terms of this Agreement, then Seller shall pay to Buyer on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer (or charged to Buyer by CAISO) for any RA Capacity purchased to replace the amount of Contract Quantity not provided by Seller (such, RA Capacity, the "**Replacement Capacity**"), plus (B) the product of the Capacity Replacement Price times the amount of the Contract Quantity neither provided by Seller nor purchased by Buyer, and (ii) the product of the Contract Quantity not provided by Seller for the applicable Showing Month times the Contract Price times 1,000 for that month. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

3.7. Indemnities for Failure to Deliver Contract Quantity. Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Contract Quantity for the respective Showing Month for the Delivery Term, less any reductions to Contract Quantity pursuant to Section 3.4;

(b) Seller's failure to provide notice of the non-availability of any portion of the Contract Quantity consistent with Section 3.4; or

(c) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Contract Quantity purchased hereunder for the respective Showing Month, less any reductions to Contract Quantity pursuant to Section 3.4, or the annual RA compliance filing during the Delivery Term.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. Seller will have no obligation to Buyer under this Section 3.7 in respect of the portion of the Contract Quantity for any portion of the Delivery Term for which Seller has paid damages for Replacement Capacity under Section 3.6. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties,

fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

3.8. Monthly RA Capacity Payment. Buyer shall make a payment to Seller for the Unit, in arrears, after the applicable Showing Month (the "**Monthly RA Capacity Payment**"). The Parties agree that all invoices under this Agreement shall be paid in accordance with Section **Error! Reference source not found.**. The Unit's Monthly RA Capacity Payment shall be equal to the product of (i) the applicable Contract Price for that Monthly Delivery Period, (ii) the Contract Quantity actually delivered for the Monthly Delivery Period, and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.9. Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for sales of any products other than the Product sold to Buyer hereunder, including (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity of any Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts (as defined in the Tariff) for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.9(a) above).

(c) In accordance with Section 3.9 of this Agreement:

(i) all such Buyer revenues described in Section 3.9(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.9(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay

such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Contract Quantity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.10. Change in Law. If a change in Applicable Laws occurring after the Effective Date would increase Seller's costs to comply with Seller's obligations in excess of Seller's known or reasonably expected costs (as of the Effective Date) with respect to obtaining, maintaining, conveying, or effectuating Buyer's use of (as applicable) RAR Attributes, and, if applicable, LAR Attributes and FCR Attributes, then Seller shall have no obligation to incur any additional out-of-pocket costs and expenses under this Agreement for the costs relating to such change in Applicable Laws. For avoidance of doubt, Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are not considered out-of-pocket expenses for purposes of this Section 3.10.

ARTICLE 4: CAISO OFFER REQUIREMENTS

4.1. CAISO Offer Requirements. During the Delivery Term, except to the extent the Unit is on an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Contract Quantity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Contract Quantity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: BUYER'S RE-SALE OF PRODUCT

5.1. Notwithstanding any provision of this Agreement to the contrary, Buyer may not re-sell any portion of the Product.

ARTICLE 6: [RESERVED]

ARTICLE 7: PERFORMANCE SECURITY

7.1. **Performance Security**. Performance Security shall not be required from either Party in connection with this Agreement.

ARTICLE 8: PAYMENT AND NETTING

8.1. **Billing Period**. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

8.2. **Timeliness of Payment**. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month, or fifteenth (15th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

8.3. **Disputes and Adjustments of Invoices**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.4. **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement and the Swap Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including but not limited to, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who

owes it. For the avoidance of doubt, the netting provision of this Section 8.4 shall not apply to any related damages calculated pursuant to Sections 3.6 or 3.8.

8.5. Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including but not limited to, interest, and payments or credits, that Party shall pay such sum in full when due. Any related damage amounts calculated pursuant to Sections 3.6 or 3.7 shall never be subject to netting and shall be paid in full when due.

ARTICLE 9: NOTICES

9.1. Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10: FORCE MAJEURE

10.1. Definition.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or

ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Force Majeure may include delays in performance or inability to perform or comply with the terms and conditions of this Agreement due to delays in obtaining necessary equipment, labor or materials or other issues caused by or attributable to pandemics or epidemics, COVID-19, if the elements of Force Majeure defined in this Section 10.1(a) (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) have been satisfied; provided that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in the first sentence hereof (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) has occurred.

(b) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a curtailment order by the CAISO or the PTO (as defined in the Tariff); (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Project; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2. No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3. **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided that that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4. **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(a). Further, upon termination under this Section 10.4, the Swap Agreement shall automatically terminate, pursuant to Section 2.2 therein.

ARTICLE 11: EVENTS OF DEFAULT; REMEDIES

11.1. **Events of Default**. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

(b) 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 and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.6 and 3.7) if such failure is not remedied within thirty (30) Business Days after written notice;

(d) such Party becomes Bankrupt; and

(e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

11.2. Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("**Early Termination Date**") to accelerate all amounts owing between the Parties and to terminate this Agreement (referred to as a "**Terminated Transaction**") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance.

11.3. Result of Early Termination. In the event of early termination under either the Swap Agreement or the Seller Supply Agreement, the Parties hereby acknowledge and agree that this Agreement shall terminate in accordance with Section 11.2 herein.

11.4. [Reserved].

11.5. [Reserved].

11.6. [Reserved].

11.7. Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 11.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 12: LIMITATIONS

12.1. Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL,

INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 13: REPRESENTATIONS; WARRANTIES; COVENANTS

13.1. Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Project and sell the Product therefrom in the case of Seller;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) there is not pending or, to its knowledge, threatened against it or any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

13.2. Buyer and Seller Covenants. Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 5. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform the transaction contemplated herein to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided*, however, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

13.3. Seller Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

(a) Seller is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the

State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Seller are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Applicable Laws.

(b) Seller owns or has the exclusive right to the RA Capacity sold under this Agreement from the Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) If Seller is the owner of the Unit, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(i) Seller has notified the Scheduling Coordinator of the Unit that Seller has transferred the Contract Quantity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, at least five (5) Business Days before the Notification Deadline, the Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(k) Seller has notified the Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 3.10(b) of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues; and

13.4. <u>Buyer's Representations and Warranties</u>. Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Applicable Laws.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

ARTICLE 14: ASSIGNMENT

14.1. Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party.

ARTICLE 15: DISPUTE RESOLUTION

15.1. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3. Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16: INDEMNIFICATION

16.1. Indemnification.

(a) To the full extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, and/or caused in whole or in part by any negligent or wrongful act, error, or omission of Seller or by any individual or agency for which Seller is legally liable, including officers, agents, employees or subcontractors of Seller.

(b) Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Project site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller and its respective agents, employees, directors or officers.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or any Buyer of any liability to the other for any breach of this Agreement. No Party shall be indemnified for any damages resulting from its gross negligence, intentional acts, or willful misconduct or for the gross negligence, intentional acts, or willful misconduct of its directors, officers, employees and agents. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2. Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Party being indemnified by the

other Party (such indemnified Party, the "**Indemnified Party**") shall notify the Party indemnifying the Indemnified Party (such indemnifying Party, the "**Indemnifying Party**") in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided that that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17: [RESERVED]

ARTICLE 18: CONFIDENTIAL INFORMATION

18.1. Confidential Information.

(a) Each Party agrees, and shall use reasonable efforts to cause its respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Applicable Laws, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, "CPRA"), all documents, data (including operating data provided in connection with the scheduling of energy or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("Confidential Information"). The provisions of this Section 18.1 shall survive and shall continue to be binding upon the Parties for a period of two (2) years following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Subject to the CPRA, either Party may, without violating this Section 18.1, disclose matters that are made confidential by this Agreement on an as needed basis:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party;

(ii) to governmental officials and parties involved in any proceeding in which a Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other requirement of Applicable Laws, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the Contract Quantity under this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose (i) the transfer of the Contract Quantity under this Agreement to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans, and (ii) to CAISO, the operational characteristics, signature pages, Delivery Term, Initial Delivery Date, and any other Milestones, or other dates as requested by CAISO; provided that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information.

(d) If a Party is requested or required, pursuant to any Applicable Law, regulation, order, rule, or ruling, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice (to the extent practical and permissible) to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; provided that Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 18.1.(c), (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA, and (iii) support, to the extent in compliance with Buyer's rights and obligations under Applicable Laws, Seller in its efforts to obtain a protective order or

other appropriate remedy with respect to the disclosure of operating data from the Project or any engineering drawings, project plans, technical specifications or other similar information regarding the Project.

(f) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments, and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Applicable Laws, the credit support contemplated by this Agreement, and the rights, liens and priorities of Buyer with respect to such credit support.

(g) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the indemnitees from and against all suits, claims, and causes of action brought against Buyer or any indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all indemnitees, as well as all damages or liability of any nature.

(h) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore, each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Article 12.

ARTICLE 19: PROJECT CONSTRUCTION AND COMMERCIAL OPERATION

19.1. Construction of the Project.

(a) Progress Reports. Seller shall provide to Buyer all progress reports that Seller receives pursuant to the Seller Supply Agreement.

19.2. Commercial Operation Date.

(a) Commercial Operation Date. "Commercial Operation Date" has the meaning provided in the Seller Supply Agreement.

(b) Termination for Failure to Achieve Commercial Operation. If the Project has not achieved Commercial Operation on or prior to the relevant Compliance Showing deadline for the Showing Month that contains the Initial Delivery Date, then either Party may terminate this Agreement upon thirty (30) days' written notice without any further obligation to the other Party. In addition, if the contract for the construction of the Project with the Developer is terminated and not replaced, then either Party may terminate this Agreement on thirty (30) days' written notice to the other Party without any further obligation. For avoidance of doubt, if either Party terminates the Agreement pursuant to this Section 19.2(b), such termination shall not constitute an Event of Default and the terminating Party shall not, on the basis of such termination, owe the other Party any damages. Further, termination under this Section 19.2(b) shall automatically terminate the Swap Agreement, pursuant to Section 2.2 therein.

ARTICLE 20: GOVERNMENTAL CHARGES

20.1. Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

20.2. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("**Governmental Charges**") on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 8 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 21: MISCELLANEOUS

21.1. Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

21.2. Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Contract Quantity

delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

21.3. Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

21.4. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.5. No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

21.6. No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Project or any business related to the Project. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any lender and/or Indemnified Party.

21.7. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.8. Mobile-Sierra. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or

retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Applicable Law.

21.9. Service Contract. The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986, as amended.

21.10. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.11. Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any Applicable Law.

21.12. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

21.13. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

21.14. No Recourse to Members of the Parties. The Parties are each individually organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and are public entities separate from their respective constituent members. Each Party shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Each Party shall have no rights and shall not make any claims, take any actions or assert any remedies against the other Party's constituent members, or the

employees, directors, officers, consultants or advisors of the other Party or its constituent members, in connection with this Agreement.

21.15. Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

21.16. Change in Electric Market Design. If a change in the Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Remainder of Page Intentionally Left Blank]

Acknowledged and agreed to as of the Effective Date.

Valley Clean Energy Alliance, a California joint powers authority	**Redwood Coast Energy Authority, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A: [RESERVED]

EXHIBIT B: DESCRIPTION OF PROJECT

The following describes the Project to be constructed, operated and maintained by Seller through the Delivery Term in accordance with the Agreement.

Project name: _____

Resource type: _____

Nameplate capacity: _____MW

Location: _____

Project physical address: _____

Project elevation: _____

Project latitude: _____° (decimal form)

Project longitude: _____° (decimal form)

Interconnection: _____

CAISO transmission access charge area (e.g., PG&E): _____

Point of interconnection: _____

Point of interconnection address: _____

Existing zone (e.g., NP-15): _____

PNode: _____

CAISO Resource ID: _____

Substation: Point of interconnection is near _____

EXHIBIT C: [RESERVED]

RESOURCE ADEQUACY AGREEMENT

COVER SHEET

Seller: Redwood Coast Energy Authority, a California joint powers authority.

Buyer: Valley Clean Energy, a California joint powers authority.

RA Product and Attributes: During the Delivery Term, Seller shall provide Buyer with the Contract Quantity of RAR Attributes and, if applicable, LAR Attributes and FCR Attributes, from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

☒ RAR Attributes

☐ LAR Attributes

☐ FCR Attributes

Delivery Term: 10 years

Contract Quantities: The Contract Quantities for the entire Delivery Term shall be:

RAR Attributes: 12 MW NQC

LAR Attributes: 0 MW, subject to revision pursuant to Section 3.1.

FCR Attributes: 0 MW EFC

Contract Price: $[redacted] per kW-month

Scheduling Coordinator: Seller or Seller's Agent

Initial Delivery Date: 08/01/2023

Performance Security Amount

Performance security shall not be required from either Party in connection with this Agreement.

NOTICES [*to be completed prior to execution*]

Seller **VALLEY CLEAN ENERGY ALLIANCE**	**Buyer**
All Notices: Street: 604 2Nd Street City: Davis, CA 95616 Attn: [redacted] Phone: [redacted] Email: [redacted]	**All Notices:** Street: City: Attn: Phone: Facsimile: Email:
Reference Numbers: Duns: [redacted] Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: Federal Tax ID Number:
Invoices: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Invoices:** Attn: Phone: E-mail:
Scheduling: TBD Attn: Phone: Facsimile: Email:	**Scheduling:** Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: [redacted] Phone: [redacted] Email: [redacted]	**Confirmations:** Attn: Phone: Email:
Payments: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Payments:** Attn: Phone: E-mail:
ACH Wire Transfer: BNK: [redacted] ABA: [redacted] ACCT: [redacted]	**ACH Wire Transfer:** BNK: ABA: ACCT:
Credit and Collections: Attn: Phone: Facsimile: E-mail:	**Credit and Collections:** Attn: Phone: E-mail:
Notice of an Event of Default to: Attn: Phone: Facsimile: Email:	**Notice of an Event of Default to:** Attn: Phone: Email:

Seller **VALLEY CLEAN ENERGY ALLIANCE**	**Buyer**
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	**With additional Notices of an Event of Default to:** Attn: Phone: Email:
Emergency Contact: Attn: Phone: Facsimile: Email:	**Emergency Contact:** Attn: Phone: Email:

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RESOURCE ADEQUACY AGREEMENT

PREAMBLE

This Resource Adequacy Agreement ("**Agreement**") is entered into as of [_____] (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1: DEFINITIONS

1.1. Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Agreement**" has the meaning set forth in the Preamble.

"**Alternate Capacity**" means any replacement Product which Seller has elected to provide to Buyer from Replacement Units in accordance with the terms of Section 3.5.

"**Applicable Laws**" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.

"**Availability Incentive Payments**" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

"**Availability Standards**" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

"**Bankrupt**" means with respect to any entity, such entity (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 and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (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.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.

"**Buyer**" has the meaning specified in the introductory paragraph hereof.

"**Buyer Joint Powers Agreement**" means that certain Joint Powers Agreement dated as of October 25, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500 et seq.

"**CAISO**" means the California Independent System Operator or its successor.

"**CAISO Control Area**" has the meaning set forth in the Tariff.

"**CAISO Controlled Grid**" has the meaning set forth in the Tariff.

"**Capacity Attributes**" means any and all of the following attributes: RAR Attributes, LAR Attributes, FCR Attributes.

"**Capacity Replacement Price**" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.6 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Contract Quantity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

"**Claims**" means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

"**Compliance Showings**" means the applicable LSE's compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Quantity**" means, the quantities specified on the Cover Sheet.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"COVID-19" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

"**CPUC**" means the California Public Utilities Commission or its successor.

"**CPUC Decisions**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-

06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Applicable Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

"**CPUC Filing Guide**" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

"**Defaulting Party**" has the meaning set forth in Section 11.1.

"**Delivery Point**" has the meaning specified in Section 3.3.

"**Delivery Term**" has the meaning set forth in Section 2.1(b).

"**Early Termination Date**" has the meaning set forth in Section 11.2.

"**Effective Date**" is the date set forth in the Preamble.

"**Effective Flexible Capacity**" means the flexible capacity of a resource that can be counted towards an LSE's FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

"**Equitable Defenses**" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**FCR Attributes**" means, with respect to a Unit, any and all flexible resource adequacy attributes that can be counted toward an LSE's FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.

"**FCR Showings**" means the FCR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Flexible Capacity Category**" has the meaning set forth in the CPUC Decisions.

"**Flexible Capacity Requirements**" or "**FCR**" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"**Force Majeure**" has the meaning set forth in Section 10.1.

"**GADS**" means the Generating Availability Data System or its successor.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided that that "Governmental Authority" shall not in any event include any Party.

"**Governmental Body**" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal; provided that "Governmental Body" shall not in any event include any Party.

"**Governmental Charges**" has the meaning set forth in Section 19.2.

"**Initial Delivery Date**" has the meaning set forth on the Cover Sheet.

"**Interest Rate**" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Law.

"**Joint Powers Agreement**" means, as applicable, the Buyer Joint Powers Agreement or the Seller Joint Powers Agreement.

"**LAR**" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement ("LCR") in other regulatory proceedings or legislative actions.

"**LAR Attributes**" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

"**LAR Showings**" means the LAR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

"**LRA**" has the meaning set forth in the Tariff.

"**LSE**" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

"**Monthly Delivery Period**" means each calendar month during the Delivery Term and shall correspond to each Showing Month.

"**Monthly RA Capacity Payment**" has the meaning specified in Section 3.8 hereof.

"**NERC**" means the North American Electric Reliability Corporation, or its successor.

"**NERC Business Day**" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

"**NERC/GADS Protocols**" means the GADS protocols established by NERC, as may be updated from time to time.

"**Network Upgrades**" has the meaning set forth in the Tariff.

"**Net Qualifying Capacity**" has the meaning set forth in the Tariff.

"**Non-Availability Charges**" has the meaning set forth in the Tariff.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notification Deadline**" is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"**Outage**" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (as defined below).

"**Participating Transmission Owner**" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. The Participating Transmission Owner for purposes of this Agreement is Pacific Gas and Electric Company ("PG&E").

"**Person**" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Body or Governmental Authority.

"**Planned Outage**" means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

"**Product**" means the RAR Attributes and, if specified on the Cover Sheet, LAR Attributes and FCR Attributes, for the Delivery Term, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix A.

"**RA Capacity**" means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.

"**RAR**" means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

"**RAR Attributes**" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.

"**RAR Showings**" means the RAR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

"**Replacement Capacity**" has the meaning specified in Section 3.6 hereof.

"**Replacement Unit**" means a generating unit or energy storage unit meeting the requirements specified in Section 3.5 hereof. A Replacement Unit may not include a coal-fired or nuclear generating resource.

"**Resold Product**" has the meaning set forth in Section 5.1.

"**Resource Category**" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"**Sales Price**" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, (a) in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability, and (b) if Seller is unable to resell the Product not received by Buyer, then the Sales Price shall be deemed to be zero dollars ($0). For purposes of this definition, Seller shall be considered to have resold such Product to

the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

"**Schedule**" or "**Scheduling**" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Term at a specified Delivery Point.

"**Scheduling Coordinator**" has the same meaning as in the Tariff.

"**Seller**" has the meaning specified in the introductory paragraph hereof.

"**Seller Joint Powers Agreement**" means that certain Amended and Restated Joint Powers Agreement dated as of December 15, 2015, as amended from time to time, under which Seller is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500 et seq.

"**Settlement Amount**" means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 11.2.

"**Showing Month**" shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions or Tariff. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

"**Shown Unit**" means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer as of the Effective Date. A Shown Unit may not include a coal-fired or nuclear generating resource.

"**Supply Plan**" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.

"**Swap Agreement**" means that certain Resource Adequacy Agreement by and between Redwood Coast Energy Authority (defined in that agreement as "Buyer") and Valley Clean Energy (defined in that agreement as "Seller"), dated of even date herewith.

"**Swap Reduction Option**" has the meaning set forth in Section 3.4(d).

"**Tariff**" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

"**Tax**" or "**Taxes**" means all U.S. federal, state, local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Delivery Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and

use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section **Error! Reference source not found.**.

"**Transmission Provider**" means the CAISO. "Transmission System" means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.

"**Unit**" or "**Units**" shall mean the generation and/or storage assets described in Appendix A and any Shown Unit, including any Replacement Units. A Unit may not include a coal-fired or nuclear generating resource.

"**Unit EFC**" means the Effective Flexible Capacity set by the CAISO for the applicable Unit.

"**Unit NQC**" means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

"**Utility Distribution Company**" has the meaning set forth in the Tariff. The Utility Distribution Company for purposes of this Agreement is PG&E.

ARTICLE 2: DELIVERY TERM AND CONDITIONS PRECEDENT

2.1. Delivery Term.

(a) The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting). All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 16.1 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 18 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The "**Delivery Term**" is the period commencing on the Initial Delivery Date and continuing for the period specified on the Cover Sheet unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The "**Initial Delivery Date**" is set forth on the Cover Sheet.

2.2. Automatic Termination. If Seller terminates the Swap Agreement pursuant to Section 2.2, Section 10.4, or Section 19.2(b) therein, this Agreement shall terminate automatically. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(a).

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1. Resource Adequacy Capacity Product.

(a) Sale and Delivery of Product. For each Showing Month of the Delivery Term, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Contract Quantity of the Product from the Shown Unit(s), less any reductions to Contract Quantity pursuant to Section 3.4; *provided*, notwithstanding anything to the contrary herein:

(i) the Product does not confer to Buyer any right to the electrical output from the Shown Units, other than the right to include the Contract Quantity in RAR Showings, LAR Showings, and/or FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Agreement;

(ii) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing local capacity areas that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes related to a local capacity area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing RAR or Flexible Capacity Requirements, LAR Attributes or RAR Attributes, or attributes of a Shown Unit, that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iv) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing local capacity areas whereby a Shown Unit subsequently qualifies for a local capacity area, the Product, to the extent specified in the Cover Sheet, shall include all LAR Attributes related to such local capacity area;

(v) the Parties agree that, under this Agreement, no energy or ancillary services associated with any Shown Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity from a Shown Unit that is in excess of that Shown Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement.

3.2. Seller's and Buyer's Obligations. Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Contract Quantity of the Product at the Delivery Point, less any reductions to Contract Quantity pursuant to Section 3.4, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any

costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.3. Delivery Point. The "Delivery Point" for each Shown Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Shown Unit is electrically interconnected.

3.4. Reductions to Contract Quantity; Delivery of Product. Seller shall provide Buyer with the Contract Quantity of Product for each Showing Month consistent with the following:

(a) No later than fifteen (15) Business Days prior to the each annual, year-ahead Resource Adequacy compliance filing deadline applicable to California load serving entities subject to CPUC jurisdiction, Seller shall identify and confirm to Buyer for such year-ahead period the Unit(s) from which Seller will provide Product to Buyer to meet Seller's obligations under this Agreement. If Seller does not timely provide such Unit information to Buyer, then Buyer shall have the right to include the unit identified in the Swap Agreement in Buyer's year-ahead Resource Adequacy compliance filing and Seller shall have no right to include such unit in Seller's year-ahead Resource Adequacy compliance filing.

(b) No later than the Notification Deadline applicable to each Showing Month, Seller shall submit, or cause the Shown Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Contract Quantity provided to Buyer for each Showing Month of the Delivery Term so that the total amount of Contract Quantity identified and confirmed for such Showing Month equals the Contract Quantity, less any reductions to the Contract Quantity pursuant to this Section 3.4.

(c) Seller may sell and deliver from any Shown Unit that meets the Unit specifications set forth in Exhibit A. A Shown Unit must be a specific resource that is connected directly to the CAISO controlled grid or be under the operational control of CAISO. Seller shall identify the Shown Unit(s) by providing Buyer with the specific Unit information contemplated in Appendix A no later than the Notification Deadline for the relevant Showing Month.

(d) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event Buyer fails to deliver or reduces its obligation to deliver, for any reason, the contract quantity of product set forth the Swap Agreement, including any such reductions under Section 3.4(b)–(d) of the Swap Agreement (such option, the "**Swap Reduction Option**"); *provided*, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Buyer fails to deliver under the Swap Agreement and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Buyer of such reduction no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Agreement.

3.5. Alternate Capacity and Replacement Units. If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with equivalent capacity with RAR Attributes from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case, Seller shall notify Buyer of the amount of Product that Seller will provide with Alternate Capacity from identified Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 3.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

3.6. Damages for Failure to Provide Contract Quantity. If Seller fails to provide Buyer with the Contract Quantity of Product for any Showing Month, less any reductions pursuant to Section 3.4, during the Delivery Term, and such failure is not excused under the terms of this Agreement, then Seller shall pay to Buyer on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer (or charged to Buyer by CAISO) for any RA Capacity purchased to replace the amount of Contract Quantity not provided by Seller (such, RA Capacity, the "**Replacement Capacity**"), plus (B) the product of the Capacity Replacement Price times the amount of the Contract Quantity neither provided by Seller nor purchased by Buyer, and (ii) the product of the Contract Quantity not provided by Seller for the applicable Showing Month times the Contract Price times 1,000 for that month.

3.7. Indemnities for Failure to Deliver Contract Quantity. Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Contract Quantity for the respective Showing Month for the Delivery Term, less any reductions to Contract Quantity pursuant to Section 3.4;

(b) Seller's failure to provide notice of the non-availability of any portion of the Contract Quantity consistent with Section 3.4; or

(c) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Contract Quantity purchased hereunder for the respective Showing Month, less any reductions to Contract Quantity pursuant to Section 3.4, or the annual RA compliance filing during the Delivery Term.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. Seller will have no obligation to Buyer under this Section 3.7 in respect of the portion of the Contract Quantity for any portion of the Delivery Term for

which Seller has paid damages for Replacement Capacity under Section 3.6. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

3.8. Monthly RA Capacity Payment. Buyer shall make a payment to Seller for each Shown Unit, in arrears, after the applicable Showing Month (the "**Monthly RA Capacity Payment**"). The Parties agree that all invoices under this Agreement shall be paid in accordance with Section 8.2. Each Shown Unit's Monthly RA Capacity Payment shall be equal to the product of (i) the applicable Contract Price for that Monthly Delivery Period, (ii) the Contract Quantity actually delivered for the Monthly Delivery Period, and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.9. Allocation of Other Payments and Costs.

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for sales of any products other than the Product sold to Buyer hereunder, including (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity of any Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts (as defined in the Tariff) for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.9(a) above).

(c) In accordance with Section 3.9 of this Agreement:

(i) all such Buyer revenues described in Section 3.9(b) received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit's Scheduling Coordinator, owner, or operator revenues described in Section 3.9(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by

Buyer, Buyer shall be subrogated to all rights of Seller against such Unit's Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Contract Quantity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

3.10. Change in Law. If a change in Applicable Laws occurring after the Effective Date would increase Seller's costs to comply with Seller's obligations in excess of Seller's known or reasonably expected costs (as of the Effective Date) with respect to obtaining, maintaining, conveying, or effectuating Buyer's use of (as applicable) RAR Attributes, and, if applicable, LAR Attributes and FCR Attributes, then Seller shall have no obligation to incur any additional out-of-pocket costs and expenses under this Agreement for the costs relating to such change in Applicable Laws. For avoidance of doubt, Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are not considered out-of-pocket expenses for purposes of this Section 3.10.

ARTICLE 4: CAISO OFFER REQUIREMENTS

4.1. CAISO Offer Requirements. During the Delivery Term, except to the extent any Unit is on an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of that Unit, Seller shall either Schedule or cause the Unit's Scheduling Coordinator to Schedule with, or make available to, the CAISO the Unit's Contract Quantity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Contract Quantity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: BUYER'S RE-SALE OF PRODUCT

5.1. Notwithstanding any provision of this Agreement to the contrary, Buyer may not re-sell any portion of the Product

ARTICLE 6: [RESERVED]

ARTICLE 7: PERFORMANCE SECURITY

7.1. **Performance Security**. Performance Security shall not be required from either Party in connection with this Agreement.

ARTICLE 8: PAYMENT AND NETTING

8.1. **Billing Period**. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

8.2. **Timeliness of Payment**. Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month, or fifteenth (15th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

8.3. **Disputes and Adjustments of Invoices**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.4. **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement and the Swap Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including, but not limited to, interest, and payments or credits,

shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. For the avoidance of doubt, the netting provision of this Section 8.4 shall not apply to any related damages calculated pursuant to Sections 3.6 or 3.7.

8.5. Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest, and payments or credits, that Party shall pay such sum in full when due. Any damage amounts calculated pursuant to Sections 3.6 or 3.7 shall never be subject to netting and shall be paid in full when due.

ARTICLE 9: NOTICES

9.1. Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10: FORCE MAJEURE

10.1. Definition.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may

include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Force Majeure may include delays in performance or inability to perform or comply with the terms and conditions of this Agreement due to delays in obtaining necessary equipment, labor or materials or other issues caused by or attributable to pandemics or epidemics, COVID-19, if the elements of Force Majeure defined in this Section 10.1(a) (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) have been satisfied; provided that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in the first sentence hereof (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) has occurred.

(b) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Shown Units, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a curtailment order by the CAISO or PTO (as defined in the Tariff); (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Shown Units except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Shown Units; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2. No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3. **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided that that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4. **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Shown Units experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(a). Further, upon termination under this Section 10.4, the Swap Agreement shall automatically terminate

ARTICLE 11: EVENTS OF DEFAULT; REMEDIES

11.1. **Events of Default**. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

(b) 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 and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.6 and 3.7) if such failure is not remedied within thirty (30) Business Days after written notice;

(d) such Party becomes Bankrupt; and

(e) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

11.2. Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("**Early Termination Date**") to accelerate all amounts owing between the Parties and to terminate this Agreement (referred to as a "**Terminated Transaction**") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance.

11.3. Result of Early Termination. In the event of early termination under the Swap Agreement, the Parties hereby acknowledge and agree that this Agreement shall terminate in accordance with Section 11.2 herein.

11.4. [Reserved].

11.5. [Reserved].

11.6. [Reserved].

11.7. Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 11.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 12: LIMITATIONS

12.1. Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL,

INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 13: REPRESENTATIONS; WARRANTIES; COVENANTS

13.1. Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain any Shown Units and sell the Product therefrom in the case of Seller;

(c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) there is not pending or, to its knowledge, threatened against it or any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

13.2. Buyer and Seller Covenants. Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 5. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform the transaction contemplated herein to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided*, however, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

13.3. Seller Representations, Warranties and Covenants. Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

(a) Seller is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the

State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Seller are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Applicable Laws.

(b) Seller owns or has the exclusive right to the RA Capacity sold under this Agreement from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) Each Unit is within the CAISO Control Area;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) If Seller is the owner of any Unit, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Agreement, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Contract Quantity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to Buyer by the Notification Deadline the Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 3.9(b) of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues; and

13.4. <u>Buyer's Representations and Warranties</u>. Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Applicable Laws.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

ARTICLE 14: ASSIGNMENT

14.1. Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party.

ARTICLE 15: DISPUTE RESOLUTION

15.1. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2. **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3. **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16: INDEMNIFICATION

16.1. **Indemnification**.

(a) To the full extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, and/or caused in whole or in part by any negligent or wrongful act, error, or omission of Seller or by any individual or agency for which Seller is legally liable, including officers, agents, employees or subcontractors of Seller.

(b) Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to any Shown Unit sites, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller and its agents, employees, directors or officers.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or any Buyer of any liability to the other for any breach of this Agreement. No Party shall be indemnified for any damages resulting from its gross negligence, intentional acts, or willful misconduct or for the gross negligence, intentional acts, or willful misconduct of its directors, officers, employees and agents. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2. **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Party being indemnified by the

other Party (such indemnified Party, the "**Indemnified Party**") shall notify the Party indemnifying the Indemnified Party (such indemnifying Party, the "**Indemnifying Party**") in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided that that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17: [RESERVED]

ARTICLE 18: CONFIDENTIAL INFORMATION

18.1. Confidential Information.

(a) Each Party agrees, and shall use reasonable efforts to cause its respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Applicable Laws, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, "CPRA"), all documents, data (including operating data provided in connection with the scheduling of energy or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("Confidential Information"). The provisions of this Section 18.1 shall survive and shall continue to be binding upon the Parties for a period of two (2) years following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Subject to the CPRA, either Party may, without violating this Section 18.1, disclose matters that are made confidential by this Agreement on an as needed basis:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party;

(ii) to governmental officials and parties involved in any proceeding in which a Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other requirement of Applicable Laws, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the Contract Quantity under this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose (i) the transfer of the Contract Quantity under this Agreement to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans, and (ii) to CAISO, the operational characteristics, signature pages, Delivery Term, Initial Delivery Date, or other dates as requested by CAISO; provided that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information.

(d) If a Party is requested or required, pursuant to any Applicable Law, regulation, order, rule, or ruling, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice (to the extent practical and permissible) to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; provided that Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 18.1.(c), (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA, and (iii) support, to the extent in compliance with Buyer's rights and obligations under Applicable Laws, Seller in its efforts to obtain a protective order or

other appropriate remedy with respect to the disclosure of operating data from any Shown Units or any engineering drawings, project plans, technical specifications or other similar information regarding any Shown Units.

(f) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments, and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Applicable Laws, the credit support contemplated by this Agreement, and the rights, liens and priorities of Buyer with respect to such credit support.

(g) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the indemnitees from and against all suits, claims, and causes of action brought against Buyer or any indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all indemnitees, as well as all damages or liability of any nature.

(h) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore, each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Article 12.

ARTICLE 19: GOVERNMENTAL CHARGES

19.1. **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

19.2. **Governmental Charges**. Seller shall pay or cause to be paid all taxes imposed by any government authority ("**Governmental Charges**") on or with respect to the Product

or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 8 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 20: MISCELLANEOUS

20.1. **Title and Risk of Loss**. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

20.2. **Audit**. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Contract Quantity delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

20.3. **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.4. **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of

Seller and Buyer; provided that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.5. **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.6. **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to any Shown Units or any business related to any Shown Units. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any lender and/or Indemnified Party.

20.7. **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.8. **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Applicable Law.

20.9. **Service Contract**. The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986, as amended.

20.10. **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.11. **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original.

The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any Applicable Law.

20.12. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.13. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

20.14. No Recourse to Members of the Parties. The Parties are each individually organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and are public entities separate from their respective constituent members. Each Party shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Each Party shall have no rights and shall not make any claims, take any actions or assert any remedies against the other Party's constituent members, or the employees, directors, officers, consultants or advisors of the other Party or its constituent members, in connection with this Agreement.

20.15. Further Assurances. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

20.16. Change in Electric Market Design. If a change in the Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable

of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Remainder of Page Intentionally Left Blank]

Acknowledged and agreed to as of the Effective Date.

Redwood Coast Energy Authority, a California joint powers authority	**Valley Clean Energy Alliance, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A: IDENTIFICATION OF SHOWN UNITS

Unit 1

Unit Specific Information	
Resource Name	
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month	
Unit EFC by month	
Resource Type	
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	
TAC Area	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Capacity Area	
Resource Category as defined by the CPUC	

(*Repeat for additional Units)*

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Agreement.]

RESOLUTION 2023-___

RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF THE RESOURCE ADEQUACY SWAP AGREEMENTS WITH REDWOOD COAST ENERGY AUTHORITY

WHEREAS, Valley Clean Energy Alliance ("VCE") 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"), the City of Woodland and the City of Winters ("Cities") (the "JPA Agreement"), to collectively study, promote, develop, conduct, operate, and manage energy programs; and

WHEREAS, VCE and Redwood Coast Energy Authority ("RCEA") are subject to procurement mandates from the California Public Utilities Commission, including through Mid-Term Reliability Decision 21-06-035 ("MTR Decision"); and

WHEREAS, RCEA has an urgent, outstanding need to procure Resource Adequacy ("RA") from new power resources under the MTR Decision and VCE has excess RA that can satisfy this Decision; and

WHEREAS, the VCE-RCEA MTR RA Agreement and RCEA-VCE System RA Agreement (together the "Swap Agreements") will ensure compliance for RCEA; and

WHEREAS, under the VCE-RCEA MTR RA Agreement, VCE will provide RCEA with MTR-compliant RA from the Resurgence solar plus battery storage project for the 10-year term; and

WHEREAS, under the RCEA-VCE System RA Agreement, RCEA will supply VCE with generic System RA from any contracted resource for which RCEA holds the RA attributes for the 10-year term; and

WHEREAS, VCE has found that it is appropriate and prudent to help a fellow CCA satisfy regulatory requirements provided the cost/benefits to VCE and it's customers are balanced and has determined that VCE is not negatively impacted by the proposed swap.

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

1. The VCE-RCEA MTR RA Agreement between Valley Clean Energy and Redwood Coast Energy Authority is hereby approved.
2. The RCEA-VCE System RA Agreement between Valley Clean Energy and Redwood Coast Energy Authority is hereby approved.

3. The Executive Director of Valley Clean Energy is authorized to execute the Swap Agreements substantially in the forms attached hereto as Attachment 1 and Attachment 2 on behalf of VCE, and, in consultation with legal counsel, is authorized to approve any needed future amendments to the Swap Agreements so long as the term, volume, and price are not changed and the amendment does not fundamentally change the business terms of the Swap Agreements.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Valley Clean Energy Alliance, held on the _____ day of _____ 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Tom Stallard, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment 1 – VCE-RCEA MTR RA Agreement

Attachment 2 - RCEA-VCE System RA Agreement

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 18

TO: Board of Directors

FROM: Gordon Samuel, Assistant General Manager & Director of Power Services

SUBJECT: Wholesale Energy Risk Management update

DATE: February 9, 2023

RECCOMENDATION
Informational. No action requested.

BACKGROUND
Load serving entities (LSEs), such as VCE, conduct business within the framework of enterprise risk management (ERM) policies. In 2018, VCE established an ERM policy and has been working under this policy since launch (https://valleycleanenergy.org/wp-content/uploads/Reso-2018-006-Adopt-Ent.Risk_.Mngmnt.Plcy_.pdf). In addition, since 85%+ of VCE's budget is related to energy procurement, VCE established several additional policies specifically related to energy risk. Examples of these policies are the procurement plan , directives and delegations and the wholesale energy risk management policy with amendment #1 . The overall business enterprise can have additional risk areas associated with regulatory, reputational, programs, etc., but the focus for CCA's is typically the energy component since that comprises such a significant percentage of it's annual budget.

NEXT STEPS
Staff, with the assistance from The Energy Authority (TEA), is proposing to update the ERM as well as the energy policies described above. This staff report and the attached draft Wholesale Energy Procurement Risk Management Program consolidates the energy policies noted above into one document that will be a large portion of the updated ERM. Staff is seeking Board feedback on the attached draft procurement risk document and will bring a complete revised ERM to a future meeting for Board consideration.

CONCLUSION
As VCE approaches its five-year anniversary much in the energy sector has evolved during that time which can impact the approach to managing risk. The regulatory landscape continues to change, VCE's power portfolio is taking shape, and numerous other areas that impact VCE's business are evolving. Therefore, staff has initiated an update of the ERM as a whole and specifically the wholesale energy component.

ATTACHMENT
1. Draft - Wholesale Energy Procurement Risk Management Program

VALLEY
CLEAN ENERGY

Valley Clean Energy Wholesale Energy Procurement Risk Management Program

Revised: _____

Table of Contents

1. Program Overview

1.1 Background and Purpose

Valley Clean Energy ("VCE")'s Wholesale Energy Procurement Risk Management Program ("Program") provides a structured, disciplined, and consistent approach to wholesale energy procurement risk management that facilitates risk-informed decision making in wholesale energy activities, which makes up more than 85% of VCE's annual budget. The Program supports VCE in aligning its strategy, processes, people, and technology for the purpose of evaluating and managing energy procurement uncertainties inherent to the energy industry and power procurement. By strategically managing risk associated with power procurement activities, VCE can proactively reduce the chance of loss, identify and take advantage of procurement opportunities, create greater financial stability, and protect its resources to support its mission and create value for its members.

The ultimate purpose of the Program is to support VCE's achievement of its goals by specifying management responsibilities, organizational structures, risk management standards, and the operating controls and limits necessary to appropriately identify, evaluate, and mange VCE's exposure to wholesale energy procurement risk.

Embedded within the above overarching objective of the Program are a number of risk management goals for VCE, including:

- Provide the VCE Board of Directors ("Board") with transparency and insight into power procurement risks that could impact the ability to execute VCE's mission
- Implement well-defined wholesale energy risk management process, tools, and techniques
- Identify current and emerging electricity market risks, and prioritize and develop response plans when necessary
- Increase the likelihood of success in achieving VCE's power procurement objectives
- Build credibility and sustain confidence in VCE's governance by all stakeholders including private, federal, state, and local partners
- Improve the understanding of interactions and relationships between wholesale energy procurement risks for VCE by the Board, VCE Staff ("Staff"), and third-party service providers
- Establish clear accountability and ownership of wholesale energy procurement risk
- Develop the capacity for continuous monitoring and periodic reporting of power procurement risks

1.2 Statement of Risk Appetite

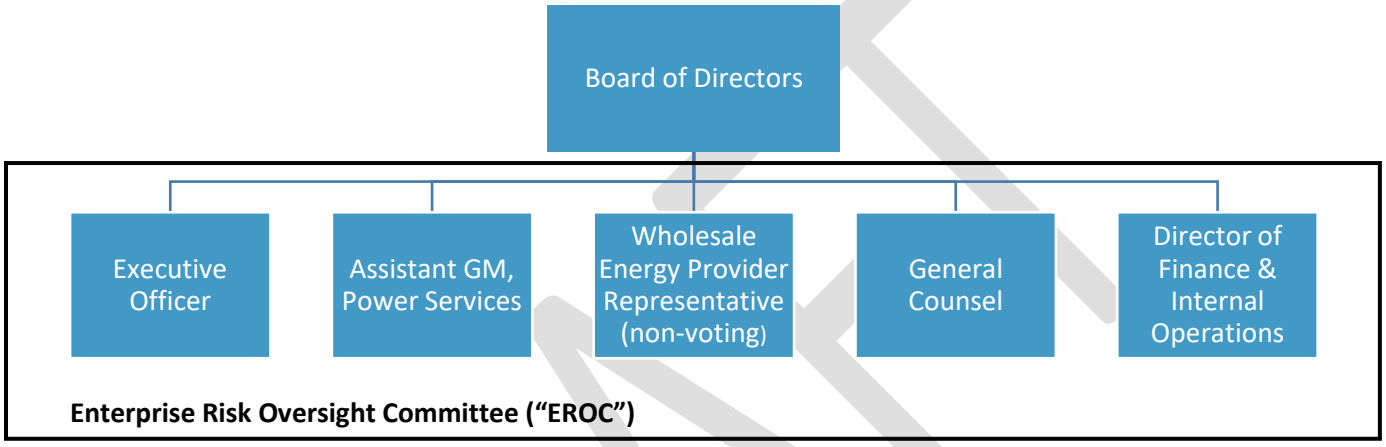
VCE's approach to wholesale energy procurement risk is to conservatively manage its exposure to financial, legal, compliance and regulatory, operational, strategic, and reputational impacts while accepting and balancing risk-taking in pursuit of its mission and objectives. It recognizes that its appetite for risk varies according to the activity undertaken, that acceptance of risk is subject to ensuring that

potential benefits and risks are fully understood before taking action, and that sensible measures to mitigate risk are established.

2. Wholesale Energy Procurement Risk Management Roles and Responsibilities

2.1 Wholesale Energy Procurement Risk Management Organizational Structure

Below is a high-level organization chart describing VCE's risk management governance.



2.2 Board of Directors

The VCE Board of Directors has the responsibility to review and approve the VCE Wholesale Energy Risk Management Program. With this approval, the Board assumes responsibility for understanding the risks VCE is exposed to due to wholesale energy procurement activity and how the policies outlined in this document help VCE manage the associated risks. The Board of Directors is also responsible to:

- Determine VCE strategic direction in energy procurement
- Understand the procurement strategy employed
- Approve risk exposures beyond the EROC's authority
- Approve voting Members of the EROC

2.3 Enterprise Risk Oversight Committee

The EROC is responsible for implementing, maintaining, and overseeing compliance of the Program. The voting members of the EROC shall be Board-approved VCE staff members. Additionally, a representative of VCE's Wholesale Power Manager will serve as a non-voting member of the EROC. The current voting members of the EROC are:

- Executive Officer
- Assistant General Manager, Director of Power Services

- General Counsel
- Director of Finance & Internal Operations

The primary responsibility of the EROC is Risk Management: to ensure that risks, particularly those related to procurement activities, are managed to create value for VCE members in a manner consistent with the Program and Board directives. In addition to this, the EROC is also responsible for Risk Monitoring: establishing VCE's risk appetite and risk tolerance levels and overseeing the development and implementation of processes used to analyze, prioritize, and address risks across VCE, particularly those related to procurement activities. Risk Monitoring may include proposing recommendations to adjust the Wholesale Energy Risk Management Program when conditions dictate.

The EROC maintains the Wholesale Energy Risk Management authority and responsibility to:

- Approve and ensure that all procurement strategies are consistent with the Program
- Determine if changes in procurement strategies are warranted
- Approve new transaction types, regions, markets, and delivery points
- Understand all financial and risk models used by VCE and any third-party service providers
- Understand counterparty credit review models and methods for setting and monitoring credit limits
- Meet to review actual and projected financial results and potential risks
- Authorize individual transactions that exceed an individual staff member's authority, as indicated in Section 3 below
- Escalate to the Board any risks beyond the EROC's authority

The Assistant General Manager, Power Services & Programs is the staff person that will own the Wholesale Energy Risk Management processes.

The EROC maintains the Wholesale Energy Procurement Risk Monitoring authority and responsibility to:

- Work with the Board to develop and establish a list of high priority wholesale energy procurement risks that will be monitored on an ongoing basis
- Approve Program processes and risk appetite and risk tolerance guidelines
- Receive and review reports as described in the Program
- Conduct and coordinate any actions identified as risk mitigation for the management of specific wholesale energy procurement risks
- Review summaries of limit violations
- Review the effectiveness of VCE's wholesale energy procurement risk measurement methods
- Maintain the Program
- Monitor regulatory and legislative activities related to wholesale energy procurement
- Perform any other activities consistent with the Program and governing laws that VCE's Board determines are necessary or appropriate

The Director of Finance & Internal Operations is the staff person that will own the Wholesale Energy Procurement Risk Monitoring process.

2.4 Wholesale Energy Provider

VCE's Wholesale Energy Provider ("WEP") is responsible for maintaining a strong segregation of duties, also referred to as "separation of function", that is fundamental to mange and control the risks outlined in the Program as well as the WEP's internal Energy Risk Management Policy. The WEP provides information to the EROC on the risk and credit models, methods, and processes that it uses to fulfil its obligations under its own Risk Policy as well as meet VCE's Program. Staff members at the WEP responsible for legally binding VCE to a transaction will not also perform confirmation or settlement functions. With this in mind, the WEP's responsibilities are divided into front-, middle-, and back-office activities, as described below.

2.4.1 Wholesale Energy Provider – Front Office

The WEP's Front Office has overall responsibility for:

- Managing all commodity and transmission activities related to procuring and delivering resources needed to serve VCE's load
- Analyzing fundamentals affecting load and supply factors that determine VCE's net position
- Transacting within the limits of the Program, and associated policies, to balance loads and resources and maximize the value of VCE's assets through the exercise of approved optimization strategies.

Other duties associated with the WEP's Front Office include:

- Assisting in the development of risk management hedging products and strategies, and bringing recommendations to the EROC
- Preparing each month a monthly operating plan for the prompt months that gives direction to the day-ahead and real-time trading and scheduling staff regarding the bidding and scheduling of VCE's resource portfolio in the California Independent System Operator ("CAISO") market
- Forecast and monitor day-ahead and real-time loads
- Keep accurate records of all executed transactions

2.4.2 Wholesale Energy Provider – Middle/Back Office

The WEP's Middle Office provides independent market and credit risk oversight. The Middle Office is functionally and organizationally separate from the Front Office. The WEP's Back Office provides support with a wide range of administrative activities necessary to execute and settle transactions and support the risk control efforts (*e.g. transaction entry and/or checking, data collection, billing, etc.*) consistent with both the WEP's Risk Policy as well as VCE's Program. The Back Office is also functionally and organizationally separate from the Front Office.

The WEP's Middle and Back Offices have primary responsibility for trading control and for ensuring agreement with counterparties regarding the terms of all trades, including forward trading. The WEP's Middle and Back Offices have overall responsibility for:

- Estimating and publishing daily forward monthly power and natural gas price curves for a minimum of the balance of the current year through the next calendar year

- Calculating and maintaining the net forward power positions of VCE
- Ensuring that VCE adheres to all risk policies and procedures of both VCE and the WEP's in letter and intent
- Maintaining the overall financial security of transactions undertaken by the WEP on behalf of VCE
- Implementing and enforcing credit policies and limits
- Handling confirmation of all transactions and reconciling differences with the trading counterparties
- Reviewing trade tickets for adherence to approved limits
- Ensuring all trades have been entered into the appropriate system of record
- Ensuring that both pre-schedule and actual delivery volumes and prices are entered into the physical databases
- Carrying out month-end checkout of all transactions each month
- Reviewing models and methodologies and recommending EROC approval
- Providing supporting documentation for power supply audits

3. Delegation of Authority

3.1 Delegation of Transaction Authority

By adopting the Program, the Board is explicitly delegating operational control and oversight to the EROC and the WEP, as outlined through the Program. Specifically, to facilitate daily operations of the CCA in its wholesale energy procurement function, the Board is delegating transaction execution authorities shown in the table below.

Position	Maturity Limit	Term Limit	Energy Transaction Volume Limit (MWh)	Capacity Transaction Value Limit ($)
VCE Board of Directors	Any transaction that exceeds the Enterprise Risk Oversight Committee limits			
Enterprise Risk Oversight Committee	42 Months	36 Months	500,000	$5,000,000
Executive Officer	36 Months	30 Months	375,000	$3,000,000
Wholesale Energy Provider	30 months	24 Months	250,000	$1,500,000

These authorities will be applied to wholesale power activity executed outside of the CAISO markets. These limits provide both VCE and its WEP needed authorities to manage risks as they arise. Transactions falling outside the delegations above require Board approval prior to execution. Activity with CAISO is excluded from this table due to the nature of the market, where prices for activities may not be known until after transactions are committed.

All procurement executed under the delegation above must align with any subsequent procurement strategies or financial management policies authorized by the Board and the Energy Risk Procurement Strategy (see Section 8).

3.2 Monitoring, Reporting, and Instances of Exceeding Risk Limits

The WEP Middle Office is responsible for monitoring, and reporting compliance with, all limits within the Program. If a limit or control is violated, the WEP Middle Office will send notification to the trader responsible for the violation and the EROC. The EROC will discuss the cause and potential remediation of the exceedance to determine next steps for curing the exceedance. VCE Power Resources staff are also responsible for monitoring transactions reported by the WEP and bringing to the EROC's attention any violations of limits within the Program that have not been noted by the WEP.

4. Position Tracking and Management Reporting

The WEP will assist the Director of Finance & Internal Operations in working with the EROC to establish an appropriate reporting format and metrics for VCE staff to use in reporting wholesale energy procurement risks to the EROC and the Board. The reports will show metrics, status and additional mitigations where appropriate. Emerging risk evaluation and discussion will be integrated into the reporting and monitoring process. In addition to risk-specific reporting, consolidated summary reporting on the status of all high priority wholesale energy procurement risks will be reported out as follows:

- **Daily Financial Model Forecast**
  Latest projected power costs and financial performance, marked to current market prices and shown relative to financial goals provided to Staff daily
- **Monthly Net Position Report**
  Forward net position report presented monthly to the EROC
- **Daily Credit Report**
  A report showing credit exposure for the transactions that the WEP executes on VCE's behalf and passes through the WEP to VCE provided to Staff daily
- **Monthly Risk Analysis**
  Cash flow at risk and stress testing of the financial forecast relative to financial goals presented monthly to the EROC
- **Quarterly Report to EROC**
  A qualitative and quantitative report on the status of power procurement risks provided quarterly to the EROC
- **Semi-Annual Risk Report to the Board**
  Staff will report semi-annually to the Board on the status of wholesale energy procurement risks

5. Business Practices

5.1 Channels for Procurement and Trading Practices

VCE's WEP will access power markets and transact on behalf of VCE using the following market channels:

- **Direct Solicitation**
  The WEP will use its existing relationships to seek suitable bilateral agreements with counterparties directly, either through bilateral outreach or formal Requests For Offers ("RFOs")
- **Electronic Exchange Platforms**
  The WEP will use its access to platforms such as ICE (Intercontinental Exchange) to research markets and transact
- **Electronic Auction Platforms**
  The WEP will use its access to platforms such as EnerNoc to create and enter auctions for desired products
- **Brokers**
  The WEP will use its existing agreements with brokers to help locate trade partners for desired products

Considerations for the channel(s) used include:

- Type of product
- Market liquidity
- Credit quality and availability
- Timing
- Cost/fees
- Existing counterparties and transactions
- Resource and counterparty diversity
- Market conditions

The approved scope of market participation by VCE is limited to those activities required to capture reasonably expected value and cost stability from VCE's resource portfolio without engaging in speculative or unauthorized trading activities. Staff and individuals at the WEP may exercise some discretion on trade timing and volumes subject to exigent conditions (such as unusual weather, periods of illiquidity, load/generation deviations, and/or power system circumstances). VCE procurement practices are intended to prohibit the acquisition of unwarranted or additional exposure to price and volume risk beyond that projected and associated within the efficient utilization and optimization of VCE's resource portfolio. If any questions arise as to whether a particular transaction constitutes speculation, the EROC shall review the transaction(s) to determine whether the transaction would constitute speculation.

5.2 Transaction Type, Region, and Markets

Authorized transaction types, regions and markets are listed in in section 7 to the Program. These transaction types, regions and markets are and shall continue to be focused on supporting VCE's financial policies, including the approved procurement strategy in Appendix B. New or non-standard transaction types may provide VCE with additional flexibility and opportunity but may also introduce new risks. Therefore, transaction types, regions, and markets not included in Appendix A, or transactions within already approved transaction types that are substantially different from any prior transaction executed by VCE, must be approved by the EROC prior to execution.

It is the responsibility of the WEP's Front Office to ensure that relevant departments have reviewed the proposed transaction and that material issues are resolved prior to submittal to the EROC for approval. If approved, Appendix A to the Program will be updated to reflect the new transaction type.

5.3 Credit Policy and Counterparty Suitability

All procurement activities executed by the WEP on behalf of VCE, using the WEP's counterparty agreements, will be subject to the credit policies and procedures outlined in the WEP's Energy Risk Management Policy. The WEP's credit policy requires that all counterparties be evaluated for creditworthiness by the WEP Middle Office prior to execution of any transaction and no less than annually thereafter. Additionally, counterparties shall be reviewed if a change has occurred, or perceived to have occurred, in market conditions or in a company's management or financial condition. This evaluation, including any recommended increase or decrease to a credit limit, shall be documented in writing and includes all information supporting such evaluation in a credit file for the counterparty. A credit limit for a counterparty will not be recommended or approved without first confirming the counterparty's senior unsecured or corporate credit rating from one of the nationally recognized rating agencies and/or performing a credit review or analysis of the counterparty's or guarantor's financial statements. The WEP's credit analysis shall include, at a minimum, current audited financial statements or other supplementary data that indicates financial strength commensurate with an investment grade rating. Trade and banking references, and any other pertinent information, may also be used in the review process.

Counterparties that do not qualify for a credit limit or wish to enter into a transaction exceeding their credit limit must post an acceptable form of credit support or prepayment prior to the execution of any transaction. A counterparty to the WEP may choose to provide a guarantee from a third party, provided the third party satisfies the criteria for a credit limit as outlined in the WEP's Energy Risk Management Policy.

The WEP Middle Office will establish continuous monitoring of the current credit exposure for each Counterparty with whom the WEP transacts on behalf of VCE and include such information in the Current Counterparty Credit Risk Report.

The WEP will provide a credit review and recommendation for any counterparty with whom VCE contracts directly.

5.4 System of Record

The WEP's Middle Office will maintain a set of records for all transactions executed in association with VCE procurement activities. The records will be maintained in US dollars and transactions will be separately recorded and categorized by type of transaction. This system of record shall be auditable.

5.5 Transaction Valuation

Transaction valuation and reporting of positions shall be based on objective, market-observed prices. Open positions should be valued (marked-to-market) daily, based on consistent valuation methods, and data sources. Whenever possible, mark-to-market valuations should be based on independent, publicly available market information and data sources.

5.6 Stress Testing

In addition to limiting and measuring risk using the methods described herein, stress testing shall also be used to examine performance of the VCE portfolio under adverse conditions. Stress testing is used to understand the potential variability in VCE's projected procurement costs, and resulting retail rate impacts and competitive positioning, associated with low probability events. The WEP's Front and Middle Offices will collaborate on performing stress-testing of the portfolio as needed and distribute results. The EROC will provide guidance to the WEP as needed regarding what parameters should be stress tested and to what degree.

7. Authorized Transaction Types or Products

All transaction types listed below must be executed within the limits set forth in the Program.

- CAISO Market Products
    - Day-ahead and Real-time Energy
    - Congestion Revenue Rights
    - Convergence Bidding
    - Inter-Scheduling Coordinator Transactions
    - Tagging into and out of CAISO
    - Ancillary Services
- Physical Power Products
    - Short- and Long-Term Power
    - Physical OTC Options
- Resource Adequacy
    - System, Local, and Flexible Resource Adequacy
    - Existing Contract Import Capability
- Physical Environmental Products
    - Renewable Energy Credits
    - Specified Source Power
    - Carbon Allowances and Obligations
- Transmission Access Charges
- Energy Generation
    - Energy Storage, including time-based arbitrage
    - Demand Response

The point of delivery for all products must be at a location within the CAISO service area.

8. Energy Risk Procurement Strategy

8.1 Energy Risk Procurement Strategy Overview

This Energy Risk Procurement Strategy ("Strategy") provides a roadmap of how VCE procures the power supply requirements of its customers during the current calendar year plus next two calendar years. This is not a resource plan, insofar as a resource plan deals with issues such as the long-term resource goals of VCE. Ultimately long-term resource goals will be incorporated into shorter term procurement activity. The Strategy details procurement schedules (or where appropriate justifies the decision not to set schedules) for attaining wholesale, market-based products required by the CCA. Specific focus is on procurement of the following products:

- Fixed Price Energy (also known as system power or energy hedges)
- Portfolio Content Category 1 Renewable Energy
- Portfolio Content Category 2 Renewable Energy
- Carbon Free Energy
- Resource Adequacy Capacity
- Congestion Revenue Rights

As discussed above, in addition to market-based transactions entered into pursuant to this Strategy, VCE will also procure assets, enter into long-term power purchase agreements (PPAs), and/or enter into other long-term contracts (*e.g. stand-alone energy storage*) pursuant to statutory and regulatory requirements and VCE program goals as established by the Board.

The overall goals of the Strategy are to identify exposure to commodity prices, quantify the financial impact that variability in commodity prices, load requirements, and generation output may have on the ability of the VCE to meet its financial program goals, and then manage the associated risk.

To help ensure long-term viability for the CCA, VCE has outlined the following goals in developing its power portfolio to establish metrics used for modeling and measuring risk exposures of VCE:

- VCE will target meeting all applicable Federal, regional, and local standards and regulatory requirements, including:
    - Meet CPUC Resource Adequacy requirements
    - Meet CAISO Tariff and Business Practice Manual requirements
    - Meet RPS Compliance Period energy content standards
- VCE will consider its overarching fiscal goals and concerns, such as maintaining competitive retail rates and funding financial reserves in balance with procurement decisions
- VCE will target procurement of the power portfolio product mix of renewables and non-RPS clean energy as directed by Board goals
- VCE will adhere to risk mitigating directives and delegations of the EROC

All procurement activities will be conducted to achieve results consistent with the above goals, regulatory compliance obligations, and to meet the power supply requirements of VCE's customers. Any

transaction that cannot be directly linked to a requirement of serving VCE's customers, or that does not serve to reduce risk as measured by the Cash Flow at Risk Metric described below, is prohibited.

8.2 Energy Hedging Strategy and Targets

8.2.1 Energy Hedging Overview

The time horizon for the energy hedging program for VCE will several years (see below). The energy hedging schedules described below provide a disciplined approach to procurement by mandating targeted hedge levels to be achieved by definite dates. This commonly utilized approach is intended to mitigate speculation of future wholesale market prices while also spreading procurement over a multi-year period.

The purpose of these hedging transactions is to reduce variability of power supply costs by gradually increasing the amount of energy hedged as the date of consumption approaches. Time driven strategies avoid the inherent impossibility of trying to consistently and accurately "time the market" when making hedging decisions. Additionally, VCE needs to spread its procurement efforts over time to effectively manage the potential negative price impacts of procuring a large volume of energy over a short period of time in an illiquid market.

Fixed price energy products, including block energy and shaped energy are used to manage the electricity commodity price risk that VCE faces as a CCA. Fixed price energy provides for the supplier to deliver a predetermined volume of energy, at a constant delivery rate, for a fixed price. Specific to VCE's customers, fixed price energy hedges are used to provide cost certainty and rate stability. A key goal of the CCA program is to reduce energy price uncertainty for the upcoming operating year(s) by procuring at least 70 percent and up to 100 percent of its energy needs with fixed price contracts thereby mitigating exposure to unexpected price movement.

8.2.2 Energy Hedging Targets

When assessing its requirements for fixed price energy, VCE will forecast the monthly energy requirements of its customers during heavy and light load hours[1] each month as well as the forecasted output from resources in its portfolio. Changes in regulatory, load, supply, and market dynamics may warrant occasional under- or over-hedging and subsequent remarketing of over-procured products.

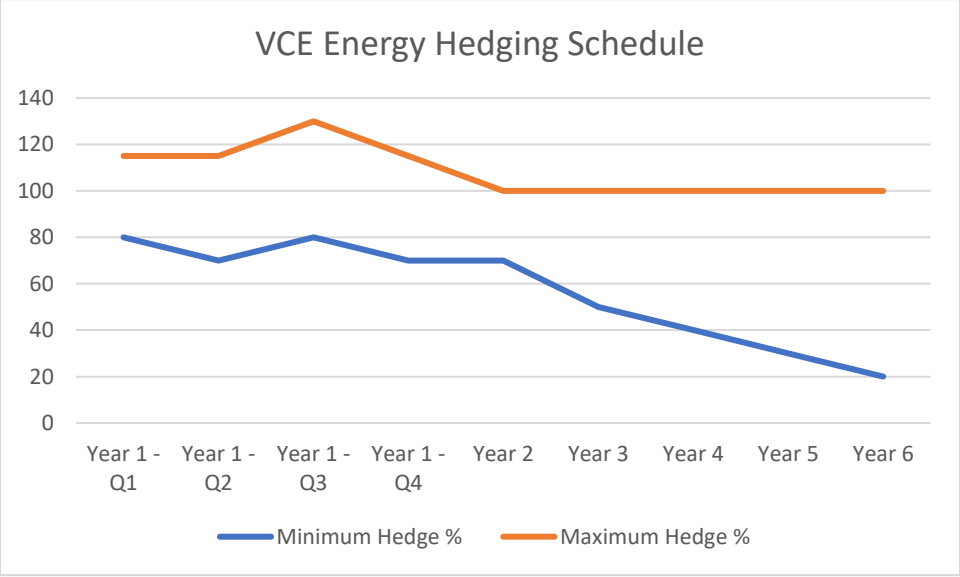
The targets below describe minimum and maximum percent hedge targets for identified future time periods. The definition of "Hedge %" in this context is the total fixed price megawatt hours (MWh) procured in the period divided by the total forecast load in MWh inclusive, as applicable, of the energy forecast to be provided by PPAs and other long-term resources within VCE's portfolio during respective time periods.

[1] Heavy Load (On-Peak) Hours in current wholesale energy markets are 6am to 10pm, Monday through Saturday, excluding New Years, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas. All other hours during the year are considered Light Load (Off-Peak) Hours.

VCE will observe the following schedule when hedging its Fixed Price Energy requirements:

Time Period	Minimum Hedge %	Maximum Hedge %
Prompt Month (Jan -March/Q1)	80%	115%
Prompt Month (April-June/Q2)	70%	115%
Prompt Month (July-Sep/Q3)	80%	130%
Prompt Month (Oct-Dec/Q4)	70%	115%
Prompt Calendar Year (PCY)	70%	100%
PCY +1	50%	100%
PCY +2	40%	100%
PCY+3	30%	100%
PCY+4	20%	100%

The hedge schedule for the Prompt Month will be measured five calendar days prior to the first day of the particular month (*e.g. on January 27, 2024, VCE will have hedged 80 to 115 percent of its projected energy requirements during February 2024, which is in Q1*). The hedge schedule for the Prompt Calendar Year (PCY), as well as subsequent four calendar years, will be measured ten calendar days prior to each new calendar year (*e.g. on December 21, 2024, VCE will have hedged at least 70 percent of its forecast energy requirements for CY 2025, 50 percent of its forecast energy requirements for CY 2026, and 30 percent of its forecast energy requirements for CY 2027, CY2028, and CY2029*). This is shown visually in the chart below.



The targets described above represent total fixed-price MWh procured compared to total MWh load forecasts. They are intentionally not prescriptive regarding diurnal periods (HLH/LLH or Peak/Off Peak) which allows flexibility in procurement strategy given rapidly evolving market dynamics. Historically

Peak/HLH periods contain the most price risk. **Accordingly, VCE additionally requires HLH periods to be procured to a minimum 100% hedged level, using the same definition above, for Prompt Months.**

Hedging decisions to reach targets between the minimum and maximum hedge levels are based on price-driven or opportunistic strategies. The purpose of these strategies is to capitalize on market opportunities when conditions are favorable. VCE bases its decision to execute opportunistic hedges on the impact to projected power supply costs and the resulting reduction in cash flow at risk (CFaR). Opportunistic hedges may be executed when energy price levels are favorable to lowering the cost of power relative to established program goals and financial projections. Alternatively, opportunistic hedges can be executed in adverse market conditions relative to financial goals in order to reduce the potential negative impact of continued upward trending commodity prices relative to established goals.

In executing this strategy, fixed price energy hedges may be purchased, sold, or moved from one month to another for the purpose of maintaining hedge coverage that matches changes in forecasted electric load. This includes the ability of the VCE to purchase standard products to hedge average loads over a defined time period and then later modify its portfolio by purchasing or selling more granular products to more precisely match load.

VCE does not set programmatic procedures assigned to Renewable Portfolio Standard, Carbon Free Energy, or Resource Adequacy products. Procurement of these products is primarily driven by VCE Board-adopted goals and regulatory compliance requirements, which in many cases apply prescribed hedging schedules, as further described in the respective sections below.

8.2.3 Summer Assessment

VCE will complete a Summer Assessment of market risk and hedging plan by June 1 of each year. This work product will be shared in draft form with the EROC in May of each year and will include:

- Analysis of summer exposure
- Fundamental analysis of market conditions
- Hourly load/resource balance forecast for June-September
- Recommendations on products and target hedge levels designed to mitigate peak hour and daily HLH exposure

Although compliance with the Fixed Price Energy schedule above will be measured monthly, **VCE shall endeavor to complete all Q3 hedging prior to June 15 of each year**, subject to and allowing for true-ups as load and generation profiles fluctuate throughout the summer season.

8.2.4 Power Charge Indifference Adjustment ("PCIA") Exit Fee and Hedging with Fixed Price Energy

Under the current PCIA construct, departing load is responsible for costs associated with procurement that the incumbent utility has already done on behalf of that load. At the time of departure, the applicable vintage portfolio[2] then serves as a hedge for the departing load in that as market prices

[2] The vintage portfolio is generally all contracts and utility-owned generation that was procured while the departing load was still receiving bundled service.

increase, the departing load charges decrease, thereby reducing costs to CCA customers relative to bundled customers. Similarly, if market prices decrease, the departing load charges increase, due to more of the vintage portfolio being above market costs.

One impact of the PCIA on VCE is, therefore, the way it serves as a "lagging hedge" against energy price volatility. Increased market prices in one year will result in an all-else-equal lower PCIA in subsequent years, and vice versa, although the exact impact will depend on market-sensitive PG&E data that VCE does not have access to. In lieu of better quantitative data, hedging decisions will be made with the qualitative understanding that the PCIA may serve from a 5% to 20% "lagging hedge" on VCE's portfolio, dependent on market conditions and seasonality.

8.3 Congestion Revenue Rights

RTO markets such as the CAISO expose entities to financial basis risks between the point a seller supplies power (a "source" node) and the location where the buyer has load (a "sink" node). In order to manage this risk CAISO offers a financial product known as congestion revenue rights ("CRRs") which can be allocated to an entity or purchased via the CAISO CRR Auction. VCE will use both mechanisms to acquire necessary congestion hedges in on and off-peak periods to reduce risk between generation or fixed price energy purchase locations and VCE's load point. CRRs are limited in that they are designed to cover energy flows that are blocked into on-peak and off-peak periods and are not shapeable. As VCE's CRRs are used to manage a source-sink relationship consistent with utility hedging, exposure created by the CRR must be reasonably expected to have an offsetting effect on cashflow associated with the positions that necessitated the CRR in the first place across the period. It is acknowledged however that due to discrepancies in granularity, these cashflows will never be fully symmetric.

The WEP will calculate a Total Dollar Stop-Loss designed to limit the amount of capital that could be consumed taking into consideration both realized and unrealized gains. For CRRs, the WEP monitors a five percent outcome for CFaR for inclusion in the Total Dollar Stop-Loss value. Once the Total Dollar Stop-Loss reaches the limit outlined in the WEP's Energy Risk Management Policy all open position trading at the WEP on behalf of VCE is ceased and positions are liquidated if needed.

8.4 Compliance and Goal-Driven Procurement

This section covers procurement undertaken primarily to meet compliance requirements set by regulatory authorities and/or to meet Board-adopted goals.

8.4.1 Renewable Procurement

VCE has a compliance mandate to procure sufficient renewable energy to meet the state of California's RPS requirements, based on multi-year compliance periods, as well as Board-adopted goals regarding the sourcing of its portfolio from renewable and/or carbon-free sources. VCE will meet all current Board adopted goals and state compliance mandates in its renewable energy procurement.

A large portion of VCE's renewable energy supply will consist of Portfolio Content Category 1 ("PCC1") renewable energy. PCC1 renewable energy is sourced from a renewable generator either located inside of California or from a generator that is directly interconnected to the CAISO or other California Balancing Authority. 75% of the renewable energy used to meet VCE's RPS compliance requirement must be sourced from PCC1 renewable energy.

Additional renewable procurement can come from Portfolio Content Category 2 ("PCC2") renewable energy. PCC2 energy is sourced from renewable generators located outside the state of California and is "firmed and shaped" for reliable delivery into California. PCC2 purchases have historically been less expensive and shorter in term than PCC1, so they can provide a cost-effective and flexible method of augmenting VCE's renewable energy purchases to meet renewable portfolio content compliance requirements and goals. However, under the greenhouse gas emissions accounting methodology of the California Energy Commission's Power Source Disclosure Program PCC2 renewable energy is ascribed the same carbon-intensity as "unspecified" system power unless matched one-to-one with carbon-free energy. The procurement strategy of this product is thus dependent on the combined price of PCC2 and carbon-free energy to meet VCE's total carbon-free goals, compared to the direct procurement of PCC1 energy, which receives a lower or zero carbon-intensity rating, dependent on fuel type. PCC2 purchases also require increased oversight of deliveries and compliance reporting, which further reduces the attractiveness of this product over PCC1 energy.

VCE will not target any procurement of Portfolio Content Category 3 ("PCC3") renewable energy, which takes the form of a credit "unbundled" from the energy production of a renewable asset, and can be procured from both in-state and out-of-state renewables. However, PCC3 is reserved for use to make up any shortfalls in renewable energy content in a given year stemming from volumetric changes in forecast versus actual load or volumetric changes in deliver of renewables. This could occur if VCE's load in a given year is greater than forecast. PCC3 would only be used as insurance that VCE meets its desired power mix for a year when additional procurement of PCC1 and PCC2 is not feasible. No more than 10% of the renewable energy used to meet VCE's RPS compliance requirement can be sourced from PCC3 renewable energy.

As part of VCE's Renewable Procurement Plan, filed annually with the CPUC, VCE staff and consultants undertake an annual assessment of the entirety of the program's renewable energy procurement activities with respect to both state compliance goals and Board-adopted goals. This analysis, which includes qualitative and stochastic risk assessment, feeds into VCE's renewable procurement timelines as well as its annual RPS compliance filing. The analysis is updated on an ad hoc basis throughout the year as a function of changing market dynamics or new procurement mandates. This assessment provides guidance and guardrails to VCE's renewable procurement strategy, similar to the energy hedging targets described above.

8.4.2 Carbon-Free Procurement

In pursuit of its goal to develop a clean and renewable energy portfolio, VCE shall procure incremental carbon-free energy in addition to the renewable procurement described above. Carbon-free energy generating facilities are typically hydroelectric resources located in California that are too large to qualify as Eligible Renewable Resources (greater than 30 MW) or located outside of California. Similar to

PCC2 renewable energy contracts, carbon-free energy purchases are typically short-term, most frequently one to three years in length.

The majority of VCE's renewable energy is also carbon-free, which means that the analysis that drives VCE's renewable procurement decisions also underlie VCE's supplemental carbon free energy procurement. For this reason, VCE staff and consultants will utilize the annual renewable procurement planning and analysis process to also plan for carbon-free energy procurement rather than utilizing programmatic hedging targets. The purchase of carbon-free energy is a voluntary goal set by the Board, who may elect to reduce the total quantity of carbon free energy included in VCE's portfolio as it seeks to balance multiple program objectives, including financial targets for reserves and retail rates.

8.4.3 Carbon Allowances

Procurement of out-of-state power can be structured in a way that creates a Carbon Cap and Trade compliance obligation which must be covered by carbon allowances. VCE expects to avoid this obligation by structuring any out-of-state power transactions (e.g. Pacific Northwest Large Hydro) such that it is not the First Importer of power into the state. Therefore, it is not anticipated that carbon allowances will need to be procured by VCE. Should it be potentially commercially advantageous to structure a transaction such that VCE is the First Importer of energy into California, VCE will factor in the expected cost of procuring carbon allowances and increased compliance burden in its procurement decision.

8.4.4 Resource Adequacy Capacity

VCE will use best reasonable efforts to comply with the filing requirements of the CAISO- and CPUC-administered Resource Adequacy (RA) program, currently:

- 90% of System and Flexible RA requirements procured prior to the year-ahead RA showing on October 31st of the year prior to the showing year
- 100% of System and Flexible RA requirements procured prior to the month-ahead RA showings, due 45 calendar days prior to the first day of the showing month

Starting in the 2023 RA compliance year, procurement of local RA is solely the responsibility of the Central Procurement Entity (CPE) in PG&E's service territory, the only territory in which VCE serves load. Therefore VCE no longer has a regulatory obligation to procure or show local RA to the state agencies. Instead, VCE has the option to self-show or sell its local RA capacity to the CPE to obtain some value for it, which also has a downside of reduction in VCE's RA portfolio flexibility to sell potential long RA positions.

RA is typically transacted via contracts that vary in length from one month to three years, and it is currently bought and sold via a bilateral market, which can result in cost-effective contracting opportunities but is also sometimes fragmented and volatile. Due to the nature of RA markets, monthly products are often bundled with other products or "strips" of multiple months of RA, which may result in over-procurement for one or more months as a necessary condition to satisfy compliance requirements in one or more other months. Execution of long-term PPAs or other contracts can also lead to over-procurement of RA products for future years, and inclusion of a defined hedging matrix for RA might require selling excess long-term RA to bring VCE into hedging compliance, even though such action may not be in VCE's best business and operational interest. Given these factors, as well as the fact

that compliance guardrails already exist for the RA program, VCE does not have programmatic hedging targets for RA capacity.

The RA program's potential restructuring, which could significantly impact VCE's RA compliance requirements, is currently part of an open proceeding at the CPUC for potential test implementation in the 2024 compliance year and full implementation in the 2025 compliance year.

8.4.4 Long-Term Mandated Procurement

CPUC-jurisdictional entities participate in regular Integrated Resource Planning cycles led by the CPUC, which can result in mandates to procure a share of the capacity needed to help ensure the long-term reliability of the California power grid. VCE will continue to target meeting all mandated capacity procurement requirements while attempting to procure low-cost resources that potentially provide additional energy products aligned with VCE's procurement goals.

8.5 CAISO Market Energy

Because VCE customers reside in the CAISO balancing authority, their load will be served physically by energy from the CAISO market. VCE is therefore subject to paying the price at the PG&E Default Load Aggregation Point (DLap) where it is assumed to take energy.

The WEP's CAISO Desk will create and analyze daily short-term load forecast profiles that take into account weather and other variables. Forecasted hourly loads for VCE will bid into the CAISO Day Ahead market by 10am the prior day. All awarded from the Day Ahead market will carry over to the Real Time market. Any deviations in VCE's actual load in Real Time from what is scheduled int the Day Ahead market will pay or be paid at the Real Time market prices.

8.6 Energy Risk Procurement Strategy Metrics

The success of the Energy Risk Procurement Strategy will be measured by realizing power supply costs in line with the budgeted power supply costs used to set customer rates, as well as by reducing VCE's exposure to commodity price risk. The following two metrics will be utilized to manage the Energy Risk Procurement Strategy:

- Current projected power supply costs will be compared to budgeted power supply costs where budgeted costs will be based on the assumptions used at the time customer generation rates are set. Current power supply costs shall use all fixed price contracts executed as of the date of the report. All open positions will be marked to market and compared to the budgeted power supply costs.
- Cash Flow at Risk (CFaR). CFaR represents a statistical view of what could happen to VCE's power supply costs and CRR portfolio assuming that no action is taken to manage its portfolio from the date of the analysis through the end of the period of time being analyzed. The potential CFaR will be calculated using a historical sampling methodology that considers on- and off-peak periods separately over the remaining life of the transactions. The CFaR calculation will

consider potential variability in load and generation supply. The CFaR will be calculated by rank ordering the portfolio cost and measuring the difference between the 95th percentile and the expected power cost outcome.

These metrics will be reviewed when making price-driven or opportunistic hedging decisions to ensure that the transactions are consistent with the goals of the Energy Risk Procurement Strategy. These metrics will be updated and reported by the WEP to the EROC on a monthly basis.

9. Definitions

The following are definitions of commonly used energy procurement terms utilized in this document and in discussing energy procurement strategy and processes.

- **Back Office**
  That part of a trading organization which handles transaction accounting, confirmations, management reporting, and working capital management.
- **Bilateral Transaction**
  Any physical or financial transaction between two counterparties, neither of whom is an Exchange or market entity (*e.g. CAISO*).
- **Cash Flow at Risk**
  A probability-based measure of the extent to which future cash flows may deviate from expectations due to changes in load, generation and/or market prices of energy. (For RCEA, the most relevant Cash Flow at Risk metric is a measure of the potential for net revenues to deviate from the current forecast.)
- **CAISO**
  California Independent System Operator. CAISO operates a California bulk power transmission grid, administers the State's wholesale electricity markets, and provides reliability planning and generation dispatch.
- **CCA**
  Community Choice Aggregator. CCAs allow local government agencies such as cities and/or counties to purchase and/or develop generation supplies on behalf of their residents, businesses, and municipal accounts.
- **Commodity**
  A basic good used in commerce that is interchangeable with other goods of the same type. Commodities are most often used as inputs in the production of other goods or services. The quality of a given commodity may differ slightly, but it is essentially uniform across producers. When they are traded on an exchange, commodities must also meet specified minimum standards, also known as a basis grade.
- **Commodity Price or Market Price**
  The price at which electricity, gas, capacity, and renewable attributes are bought and sold.
- **Confirmation Letter**
  A letter agreement between two counterparties that details the specific commercial terms (e.g., price, quantity and point of delivery) of a transaction.
- **Congestion Revenue Rights**
  Congestion Revenue Rights (CRR) are financial instruments used in the Day Ahead market to hedge the difference in price between two locations caused by congestion.
- **Counterparty Credit Risk**
  The risk of financial loss resulting from a counterparty to a transaction failing to fulfill its obligations.
- **Customer Load**
  A single customer's power usage that receives power from the electric system.

- **Day-Ahead**
  Refers to the day before actual power flow begins. For example, in the CAISO, the Day-Ahead market for Tuesday's flow date closes on Monday at 10am.
- **Default Load Aggregation Point (DLap)**
  A set pricing nodes used in the CAISO market for the submission of demand bids and for settlement of demand. The purpose of a DLap is to collapse into a single pricing node, the various locations of a load serving entity's load that are distributed throughout the system.
- **Delivery Point**
  The point at which a commodity will be delivered and received.
- **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 VCE. 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.
- **Financial Product**
  A contract in which the value is derived from an underlying physical commodity but which does not require physical delivery or receipt of the commodity.
- **Front Office**
  That part of a trading organization which solicits customer business, services existing customers, executes trades, and ensures the physical delivery of commodities.
- **Hedging Transaction**
  A transaction designed to reduce the exposure of a specific outstanding position or portfolio; "fully hedged" equates to complete elimination of the targeted risk and "partially hedged" implies a risk reduction of less than 100%.
- **Illiquidity**
  Occurs when an asset cannot easily and quickly be sold or exchanged for cash without a substantial loss in value.
- **Limit Structure**
  A set of constraints that are intended to limit procurement activities.
- **Limit Violation**
  Any time a defined limit is violated.
- **Liquidity**
  Efficiency or ease with which an asset can be transacted without affecting its market price.
- **Long Position**
  A long position means there is not an open or short position, and that excess supply exists. In addition, as load forecasts are updated, if an excess exists, that excess is also considered a long position. For the renewable power purchase example (see Open Position), if 60,000 MWh have been procured for a 50,000 MWh need, a long position of 10,000 MWh will exist.
- **Middle Office**
  That part of a trading organization that measures and reports on market risks, develops risk management policies and monitors compliance with those policies, manages contract

administration and credit, and keeps management and the Board informed on risk management issues.

- **Non-Standard**
  Any product that is not commonly transacted among market participants in forward markets. The nonstandard attribute of the product could be a function of a number of factors such as volume, delivery period and/or term.
- **Open Position**
  For any given timeframe, any commodity requirement that is unfilled is considered to be an open position. For instance, if there is a requirement to procure 50,000 MWh of renewable power in a calendar year, until 50,000MWh of renewable power purchases have been secured, there will be an open position equal to the remaining MWh value needed to reach 50,000 MWh.
- **PCIA**
  Power Cost Indifference Adjustment. The PCIA is intended to compensate Investor-Owned Utilities for their stranded costs when a bundled customer departs and begins taking generation services from a CCA.
- **Physical Product**
  A contract which requires the seller to physically deliver, and the buyer to physically receive a given commodity.
- **Price Risk (also known as Market Price Risk)**
  Price Risk is the risk that prices for power are different than have been assumed for financial planning and budgeting. Price Risk is hedged by procuring fixed-price forward contracts for power.
- **Portfolio**
  The aggregation of commodity-related products (both physical and financial) procured to serve load and meet other policy goals.
- **Prompt**
  The period immediately following the current period, e.g. in February the prompt month is March.
- **Real Time**
  Refers to the actual day in which power flows. In the CAISO, the Real-time market opens at 1pm the day before flow date and closes for each hour 75 minutes prior to the start of scheduled flow.
- **Renewable Energy Certificate (REC)**
  A REC is evidence of the production equal to one megawatt-hour of generation from a certified renewable energy resource.
- **Retail Load**
  The summation of all customers' loads that receive power from the electric system.
- **Scheduling**
  The actions of the counterparts to a transaction, and/or their designated representatives, of notifying, requesting and confirming to each other the quantity and type of product to be delivered on a given day.
- **Separation of Function**
  Also referred to as “segregation of duties,” part of a complete risk control framework.

Individuals responsible for legally binding the organization to a transaction should not also perform confirmation, clearance, or accounting functions.

- **Settlement**
  Settlement is the process by which counterparties agree on the dollar value and quantity of a commodity exchanged between them during a particular time interval.
- **Short Position**
  A short position is an open position. The volumetric value of a short position is determined by the shortfall in volume compared to the requirement. For the renewable power purchase example, if 30,000 MWh of the 50,000 MWh requirement has been procured, a short position of 20,000 MWh remains.
- **Specified Source**
  A Specified Source is an out-of-state generator that meets the requirements of the California Air Resources Board such that the carbon intensity of that resource's emissions (typically zero, or lower than that of unspecified imports) can be declared by the California entity importing the power.
- **Stress Testing**
  The process of simulating different financial outcomes to assess potential impacts on projected financial results. Stress testing typically evaluates the effect of negative events to help inform what actions may be taken to lessen the negative consequences should such an event occur.
- **System Load**
  The summation of all customers' loads that receive power from the electric system. System Load includes applicable transmission and/or distribution losses.
- **Volumetric Risk**
  The effect of fluctuations in demand for load or for production of generation from a generator.
- **Western Renewable Energy Generation Information System (WREGIS)**
  The Western Renewable Energy Generation Information System (WREGIS) is an independent, renewable energy tracking system for the region covered by the Western Electricity Coordinating Council (WECC).
- **Wholesale Energy Provider**
  An entity broadly responsible for managing the purchase and sale of energy commodity-related products in the commodity portfolio in an effort to serve load and meet other policy goals.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 19

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Edward Burnham, Director of Finance & Internal Operations

SUBJECT: VCE Strategic Plan Update

DATE: February 9, 2023

RECOMMENDATION
This is an informational item, no action requested.

OVERVIEW
The purpose of this report is to:

1. Present a progress update on the VCE Three-Year Strategic Plan (2021-2023); and
2. Present a plan and timeline for extending beyond the current end of the planning period (end of 2023).

BACKGROUND
The Board ratified the VCE Three-Year Strategic Plan (Plan) for 2021-2023 at it's November 12, 2020 meeting (VCE-Strategic-Plan-Final.pdf (valleycleanenergy.org). The strategic plan is aligned with VCE's mission and vision and guides the organization's actions over a multi-year time horizon. The Plan is the basis for developing annual organization and individual goals, annual budgets, key decisions, and priorities. The Plan also informs the development of VCE's compliance documents, including the Integrated Resource Plan (IRP), a document that sets out a 10-year roadmap for energy procurement that is updated on a 2-year rolling basis.

The Plan categories and key goals include:

FINANCAL STRENGTH	• Goal: Maintain and grow a strong financial foundation and manage costs to achieve long-term organizational health.
PROCUREMENT AND POWER SUPPLY	• Goal: Manage power supply resources to consistently exceed California's Renewable Portfolio Standard (RPS) while working toward a resource portfolio that is 100% carbon neutral by 2030.
CUSTOMERS AND COMMUNITY	• Goal: Prioritize VCE's community benefits and increase customer satisfaction and retention.
DECARBONIZATION AND GRID INNOVATION	• Goal: Promote and deploy local decarbonization and grid innovation programs to improve grid stability, reliability, community energy resilience, and safety.
STATEWIDE ISSUES: REGULATORY AND LEGISLATIVE AFFAIRS	• Goal: Strongly advocate for public policies that support VCE's Vision/Mission.
ORGANIZATION, WORKPLACE, AND TECHNOLOGY	• Goal: Analyze and implement an optimal long-term organizational, management, and information technology structure at VCE.

The Strategic Plan incorporates the following schedule for status reporting:

- Quarterly Report to VCE Management
  Staff will report quarterly to the Executive Officer on the status of goals, objectives and metrics for which they are responsible.
- Annual Report to Board and CAC
  Staff will report annually to the Board and CAC on the status of goals, objectives and metrics, and will recommend any mitigations or amendments as may be necessary for Board approval.

Staff has provided progress updates to the Executive Officer, Community Advisory Committee (CAC), and Board as described above. Generally, Staff observes that progress has been made in each goal area and that the plan serves to align organizational activities with policy priorities.

"Rolling" Strategic Plan Concept (Beyond 2023)

The current Strategic Plan runs through the end of 2023. Based on early Board feedback on the approach for extending the strategic plan beyond the end of 2023, Staff has developed an action plan to adopt one-year "rolling" extensions each year so that the Plan is always 1+ years from expiration to maintain a three-year outlook. The first update will require the development of 2024-2025 objectives. The following strategic plan objectives for 2026 will be included in the 2024 rolling update. Staff will present the plan and timeline to the Community Advisory Committee in February for additional feedback on the development process and plan to return to the Board in Q3.

Proposed Plan Development Process and Timeline

The following planning process outline and timeline are suggested based on the Board's previous direction to adopt a rolling strategic plan. Based on Board feedback, staff will develop a detailed project calendar. The proposed project calendar would be based on the following milestones and timeline:

Tentative development milestones and timeline:

- February 13, 2023 (current action). Board direction – Board direction on the rolling strategic plan development process and timeline.
- February 23, 2023 - CAC. Present rolling strategic plan process and timeline to CAC. Recommend that the CAC form a Task Group to provide feedback related to the development of a rolling strategic plan.
- March–June 2023 – CAC Task Group to provide input and feedback to staff in developing the working draft plan.
- June – July 2023 – Draft Plan. Present Draft to CAC and Board for review and feedback in Q3 2023.
- August – September 2023 – Final draft plan. Present final draft to CAC and Board for consideration for adoption by Q4 2023.

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Staff believes this schedule represents a relatively quick but achievable timeline for adoption of a rolling strategic plan by the end of 2023.

CONCLUSION

Staff is seeking confirmation from the Board on the development of a rolling strategic plan. If Board direction is provided, staff will put the tentative timeline outlined above into motion.