Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, September 10, 2020 at 4:00 p.m.
Via Teleconference

Pursuant to the Provisions of the Governor's Executive Orders N-25-20 and N-29-20, which suspends certain provisions of the Brown Act and the Orders of the Public Health Officers with jurisdiction over Yolo County, to Shelter in Place and to provide for physical distancing, all members of the Board of Directors and all staff will attend this meeting telephonically. Any interested member of the public who wishes to listen in should join this meeting via teleconferencing as set forth below.

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.

Members of the public who wish to listen to the Board of Director's meeting may do so with the teleconferencing call-in number and meeting ID code. Teleconference information below to join meeting:

Join meeting via Zoom:

a. From a PC, Mac, iPad, iPhone, or Android device with high-speed internet. (If your device does not have audio, please also join by phone.)
https://us02web.zoom.us/j/81054631110
Meeting ID: 810 5463 1110

b. By phone
One tap mobile:
+1-669-900-9128,,81054631110 US
+1-253-215-8782,,81054631110 US

Dial:
+1-669-900-9128 US
+1-253-215-8782US
Meeting ID: 810 5463 1110

Public comments may be submitted electronically or during the meeting. Instructions on how to submit your public comments can be found in the PUBLIC PARTICIPATION note at the end of this agenda.

Board Members: Don Saylor (Chair/Yolo County), Dan Carson (Vice Chair/City of Davis), Tom Stallard (City of Woodland), Wade Cowan (City of Winters), Gary Sandy (Yolo County), Lucas Frerichs (City of Davis), Angel Barajas (City of Woodland), and Jesse Loren (City of Winters)

4:00 p.m. Call to Order

1. **Welcome**
2. **Approval of Agenda**
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. 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. **Approve August 13, 2020 Board Meeting Minutes.**
5. **Receive 2020 Long Range Calendar.**
6. **Receive Financial Update – July 31, 2020 (unaudited) financial statement.**
7. **Receive Legislative Update.**
8. **Receive September 4, 2020 Regulatory Update provided by Keyes & Fox.**
9. **Receive September 1, 2020 Customer Enrollment Update.**
10. **Receive Community Advisory Committee August 27, 2020 Meeting Summary.**
11. **SMUD Amendment #19 to Task Order 4 – Operational Staff extension of Director of Finance and Internal Operations through December 31, 2020.**
12. **Approve amended and restated credit agreement with River City Bank. (Action)**

REGULAR AGENDA

13. **Approve Resource Adequacy Agreements between Valley Clean Energy and**
    A. **VESI 10 LLC (battery storage, stand alone);**
    B. **Leapfrog Power, Inc. (demand reduction – both program and commercial / industrial reduction). (Action)**
14. **Receive update and provide comments on VCE's draft statement on current environmental and social justice issues. (Informational)**
15. **Receive progress update and provide feedback on VCE Strategic Plan. (Informational)**
16. **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.
17. **Adjournment:** The next VCE Board meeting is scheduled for Thursday, October 8, 2020 at 4:00 p.m. to held via teleconference.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS MEETING ON THURSDAY, SEPTEMBER 10, 2020 AT 4:00 P.M.:

PUBLIC PARTICIPATION. 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.

Verbal public participation during the meeting: If participating during the meeting, there are two (2) ways for the public to provide verbal comments:

1) If you are attending by computer, activate the "participants" icon at the bottom of your screen, then raise your hand (hand clap icon) under "reactions".
2) If you are attending by phone only, you will need to press *9 to raise your hand.

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 Comments: If you wish to make a public comment at this meeting, please e-mail your public comment to Meetings@ValleyCleanEnergy.org or notifying the host as described above. Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Committee 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. E-mail comments received after the item is called will be distributed to the Board and posted on the VCE website so long as they are received by the end of the meeting.

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: Valley Clean Energy Alliance Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Approval of Minutes from August 13, 2020 Special Board Meeting

DATE: September 10, 2020

RECOMMENDATION

Receive, review and approve the attached Minutes from the August 13, 2020 Special Board meeting.

MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS SPECIAL MEETING
THURSDAY, AUGUST 13, 2020

The Board of Directors of the Valley Clean Energy Alliance duly noticed their special meeting scheduled for Thursday, August 13, 2020 at 4:00 p.m., to be held via Zoom teleconference. Chairperson Don Saylor established that there was a quorum present and began the meeting at 4:00 p.m.

Board Members Present:	Don Saylor, Dan Carson, Tom Stallard, Gary Sandy, Angel Barajas, Jesse Loren, *Lucas Frerichs (*arrived at 4:03 p.m.)
Members Absent:	Wade Cowan

Approval of Agenda

Motion made by Director Frerichs, seconded by Director Loren to approve the August 13, 2020 agenda. Motion passed unanimously, with Director Cowan absent.

Public Comment

Chairperson Saylor opened the floor for public comment. There were no written or verbal public comments.

Approval of Consent Agenda / Resolution 2020-022

Chairperson Saylor asked if the Board had any items to be pulled from the Consent Agenda. Director Carson does not want to pull an item, but he does have a question regarding Item 8 – Regulatory Update from Keyes & Fox. Chairperson Saylor had a question/comment about Item 9 – Customer Enrollment Update stating that this item does not need to be pulled from the Consent agenda either. The questions/comments will be addressed after the Consent Agenda has been approved.

Motion made by Director Barajas to approve the consent agenda, seconded by Director Frerichs. There were no written or verbal public comments. Motion passed unanimously with Director Cowan absent. The following items were approved, ratified, and/or received:

4. July 9, 2020 special Board meeting Minutes;
5. 2020 Long Range Calendar;
6. Financial Updated – June 30, 2020 (unaudited) financial statement;
7. Legislative Update;
8. August 5, 2020 Regulatory update provided by Keyes & Fox;
9. August 5, 2020 Customer Enrollment Update;
10. Community Advisory Committee July 23, 2020 meeting summary;
11. signed Amendment #18 to Task Orders 2, 3, and 4 to SMUD agreement increasing the Consumer Price Index (CPI) effective July 1, 2020; and,
12. Resolution 2002-022 amending Resolution 2017-004 modifying time and place for regular Board meetings.

Director Carson asked about Pacific Gas & Electric's (PG&E) regionalization efforts coming out of their bankruptcy proceedings. He read that the regionalization is focused on fire areas and VCE along with other CCA's are grouping together to provide feedback. Interim General Manager Mitch Sears confirmed that the regionalization efforts by PG&E are moving forward and r PG&E has been receptive to feedback and input from the CCAs. Director Carson suggested that PG&E's regionalization efforts be a future Board agenda item for discussion and formal input from the VCE Board on this issue.

Chairperson Saylor commented that Item 9 – Customer Enrollment Update displays opt outs, but does not provide additional information, such as customer category, number of accounts, or the electricity load demand of those who have opted out. He requested that this type of information be added so that the Board can get a better understanding of the impacts of those customers opting out of VCE. Staff will provide additional information in the Customer Enrollment Update to reflect this request.

Item 13: Recognition of the City of West Sacramento as an Associate Member of VCE JPA / Resolution 2020-023

Director Loren made a motion to adopt a resolution thanking the City of West Sacramento for serving as an Associate Member to Valley Clean Energy during VCE's investigation of ownership of PG&E's local assets, seconded by Director Barajas. There were no written or verbal public comments. Motion passed as Resolution 2020-023 by the following vote:

AYES: Saylor, Carson, Stallard, Sandy, Frerichs, Loren, Barajas
NOES: None
ABSENT: Cowan
ABSTAIN: None

City of West Sacramento Councilperson Beverly Sandeen informed those present that Mayor Christopher Cabaldon unfortunately could not attend tonight's meeting, but he wanted her to pass on to VCE his appreciation. Councilmember Sandeen thanked and shared the City of West Sacramento's gratitude with the City keeping tabs on VCE and continuing the relationships that have formed.

Item 14: Approval of VCE's 2020 Integrated Resource Plan and associated Action Plan for submittal by September 1, 2020 / Resolution 2020-024

Mr. Sears introduced Dr. Olof Bystrom who reviewed the no cost adjustments to the portfolios made in the draft Integrated Resource Plan (IRP). Dr. Bystrom highlighted the areas revised within the IRP and reviewed the recommendation to the Board on adopting the IRP.

Chairperson Saylor asked if the Board Members had any questions. There being none, Chairperson Saylor asked if there were any written or verbal public comments. There were no written public comments, but there were verbal public comments.

Yvonne Hunter, Chair of the Community Advisory Committee (CAC), informed those present that the CAC supports staff's recommendation and wanted to note that "while the mandatory 38 MMT portfolio is not the recommended path forward due to financial projections, we encourage the Board to make ongoing efforts at VCE to exceed the 46 MMT path."

Christine Shewmaker commented that she would like the Board to consider a long term goal of carbon neutrality by the year 2030.

Director Stallard made a motion to:

- Approve the Integrated Resource Plan (IRP) in substantially the form attached and selects the "46MMT Portfolio" as VCE's preferred conforming resource portfolio and the Action Plan identified therein, for submission to the California Public Utilities Commission (CPUC).
- Authorizing staff to make any non-substantial changes necessary to finalize the IRP as well as supplemental documents and work products to be submitted to the CPUC by September 1, 2020.

This motion was seconded by Director Sandy. Motion passed as Resolution 2020-024 by the following vote:

AYES: Saylor, Carson, Stallard, Cowan, Frerichs, Loren, Barajas
NOES: None
ABSENT: Sandy
ABSTAIN: None

Item 15: Update on VCE's response to current environmental and social justice issues (Informational)

VCE Staff Rebecca Boyles informed those present that Staff have been working with the Board's Environmental and Social Justice work group to draft a statement that is action oriented and to received feedback from the Board's network. Ms. Boyles informed those present that a draft statement will be presented to the CAC for their input at their August meeting, then it will go back to the Board. It is the goal to have a final draft presented to the Board at their September meeting. Board Members expressed their support for an action type of statement on this issue.

There were no written or verbal public comments.

Item 16: Update on VCE Strategic Plan process (Informational)

Mr. Sears informed those present that LEAN Energy, VCE's consultant assisting with the Strategic Plan, has scheduled interviews with Board and CAC members. Mr. Sears outlined the process and schedule with the goal of a working draft plan to be reviewed by the Board Subcommittee and CAC Strategic Plan Work Group in the next few months with a final draft plan being presented to the Board at their October meeting for consideration of adoption.

Director Carson is very interested in attending the CAC's meeting when the draft plan is presented and discussed.

There were no written or verbal public comments.

Board Member and Staff Announcements

VCE Staff George Vaugh, provided a verbal summary of VCE's fiscal year 2019-2020 budget outcomes, in summary the key points are:

- VCE ended the year with a Positive Net Income of $8.8M, which was $500K below the $9.3M budget;
- Very accurate on the Revenue and Power Costs components; and,
- Mitigated the lower than budget Gross Margin by realizing $500K in Operational Savings.

Mr. Sears informed those present that Ms. Boyles is leading an effort to draft a PG&E support letter from VCE and other CCAs asking the CPUC to postpone implementing time of use (TOU) for some agriculture customers. PG&E is going to carry their request letter and CCA letters of support to the CPUC.

Mr. Sears informed those present that VCE donated 500 masks to RISE, Inc., located in Esparto with Director Angel Barajas, VCE Staff Rebecca Boyles and Tessa Tobar in attendance for the donation.

Mr. Sears informed those present that there has been some progress on the SACOG Grant to install electric vehicle charging stations in Yolo County with draft Memorandum of Understanding (MOU) scheduled to go to the Winters City Council for approval and with the MOU between VCE and City of Davis complete.

The next scheduled Board meeting is Thursday, September 10, 2020 at 4 p.m. via teleconference.

Adjournment

Chairperson Saylor announced that the Board does not have a Closed Session scheduled. With no further business to conduct, the special Board meeting was adjourned at 4:52 p.m.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE
Board of Directors Meeting

Staff Report - Item 5

TO: Valley Clean Energy Alliance Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Community Advisory Committee 2020 Long-Range Calendar

DATE: September 10, 2020

Recommendation

Please find attached the Board and Community Advisory Committee long-range calendar for 2020.

VALLEY CLEAN ENERGY

2020 Meeting Dates and ***Proposed*** Topics – Board and Community Advisory Committee

MEETING DATE		TOPICS	ACTION
January 9, 2020	**Board** WOODLAND	•	•
January 23, 2020	**Advisory Committee** WOODLAND	•	•
February 13, 2020	**Board** DAVIS	• Power Purchase Agreement	• Action
February 27, 2020	**Advisory Committee** DAVIS	• Task Groups – Present Tasks/Projects • Update on Regulatory Assistance Project	• Informational • Informational
March 12, 2020	**Board** WOODLAND	• Preliminary FY20/21 Operating Budget (Regular) • GHG-free attributes • Local/Regional Renewable RFO solicitation	• Review • Action • Informational
Monday, March 23, 2020 **CANCELLED**	**Board WOODLAND**	• Strategic Plan • To be rescheduled for a future date	• Discussion/Action
March 26, 2020 IRP workshop CANCELLED	**Advisory Committee** WOODLAND	• Integrated Resource Plan (IRP) workshop (to be rescheduled - due date is now September 1, 2020)	• Information
April 9, 2020 Via Teleconference	**Board** ~~DAVIS~~	• Local / Regional Renewable Request for Offers (RFO) solicitation • River City Bank Revolving Line of Credit • Power Purchase Agreement	• Action • Action • Action
April 23, 2020 Via Teleconference	**Advisory Committee** ~~DAVIS~~	• Review Task Groups' projects/tasks "charge" for 2020	• Action

May 14, 2020 Via Teleconference	**Board** ~~WINTERS~~	• Power Purchase Agreement - YCFCWCD • Greenhouse Gas (GHG)-free attributes • Update on FY20/21 Operating Budget	• Approval • Action • Informational
May 28, 2020 Via Teleconference IRP Workshop	**Advisory Committee** ~~WOODLAND~~	• Integrated Resource Plan (IRP) Public Workshop, CAC to provide recommendation	• Information / Discussion
June 11, 2020 Via Teleconference	**Board** ~~DAVIS~~	• Final Approval of FY20/21 Operating Budget • Extension of Waiver of Opt-Out Fees for one more year • Re/Appointment of Members to Community Advisory Committee and Appoint City of Winters seats to CAC • SMUD Amendment to Contract re: VCE Collections Policy • Update on Integrated Resource Plan Public Workshop	• Approval • Action • Action • Action • Informational
June 25, 2020 Via Teleconference	**Advisory Committee** ~~DAVIS~~	• Update on the Integrated Resource Plan (IRP) Process • Update on Request for Offers	• Information • Information
July 9, 2020 Via Teleconference	**Board** ~~WOODLAND~~	• Update on draft Integrated Resource Plan (IRP due 9/1/20) • Renewable Portfolio Standard (RPS) Procurement Plan • River City Bank Line of Credit	• Informational • Action/Informational • Action
July 23, 2020 Via Teleconference	**Advisory Committee** ~~WOODLAND~~	• Draft Integrated Resource Plan (due 9/1/20) and CAC recommendation to Board • Defining local renewable resources	• Action • Discussion
August 13, 2020 Via Teleconference	**Board** ~~DAVIS~~	• Adoption of Integrated Resource Plan (due 9/1/2020) • Receive SMUD CPI Increase Amendment • Strategic Plan update • VCE's response to Environmental and Social Justice issues	• Action • Action • Informational • Informational
August 27, 2020 Via Teleconference	**Advisory Committee** ~~DAVIS~~	• Strategic Plan update • Draft Statement Environmental and Social Justice Issues	• Informational • Discussion
September 10, 2020 Via Teleconference	**Board** ~~WOODLAND~~	• Delegation of Contracting Authority • River City Bank Revolving Line of Credit • Strategic Plan update • Draft Statement Environmental and Social Justice Issues	• Action • Action • Discussion • Discussion

September 24, 2020 Via Teleconference	**Advisory Committee** ~~WOODLAND~~	• Committee Evaluation of Calendar Year End (Draft Report) • Strategic Plan draft – seek recommendation to Board from CAC • Draft Statement Environmental and Social Justice Issues – seek recommendation to the Board from CAC	• Discussion • Discussion/Action • Discussion/Action
October 8, 2020 Via Teleconference	**Board** ~~WINTERS~~	• Approval of FY19/20 Audited Financial Statements (James Marta & Co.) • Adoption of Strategic Plan • Enterprise Risk Management Report • Adoption of Statement Environmental and Social Justice Issues	• Action • Action • Informational • Action
October 22, 2020 Via Teleconference	**Advisory Committee** ~~DAVIS~~	• Committee Evaluation of Calendar Year End (Draft Report) • Quarterly Power Procurement / Renewable Portfolio Standard Update	• Discussion • Informational
November 12, 2020 Via Teleconference	**Board** WOODLAND	•	•
~~November 26, 2020~~ **Thanksgiving Holiday – Rescheduled to 3rd Thursday, November 19, 2020** Via Teleconference	**Advisory Committee** WOODLAND	• Committee Evaluation of Calendar Year End (Draft Report) • Revised Procurement Guide – Finalize Recommendation to Board	• Discussion • Action: Recommendation to Board
December 10, 2020 Via Teleconference	**Board** DAVIS	• Election of Officers for 2020	• Nominations
~~December 24, 2020~~ **Rescheduled to 3rd Thursday, December 17, 2020** Via Teleconference	**Advisory Committee** DAVIS	• Election of Officers for 2020 • Finalization of Committee Calendar Year End Report	• Nominations • Approve Report
January 14, 2021 Via Conference	**Board** WOODLAND	• Receive CAC Calendar Year End Report • Approve Revised Procurement Guide	• Receive Report • Action
January 28, 2021 Via Teleconference	**Advisory Committee** WOODLAND	• Review and Discuss Task Groups • Quarterly Power Procurement / Renewable Portfolio Standard Update	• Discuss/Action • Informational

~~Note: CalCCA Annual Meeting 11/16-11/18, San Jose~~. CANCELLED

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Finance and Operations Director

SUBJECT: Financial Update – July 31, 2020 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending July 31, 2020

DATE: September 10, 2020

RECOMMENDATION:
Accept the following Financial Statements (unaudited) for the period of July 1, 2020 to July 31, 2020 (with comparative year to date information) and Actual vs. Budget year to date ending July 31, 2020.

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 July 31, 2020.

Financial Statements for the period July 1, 2020 – July 31, 2020
In the Statement of Net Position, VCEA as of July 31, 2020 has a total of $14,391,523 in its checking, money market and lockbox accounts, $1,100,000 restricted assets for the Debt Service Reserve account and $1,354,019 restricted assets for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and SMUD and owes as of July 31, 2020 $100,710 and $129,206 respectively for a grand total of $229,916. VCEA began paying SMUD for the monthly operating expenditures (starting with January 2018 expenditures) and repayment of the deferred amount of $1,522,433 over a 24-month period. VCEA began paying the Member agencies for the quarterly

reimbursable expenditures starting in July 2019 and repayment of the deferred amount of $556,188 over a 12-month period.

The term loan with River City Bank includes a current portion of $395,322 and a long-term portion of $1,317,740 as of July 31, 2020, for a total of $1,713,062. At July 31, 2020, VCE's net position is $16,453,261.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded $7,012,275 of revenue (net of allowance for doubtful accounts) of which $7,466,043 was billed in July and ($420,340) represent estimated unbilled revenue. The cost of the electricity for the July revenue totaled $6,297,852. For July, VCEA's gross margin is approximately 10% and operating income totaled $296,234. The year-to-date change in net position was $297,719.

In the Statement of Cash Flows, VCEA cash flows from operations was $1,202,659 due to July cash receipts of revenues being higher than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending July 31, 2020

There are no financial statement line items with variances >$50,000 and 5%:

Attachments:

1) Financial Statements (Unaudited) July 1, 2020 to July 31, 2020 (with comparative year to date information.)
2) Actual vs. Budget for year to date ending July 31, 2020

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF JULY 1 TO JULY 31, 2020

PREPARED ON AUGUST 30, 2020

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
JULY 31, 2020

ASSETS		
Current assets:		
Cash in Yolo County Treasury		
Cash and cash equivalents	$	14,391,523
Accounts receivable, net of allowance		7,077,691
Energy settlements receivable		
Other receivables		
Accrued revenue		2,551,463
Prepaid expenses		21,897
Inventory - Renewable Energy Credits		
Other current assets and deposits		2,540
Total current assets		24,045,114
Restricted assets:		
Debt service reserve fund		1,100,000
Power purchase reserve fund		1,354,019
Total restricted assets		2,454,019
Noncurrent assets:		
Capital assets, net of depreciation		
Other noncurrent assets and deposits		100,000
Total noncurrent assets		100,000
TOTAL ASSETS	$	26,599,133
LIABILITIES		
Current liabilities:		
Accounts payable	$	715,899
Accrued payroll		18,632
Interest payable		4,507
Due to member agencies		100,710
Accrued cost of electricity		6,521,877
Other accrued liabilities		471,324
Security deposits - energy supplies		515,640
User taxes and energy surcharges		84,221
Current Portion of LT Debt		395,322
Advances from public purpose programs		
Total current liabilities		8,828,132
Noncurrent liabilities		
Term Loan- RCB		1,317,740
Loans from member agencies		
Total noncurrent liabilities		1,317,740
TOTAL LIABILITIES	$	10,145,872
NET POSITION		
Restricted		
Local Programs Reserve		136,898
Restricted		2,454,019
Unrestricted		13,862,344
TOTAL NET POSITION	$	16,453,261

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF JULY 1, 2020 TO JULY 31, 2020
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING JULY 31, 2020	YEAR TO DATE
OPERATING REVENUE		
Electricity sales, net	$ 7,012,275	$ 7,012,275
TOTAL OPERATING REVENUES	7,012,275	7,012,275
OPERATING EXPENSES		
Cost of electricity	6,297,852	6,297,852
Contract services	285,594	285,594
Staff compensation	97,532	97,532
General, administration, and other	35,063	35,063
TOTAL OPERATING EXPENSES	6,716,041	6,716,041
TOTAL OPERATING INCOME (LOSS)	296,234	296,234
NONOPERATING REVENUES (EXPENSES)		
Interest income	7,074	7,074
Interest and related expenses	(5,589)	(5,589)
TOTAL NONOPERATING REVENUES (EXPENSES)	1,485	1,485
CHANGE IN NET POSITION	297,719	297,719
Net position at beginning of period	16,155,542	16,155,542
Net position at end of period	$ 16,453,261	$ 16,453,261

STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF JULY 1 TO JULY 31, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING JULY 31, 2020	YEAR TO DATE
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	$ 6,302,721	$ 6,302,721
Payments to purchase electricity	(4,657,808)	(4,657,808)
Payments for contract services, general, and adminstration	(351,550)	(351,550)
Payments for staff compensation	(90,704)	(90,704)
Net cash provided (used) by operating activities	1,202,659	1,202,659
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of Debt	(32,944)	(32,944)
Interest and related expenses	(5,517)	(5,517)
Net cash provided (used) by non-capital financing activities	(38,461)	(38,461)
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	7,074	7,074
Net cash provided (used) by investing activities	7,074	7,074
NET CHANGE IN CASH AND CASH EQUIVALENTS	1,171,272	1,171,272
Cash and cash equivalents at beginning of period	15,674,270	15,674,270
Cash and cash equivalents at end of period	$ 16,845,542	$ 16,845,542
Cash and cash equivalents included in:		
Cash and cash equivalents	14,391,523	14,391,523
Restricted assets	2,454,019	2,454,019
Cash and cash equivalents at end of period	$ 16,845,542	$ 16,845,542

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF JULY 1 TO JULY 31, 2020
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING JULY 31, 2020	YEAR TO DATE
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	$ 296,234	$ 296,234
(Increase) decrease in net accounts receivable	(1,155,236)	(1,155,236)
(Increase) decrease in accrued revenue	421,732	421,732
(Increase) decrease in prepaid expenses	(21,272)	(21,272)
Increase (decrease) in accounts payable	73,499	73,499
Increase (decrease) in accrued payroll	6,828	6,828
Increase (decrease) in due to member agencies	22,000	22,000
Increase (decrease) in accrued cost of electricity	1,640,044	1,640,044
Increase (decrease) in other accrued liabilities	(105,120)	(105,120)
Increase (decrease) in user taxes and energy surcharges	23,950	23,950
Net cash provided (used) by operating activities	$ 1,202,659	$ 1,202,659

VALLEY CLEAN ENERGY
ACTUAL VS. BUDGET FYE 6-30-2021
FOR THE YEAR TO DATE ENDING 07-31-20

Description	7/30/2021 YTD FY2021 Actuals	7/30/2021 YTD FY2021 Budget	YTD Variance	% over/-under
Electric Revenue	$ 7,012,275	$ 6,877,599	$ 134,676	2%
Interest Revenues	7,074	6,836	238	3%
Purchased Power	6,297,852	6,300,428	(2,576)	0%
Labor & Benefits	97,532	107,129	(9,597)	-9%
Salaries & Wages/Benefits	67,635	59,954	7,681	13%
Contract Labor	23,333	39,976	(16,643)	-42%
Human Resources & Payroll	6,564	7,199	(635)	-9%
Office Supplies & Other Expenses	10,389	12,236	(1,847)	-15%
Technology Costs	745	1,791	(1,046)	-58%
Office Supplies	50	192	(142)	-74%
Travel	-	508	(508)	-100%
CalCCA Dues	9,594	9,594	(0)	0%
Memberships	-	150	(150)	-100%
Contractual Services	287,819	286,754	1,065	0%
LEAN Energy	2,225	2,000	225	11%
Don Dame	219	833	(614)	-74%
SMUD - Credit Support	65,333	68,479	(3,146)	-5%
SMUD - Wholesale Energy Services	47,972	48,046	(74)	0%
SMUD - Call Center	60,295	59,684	611	1%
SMUD - Operating Services	36,935	35,000	1,935	6%
Legal Bankruptcy	-	2,050	(2,050)	-100%
Legal General Counsel	5,821	12,300	(6,479)	-53%
Regulatory Counsel	25,433	15,826	9,607	61%
Joint CCA Regulatory counsel	1,331	2,563	(1,232)	-48%
Legislative	5,000	5,125	(125)	-2%
Accounting Services	1,600	2,050	(450)	-22%
Audit Fees	13,135	13,838	(702)	-5%
PG&E Acquisition Consulting	780	-	780	100%
Marketing Collateral	21,740	18,961	2,779	15%
Rents & Leases	1,448	1,448	-	0%
Hunt Boyer Mansion	1,448	1,448	-	0%
Other A&G	20,943	27,627	(6,684)	-24%
PG&E Data Fees	19,990	24,384	(4,394)	-18%
Community Engagement Activities & Sponsorships	536	513	24	5%
Insurance	417	629	(212)	-34%
New Member Expenses	-	2,000	(2,000)	-100%
Banking Fees	-	103	(103)	-100%
Program Costs	-	-	-	100%
Miscellaneous Operating Expenses	58	524	(466)	-89%
Contingency	-	21,786	(21,786)	-100%
TOTAL OPERATING EXPENSES	$ 6,716,041	$ 6,757,932	$ (41,891)	-1%
Interest Expense - Munis	-	-	-	#DIV/0!
Interest on RCB loan	5,266	5,195	71	1%
Interest Expense - SMUD	323	323	-	0%
NET INCOME	$ 297,719	$ 120,985	$ 176,734	146%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: September 10, 2020

Pacific Policy Group, VCE's lobby services consultant, continues to work with Staff and the Community Advisory Committee's Regulatory and Legislative Task Group on several legislative bills. Below is a summary:

The 2020 legislative session concluded Monday, August 31 at midnight and thus ended the two-year 2019-2020 legislative session. Governor Newsom has until October 1, 2020 to sign or veto legislation that the Legislature passed and sent to his desk.

As has been the case with everyday life, the COVID-19 pandemic was the main story of the 2020 session. Most notably, COVID-19 significantly interrupted the Legislature's calendar and reduced the amount of time available to consider and vote on legislation. This factor held true through the last days of session, as Senate Republicans were not allowed into the Capitol due to potential COVID-19 exposure and instead voted and debated remotely from their Sacramento residences. Numerous bills died Monday night simply because there was not enough time for votes to be cast on the Floors of the Assembly and the Senate.

As it relates to energy policy, the roughly two months lost to unscheduled recesses in the Legislature translated into significantly less bills being considered. Assembly Utilities & Energy Committee heard a total of five bills in 2020, all of which passed as they were deemed non-controversial and of urgent necessity. Chair Holden held a strict position of only hearing bills that met these qualifications. Senate Energy, Utilities & Communications Committee Chair Hueso was slightly more lenient in allowing bills to be heard, but the precedent set by Mr. Holden meant that few Assembly Bills could be considered in Senate Energy. Accordingly, six of the eight Assembly Bills heard in Senate Energy during two hearings in the month of August were gut and amends. Four of those gut and amend bills were sent back to the Assembly and passed the Assembly Floor without an Assembly Utilities & Energy Committee hearing.

In addition to energy policy bills, the Legislature proposed several measures to spur economic recovery and build resilience to climate change, with a focus on wildfire resilience. The wildfires that have ravaged large portions of Northern California in August produced a last second attempt at raising funds for wildfire prevention and reduction in AB 1659 (Bloom). The source of the funding would be an extension of the DWR charge assessed on IOU bills and then

borrowing against those funds, a similar approach to the IOU wildfire fund contained in AB 1054 (Holden, 2019). Ultimately, the funding mechanism proved too controversial and the bill failed.

On Friday, March 13, 2020, Pacific Policy Group (PPG), VCE's lobby services consultant, provided a bill report to Staff and the Community Advisory Committee's Regulatory and Legislative Task Group that included 25 pieces of legislation to analyze and discuss potential engagement on the bills. Of those 25 bills, only one passed the Legislature – SB 1117 (Monning), which VCE supports. PPG, Staff and the Task Group would later consider several gut and amend bills of which two passed the Legislature, SB 350 (Hill) and AB 841 (Ting). A summary of those three bills follows:

1. SB 350 (Hill). The Golden State Energy Act.
Summary: Would authorize the creation of Golden State Energy, a nonprofit public benefit corporation that would be the state's proposed successor utility to PG&E should PG&E fail to emerge from bankruptcy, enter bankruptcy at a future date, or fail to maintain appropriate safety standards that would give cause to the CPUC to revoke PG&E's license.

VCE had been monitoring SB 350 and communicating with SF PUC on potential amendments to better position municipalization opportunities. The amendments never found their way into the bill, which has now passed the Legislature and is now on the Governor's desk for his signature or veto.

Additional Information:
- Bill language: SB 350
- This bill passed the Legislature and was signed by the Governor

2. SB 1117 (Monning). Master-Meter Customers: Electrical or Gas Service.
Summary: Current law contains various provisions relative to the responsibilities of a gas or electrical corporation and master-meter customer when gas or electrical service is provided by a master-meter customer to users who are tenants of a mobile home park, apartment building, or similar residential complex, including a requirement that the master-meter customer charge each user at the same rate that would be applicable if the user were receiving gas or electricity directly from the gas corporation or electric corporation. This bill would replace "electrical corporation" with "load-serving entity," defined as including electrical corporations, community choice aggregators, and electric service providers, in many of these provisions relative to the responsibilities of an electrical corporation and master-meter customer when electrical service is provided by a master-meter customer to users who are tenants of a mobile home park, apartment building, or similar residential complex.

This bill addresses an issue raised by several CCAs in which electrical corporations and other third-party billers are charging submeter accounts in mobile home parks at the electric corporation rate for electricity, even if the park is served by a CCA with a different rate.

Additional Information:
- This bill passed both the Assembly Floor and Senate Floor on consent.
- This bill is awaiting the Governor's signature or veto.

- VCE supports this bill
- Bill Language: SB 1117

3. AB 841 (Ting) Energy Programs: Economic Stimulus.
Summary: This bill is a gut and amend bill that seeks to legislate economic stimulus opportunities by authorizing the three IOUs to move forward with EV charging infrastructure development and school retrofit projects that are installed by the IOUs' labor unions. The measure sought to require the PUC to approve pending transportation electrification infrastructure applications from the IOUs as well as require the PUC to direct the IOUs to reallocate unused portions of their energy efficiency budgets for school retrofit projects that would include HVAC and air filtration upgrades as well as replace noncompliant plumbing fixtures. The bill is primarily supported by several labor unions and Natural Resources Defense Council.

The bill was heard in the Senate Energy, Utilities and Communications Committee, and the committee imposed several amendments on the bill in order for it to pass. The recommended amendments included removal of the provisions of the bill that direct the CPUC to approve the IOUs' EV applications. The language of these recommended amendments has not been finalized nor made available. VCE, through PPG, is closely monitoring AB 841 as it relates to the EV portion of the bill as the provisions are concerning and may require an oppose position if the committee amendments are unsatisfactory.

Additional Information:
- This bill was passed by the Legislature.
- This bill is awaiting the Governor's signature or veto.
- VCE had no position on this bill.
- Bill Language: AB 841

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: September 10, 2020

Please find attached Keyes & Fox's July 2020 Regulatory Memorandum dated September 4, 2020, 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 September 4, 2020

KEYES&FOX LLP

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
Ben Inskeep, Principal Analyst, EQ Research, LLC

Subject: Regulatory Update

Date: September 4, 2020

Summary

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). A Glossary of Acronyms used is provided at the end of this memo.

In summary, this month's report includes regulatory updates on the following priority issues:

- **PG&E 2021 ERRA Forecast** PG&E filed an ERRA Trigger application in a new proceeding, but proposed resolving the issues raised through the 2021 ERRA Forecast proceeding. Joint CCAs and CalCCA, among other parties, filed a protest to PG&E's 2021 ERRA Forecast application, which proposed capped PCIA rates of $0.03115/kWh (system-average 2021 vintage) and $0.03670/kWh (system-average for 2017 PCIA vintage, which is the system-wide average applicable to most VCE customers). PG&E subsequently filed a reply. A prehearing conference was held on August 13, 2020. The CPUC Executive Director also granted PG&E's request for an extension to file its 2020 Annual Electric True-Up advice letter from September 1, 2020, to November 16, 2020
- **PCIA Rulemaking:** The CPUC issued D.20-08-004 on PCIA prepayment agreements for PCIA obligations. Joint Utilities' filed a Petition to Modify D.18-10-019 to make changes to the PCIA calculation regarding line losses.
- **Investigation into PG&E's Organization, Culture and Governance:** parties filed comments and replies in response to the ALJ Ruling on the case status, which proposed options for how the CPUC could proceed in this proceeding, and also proposed to close the Investigation of PG&E's Bankruptcy Plan proceeding.
- **RA Rulemaking (2019-2020):** Western Power Trading Forum filed an application for rehearing of D.20-06-028 with respect to the self-scheduling requirements for non-resource specific RA imports. Parties filed comments and replies on a proposed decision denying as moot three petitions for modification (PFM) of various RA decisions, including a CalCCA PFM that requested extending the RA waiver process from local RA only to system RA and flexible RA as well.
- **RA Rulemaking (2021-2022):** In Track 3.A, a working group meeting hosted by Energy Division and the Sierra Club on the CAISO Local Capacity Requirements study was held. On August 14, 2020, and August 15, 2020, CAISO issued Stage 3 emergencies, triggering rolling blackouts for

hundreds of thousands of distribution customers of PG&E and other IOUs. Working Group reports and proposals, as well as proposals by PG&E and SCE for a competitive neutrality rule for their role as Central Procurement Entities, were submitted on September 1, 2020. In Track 3.B, initial Track 3 proposals, including an Energy Division proposal, and comments on process were filed on August 7, 2020.

- **2020 IRP Rulemaking:** On September 1, 2020, LSEs including VCE filed their 2020 IRPs, which included updates on each LSE's progress towards completing additional system RA procurement ordered for the 2021-2023 years under D.19-11-016. The CPUC also issued Resolution E-5080, which implements an IRP Citation Program for non-compliance with IRP requirements. At its August 27, 2020, Meeting, the CPUC approved Resolution E-5100, authorizing PG&E's procurement of 423 MW of battery energy storage projects, and Resolution E-5101, authorizing SCE's procurement of 770 MW of battery energy storage projects, pursuant to the procurement mandate under D.19-11-016.
- **2016 IRP Rulemaking:** The ALJ issued a Proposed Decision that would grant CalCCA's Petition for Modification of D.19-11-016 and close this proceeding. The PD would clarify the methodology used to calculate a hybrid resource's capacity contribution towards the system RA procurement mandate and would open the door to examining in the future of whether, when PG&E provides system resource adequacy backstop procurement to an LSE, should to bill that entity directly for all costs associated with the procurement rather than the directly billing the customers of the entity.
- **RPS Rulemaking:** On August 12, 2020, VCE filed a Motion requesting to update its 2020 RPS Procurement Plan to make several minor clerical corrections to its Plan and noting to the CPUC that VCE anticipated terminating its PPA with Rugged Solar in August. The ALJs issued a Proposed Decision on new (i.e., not yet serving load) CCAs' 2019 RPS Procurement Plans. In addition, the ALJs issued a Proposed Decision that would resume and modify the Renewable Market Adjusting Tariff program. At its August 27, 2020 Meeting, the CPUC approved D.20-08-043, reopening the Bioenergy Market Adjusting Tariff program but refused to let CCAs participate by directly entering into BioMAT contracts.
- **PG&E's 2019 ERRA Compliance:** The ALJ issued an Amended Scoping Memo and Ruling, dividing the proceeding into two phases, with the first phase deciding most issues and the second phase addressing several PSPS issues. Parties filed rebuttal testimony on August 21, 2020.
- **Wildfire Fund Non-Bypassable Charge (AB 1054):** The ALJ issued a Proposed Decision that would adopt a Wildfire Non-Bypassable Charge (NBC) of $0.00580/kWh for October 1, 2020, through December 31, 2020.
- **PG&E's Phase 1 GRC:** The ALJs issued a Ruling modifying certain procedures due to the COVID-19 pandemic for the confidential production of computer model runs using PG&E's Results of Operations model to generate the tables needed for decision support. PG&E filed a Motion to make numerous corrections to Appendix B of the Settlement Agreement that was filed in December 2019. The Motion was not opposed by any parties to the Settlement Agreement, although Joint CCAs filed a response that criticized the transparency and accuracy of information provided by PG&E throughout this proceeding.
- **PG&E's Phase 2 GRC:** The ALJ issued a Proposed Decision that would approve ratepayer funding for the Essential Usage Study, capped at approximately $845,000. The ALJ also issued a Ruling scheduling two public participation hearings for November 6, 2020. Separately, two Email Rulings issued by the ALJ request that intervenor testimony due on November 20, 2020 address real-time pricing issues.
- **PG&E Regionalization Plan**: Fourteen parties, including five separate CCAs, filed responses or protests to PG&E's regionalization plan application, to which PG&E filed a reply. A prehearing conference was held August 20, 2020.
- **Investigation of PG&E Bankruptcy Plan**: In July, the ALJ issued a Ruling indicating this proceeding will likely be closed soon and requesting comments on how to proceed with remaining

issues in I.15-08-019 (PG&E Safety Culture) that were not addressed in this proceeding. *See updates in I.15-08-019 above for more details.*

- **Investigation into PG&E Violations Related to Wildfires:** No updates this month. On June 8, 2020, Thomas Del Monte and the Wild Tree Foundation filed applications for rehearing of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires.
- **Direct Access Rulemaking:** No updates this month. Previously, the ALJ informed parties that the release of Energy Division's recommendation as to whether to expand Direct Access has been delayed.
- **Wildfire Cost Recovery Methodology Rulemaking:** No updates this month. (An August PG&E Application for Rehearing remains pending regarding D.19-06-027, establishing criteria and a methodology for wildfire cost recovery, which has been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay.)

PG&E 2021 ERRA Forecast

PG&E filed an ERRA trigger application on July 31, 2020. On August 5, 2020, Joint CCAs and CalCCA, among other parties, filed a protest to PG&E's 2021 ERRA Forecast application, which proposed capped PCIA rates of $0.03115/kWh (system-average 2021 vintage) and $0.03670/kWh (system-average for 2017 PCIA vintage, which is the system-wide average applicable to most VCE customers). A prehearing conference took place August 13, 2020. PG&E filed a reply on August 15, 2020. On August 19, 2020, the CPUC Executive Director granted PG&E's request for an extension to file its 2020 Annual Electric True-Up advice letter from September 1, 2020, to November 16, 2020.

- **Background**: Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the PCIA and other non-bypassable charges for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates. PG&E's application proposes a total 2021 revenue requirement of $2.774 billion, comprised of the following components: (1) CAM, $283 million; (2) PCIA, $2.803 billion; (3) Ongoing Competitive Transition Charge, $20 million; (4) Tree Mortality Non-Bypassable Charge, $73 million; (5) ERRA, $1.841 billion; (6) PUBA, $277 million; and *less* (7) Utility-owned generation costs of $2.522 billion.

  PG&E's application indicates PG&E will file an expedited PUBA (*i.e.,* an interest-bearing balancing account that is used in the event that the 0.5-cent PCIA cap is reached that tracks obligations that accrue for departing load customers) trigger application later this year, which has the potential to significantly increase the PCIA. PG&E is requesting that any year-end PUBA balance not disposed of via such an expedited application process be included in the PCIA revenue requirement for recovery as part of its November Update via a separate rate adder. However, that rate adder would still be subject to the $0.005/kWh cap, meaning it would not be amortized via 2021 rates but would count towards a possible PUBA trigger application in early 2022.

  PG&E's ERRA Trigger is different than the PUBA trigger mentioned in the previous paragraph and will affect bundled customers' rates but not VCE's customers' rates. PG&E's ERRA Trigger application states that its ERRA was more than 5% overcollected as of April 30, 2020, and PG&E forecasts that its incremental ERRA overcollection will be 15.7%, or $793 million, overcollected by December 31, 2020. However, PG&E says a rate changes to refund the overcollection is not warranted, arguing the forecast bundled customer ERRA overcollection should be considered in combination with (1) departing load customer obligations to bundled customers that are merely tracked, and not collected, in the ERRA; and (2) balances to be considered as part of PG&E's existing ERRA Forecast regulatory proceeding. The net result of these considerations is a forecast bundled customer overcollection of $149 million (which is below the ERRA threshold amount). PG&E is proposing to address the remaining balances associated with overcollection, together with other generation balances, including the forecast $534 million undercollected

balances associated with the PABA in the 2021 rates proposed in its 2021 ERRA Forecast Application.

The PCIA rate for most VCE residential customers (*i.e.,* 2017 vintage) would be $0.03846/kWh, although PG&E will update this figure in November. PG&E's application does not contain any details regarding the impacts of the COVID-19 pandemic, and its June 2020 monthly report indicates a PABA undercollection that is already twice the amount the utility forecasts for year-end. Both of these factors indicate the November Update will include a further, dramatic increase in CCA customers' uncapped PCIA-related obligations.

- **Details**: In their protests, Joint CCAs and CalCCA argued that PG&E failed to demonstrate that its requests are just and reasonable and that PG&E failed to adequately prevent illegal costs shifts between bundled and unbundled customers.
- **Analysis**: This proceeding will establish the amount of the PCIA for VCE's 2020 rates and the level of PG&E's generation rates for bundled customers. PG&E is proposing another increase to its PCIA to $0.0367/kWh for the 2017 vintage. In comparison, the last ERRA Forecast proceeding established a capped rate of $0.0317/kWh for the 2017 vintage, an increases from the previous rate of $0.0267/kWh.
- **Next Steps**: A scoping memo and ruling to establish the scope and schedule of this proceeding is anticipated to be issued next. PG&E's November Update will include updates to the PCIA benchmarks for forecasting and true-up purposes. PG&E will file its 2020 Annual Electric True-Up advice letter on November 16, 2020.
- **Additional Information**: PG&E August Update (August 14, 2020); PG&E ERRA Trigger Application (July 31, 2020); PG&E Supplemental Testimony correcting errors in Application (July 17, 2020); Application (July 1, 2020); Docket Nos. A.20-07-002 (2021 ERRA Forecast); A.20-07-022 (ERRA Trigger).

PCIA Rulemaking

On August 7, 2020, Joint Utilities' filed a Petition to Modify D.18-10-019 to make changes to the PCIA calculation regarding line losses. On August 12, 2020, the CPUC issued D.20-08-004 on PCIA prepayment agreements for PCIA obligations.

- **Background**: D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current PCIA in place, maintained the current brown power index, and adopted revised inputs to the benchmarks used to calculate the PCIA for energy RPS-eligible resources and resource adequacy capacity.

  Phase 2 relies primarily on a working group process to further develop a number of PCIA-related proposals. Three workgroups examined three issues: (1) issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues; (2) issues to be resolved in early 2020: Prepayment; and (3) issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

  The CPUC has not yet issued a Proposed Decision regarding Working Group 3.

  Details: D.20-08-004, in response to the recommendations of Working Group 2, (1) adopts the consensus framework of PCIA prepayment agreements; (2) adopts the consensus guiding principles, except for one principle regarding partial payments; (3) adopts evaluation criteria for prepayment agreements; (4) does not adopt any proposed prepayment concepts; and (5) clarifies that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two. IOUs would be directed to file a Tier 2 advice letter within 60 days to establish protocols to administer prepayment requests and negotiations.

CalCCA had responded in comments filed on the proposed decision that was ultimately adopted as D.20-08-004 with comments that criticized aspects of the policy, asserting it would significantly hamper the possibility of the prepayment being used. CalCCA expressed concern with provisions that would give the IOUs the authority to propose tailored terms that must be met by the CCA to enter into prepayment negotiations, including authority to determine a CCA's financial fitness, as well as the adoption of a risk premium, which CalCCA argued violates the PCIA indifference principle.

In the Joint IOUs' PFM of D.18-10-019 in this proceeding, filed concurrently with a PFM of D.17-08-026 in R.02-01-011, the Joint Utilities seek changes to the calculations for applying line losses in the PCIA calculations. First, the Joint IOUs argue that the current formula incorrectly applies line loss adjustments to the RA component of the PCIA calculation. Second, the Joint IOUs argue that the PCIA Template is inconsistent it its application of line losses with respect to the calculation of energy market value. The net impact of these two issues, according to the Joint Utilities, is an overstated forecast of portfolio market value with all customers initially underpaying the PCIA.

- **Analysis**: The PD on prepayment, if adopted, would make successful prepayments very difficult by giving utilities significant control over the process and requiring the prepayment include a risk premium. The Joint IOUs' Petition for Modification, if adopted, would increase the PCIA for VCE's customers.
- **Next Steps**: A proposed decision regarding Working Group 3 is expected in Q3 2020. Responses to the Petition for Modification are due September 8.
- **Additional Information**: Joint IOUs PFM of D.18-10-019 (August 7, 2020); D.20-08-004 on Working Group 2 PCIA Prepayment (August 6, 2020); D.20-06-032 denying PFM of D.18-07-009 (July 3, 2020); D.20-03-019 on departing load forecast and presentation of the PCIA (April 6, 2020); Ruling modifying procedural schedule for working group 3 (January 22, 2020); D.20-01-030 denying rehearing of D.18-10-019 as modified (January 21, 2020); D.19-10-001 (October 17, 2019); Phase 2 Scoping Memo and Ruling (February 1, 2019); D.18-10-019 Track 2 Decisions adopting the Alternate Proposed Decision (October 19, 2018); D.18-09-013 Track 1 Decision approving PG&E Settlement Agreement (September 20, 2018); Docket No. R.17-06-026.

Investigation into PG&E's Organization, Culture and Governance (Safety OII)

On August 4, 2020, and August 13, 2020, respectively, parties filed comments and replies in response to the ALJ Ruling on the case status, which proposed options for how the CPUC could proceed in this proceeding.

- **Background**: On December 21, 2018, the CPUC issued a Scoping Memo opening the next phase of an ongoing investigation into whether PG&E's organizational culture and governance prioritize safety. This current phase of the proceeding is considering alternatives to current management and operational structures for providing electric and natural gas in Northern California.
- **Details**: The July 2020 ALJ Ruling described the issues that are potentially still in scope for this proceeding, which include a broad array of issues identified in the December 21, 2018 Scoping Memo, as modified by D.20-05-053 approving PG&E's reorganization plan, plus the ongoing work of NorthStar, the consultant monitoring PG&E. However, the Ruling observed that "it is not clear as a practical matter how many of those issues can be or should be addressed at this time," given PG&E is now implementing its reorganization plan and has filed its application for regional restructuring. The Ruling proposes five options for how the CPUC could proceed in this proceeding, from keeping the proceeding open and proceeding to address a manageable subset of the potential issues, to immediately closing the proceeding.

Among the comments filed on the Ruling:

1. CalCCA argued that this proceeding should address whether PG&E should be a "wires-only company" and whether PG&E's holding company structure should be revoked. In addition, it recommended the CPUC take action now to create a plan to ensure continuity of gas and electric service should PG&E's CPCN be revoked in the future.
2. Direct Access Customer Coalition strongly recommended that the CPUC move forward with examining and acting upon the conversion of PG&E to a "wires-only" company.
3. Silicon Valley Clean Energy advocated for addressing whether a distribution system operator model should replace PG&E. In the alternative, it argues this proceeding should adopt needed structural reform of PG&E's distribution grid that has been deferred from other proceedings.
4. Mussey Grade Road Alliance argued that, should PG&E's equipment and service areas be considered for reassignment to municipal utilities, the CPUC must ensure that it will not compromise wildfire safety, and that any successor entity approved by the CPUC should have a demonstrated capability to handle wildfire safety issues.

- **Analysis**: This proceeding could have a range of possible impacts on CCAs within PG&E's territory and their customers, given the broad issues under investigation pertaining to PG&E's corporate structure and governance. Numerous issues proposed in the PG&E Bankruptcy OII, including municipalization and sale of PG&E assets, were deferred and stated to be more properly within the scope of this proceeding. However, the July 15, 2020 Ruling did not mention CCA proposals to purchase PG&E electric distribution assets or suggest this issue would explicitly be considered going forward, and party comments on the Ruling did not specifically advocate that these proposals be addressed.
- **Next Steps**: Parties are awaiting further direction from the ALJ on the scope and schedule of this proceeding, should it remain open.
- **Additional Information**: Ruling on case status (July 15, 2020); Ruling on proposals to improve PG&E safety culture (June 18, 2019); D.19-06-008 directing PG&E to report on safety experience and qualifications of board members (June 18, 2019); Scoping Memo (December 21, 2018); Docket No. I.15-08-019.

RA Rulemaking (2019-2020)

On August 5, 2020, Western Power Trading Forum (WPTF) filed an Application for Rehearing of D.20-06-028 with respect to the self-scheduling requirements for non-resource specific RA imports. Parties filed comments and replies, respectively, on August 24, 2020, and August 31, 2020, on a proposed decision denying as moot three petitions for modification of various RA decisions, including a CalCCA PFM that requested extending the RA waiver process from local RA only to system RA and flexible RA as well.

- **Background**: This proceeding had three tracks, which have now concluded. Track 1 addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program. D.19-10-020 purported to affirm existing RA rules regarding imports, but adopted a distinction in the import RA compliance requirements for resource-specific and non-resource specific contracts and required, for the first time, that non-resource-specific resources self-schedule (i.e., bid as a price taker) in the CAISO energy market.

  In Track 2, the CPUC previously adopted multi-year Local RA requirements and initially declined to adopt a central buyer mechanism (D.19-02-022 issued March 4, 2019).

  The second Track 2 Decision, D.20-06-002, adopted implementation details for the central procurement of multi-year local RA procurement to begin for the 2023 compliance year in the PG&E and SCE (but not SDG&E) distribution service areas, including identifying PG&E and SCE as the central procurement entities for their respective distribution service areas and adopting a hybrid central procurement framework. The Decision rejected a settlement agreement between

CalCCA and seven other parties that would have created a residual central buyer structure (and did not specify the identity of the central buyer) and a multi-year requirements for system and flexible RA. Under D.20-06-002, if an LSE procures its own local resource, it may (1) sell the capacity to the CPE, (2) utilize the resource for its own system and flexible RA needs (but not for local RA), or (3) voluntarily show the resource to meet its own system and flexible RA needs, and reduce the amount of local RA the CPE will need to procure for the amount of time the LSE has agreed to show the resource. Under option (3), by showing the resource to the CPE, the LSE does not receive one-for-one credit for shown local resources. A competitive solicitation (RFO) process will be used by the CPEs to procure RA products. Costs incurred by the CPE will be allocated ex post based on load share, using the CAM mechanism. D.20-06-002 also established a Working Group (co-led by CalCCA) to address: (a) the development of an local capacity requirements reduction crediting mechanism, (b) existing local capacity resource contracts (including gas), and (c) incorporating qualitative and possible quantitative criteria into the RFO evaluation process to ensure that gas resources are not selected based only on modest cost differences.

In Track 3, D.19-06-026 adopted CAISO's recommended 2020-2022 Local Capacity Requirements and CAISO's 2020 Flexible Capacity Requirements and made no changes to the System capacity requirements. It established an IOU load data sharing requirement, whereby each non-IOU LSE (e.g., CCAs) will annually request data by January 15 and the IOU will be required to provide it by March 1. It also adopted a "Binding Load Forecast" process such that an LSE's initial load forecast (with CEC load migration and plausibility adjustments based on certain threshold amounts and revisions taken into account) becoming a binding obligation of that LSE, regardless of additional changes in an LSE's implementation to new customers.

On February 11, 2020, a group of clean energy and energy storage parties filed a PFM of D.20-01-004, which addressed the qualifying capacity value of hybrid resources, seeking a revision to the definition of "Hybrid Resource."

On July 17, 2020, WPTF filed a separate Application for Rehearing of D.20-06-002, the Track 2 Decision creating a multi-year central procurement regime for local RA capacity. It requested rehearing and reconsideration of the rejected settlement agreement between WPTF, CalCCA, and other parties, arguing that D.20-06-002 will discourage the procurement of local resources by individual LSEs, discriminates against natural gas resources while increasing the need for CAISO backstop procurement, may undermine reliability by making it more difficult to integrate renewables with the larger western grid, and creates a "sale for resale" procurement construct that could place it under FERC's jurisdiction as a wholesale, rather than a retail, transaction.

- **Details**: WPTF's Application for Rehearing of D.20-06-028 requests rehearing and reconsideration of the self-scheduling requirements for non-resource specific RA imports.
- **Analysis**: D.20-06-002 established a central procurement entity and mostly resolved the central buyer issues, although several details are being refined through a Working Group. Moving to a central procurement entity beginning for the 2023 RA compliance year will impact VCE's local RA procurement and compliance, including affecting VCE's three-year local RA requirements as part of the transition to the central procurement framework. Eventually, it will eliminate the need for monthly local RA showings and associated penalties and/or waiver requests from individual LSEs, but it also eliminates VCE's autonomy with regard to local RA procurement and places it in the hands of PG&E.

  The Track 1 Decision on RA imports will primarily impact LSEs relying on RA imports to meet their RA obligations by increasing the difficulty of procuring such RA in the future.

  The PD would deny PG&E's PFM of Decision D.19-02-022, CalCCA's PFM of D.19-06-026, and Joint Parties' PFM of D.20-01-004 as moot, given subsequent CPUC decisions in the RA proceedings that addressed the various issues raised by the PFMs. Of note, the PD would deny CalCCA's PFM that requested extending the existing local RA waiver process to system RA and flexible RA. The PD states that CPUC already denied CalCCA's proposal in D.20-06-031 on Track 2 Issues, which stated agreement with parties that the system and flexible RA waivers

process needs further development and study due to "significant, unresolved issues" involved with allowing waivers, including potential market power issues (e.g., withholding capacity) and leaning on other LSEs.

- **Next Steps**: The only issues remaining to be addressed in this proceeding are WPTF's Applications for Rehearing and the outstanding petitions for modification. The PD may be heard, at the September 10, 2020 CPUC meeting. Remaining RA issues will be addressed in the successor RA rulemaking, R.19-11-009.
- **Additional Information**: WPTF's Application for Rehearing of D.20-06-028 (August 5, 2020); Proposed Decision denying Petitions for Modification of Decision 19-06-026, Decision 19-02-022, and Decision 20-01-004 (July 30, 2020); WPTF's Application for Rehearing of D.20-06-002 (July 17, 2020); D.20-06-028 on Track 1 RA Imports (approved June 25, 2020); D.20-06-002 establishing a central procurement mechanisms for local RA (June 17, 2020); D.20-03-016 granting limited rehearing of D.19-10-021 (March 12, 2020); PFM of D.20-01-004 (February 11, 2020); D.20-01-004 on qualifying capacity value of hybrid resources (January 17, 2020); D.19-12-064 granting motion for stay of D.19-10-021 (December 23, 2019); Petition for Modification of D.19-06-026 by CalCCA (October 30, 2019); D.19-10-021 affirming RA import rules (October 17, 2019); PG&E PFM regarding PG&E Other disaggregation (September 11, 2019); Joint Motion to adopt a settlement agreement for a residual central procurement entity (August 30, 2019); D.19-06-026 adopting local and flexible capacity requirements (July 5, 2019); Docket No. R.17-09-020.

RA Rulemaking (2021-2022)

In Track 3.A, a working group meeting hosted by Energy Division and the Sierra Club on the CAISO Local Capacity Requirements study was held August 13, 2020, as directed by D.20-06-031. On August 14, 2020, and August 15, 2020, CAISO issued Stage 3 emergencies, triggering rolling blackouts for hundreds of thousands of distribution customers of PG&E and other IOUs. Working Group reports and proposals, as well as proposed Central Procurement Entity competitive neutrality rules by PG&E and SCE, were submitted on September 1, 2020. In Track 3.B, initial Track 3 proposals and comments on process were filed on August 7, 2020.

- **Background**: Per the Scoping Memo, this proceeding is divided into 4 tracks. The first two tracks have concluded, and the proceeding focused on Track 3 issues. Track 3 is divided into Track 3.A and Track 3.B, which will proceed in parallel. Track 3.A issues will include the following topics: (1) evaluation of CAISO's updated LCR reliability criteria; (2) evaluation of an LCR reduction compensation mechanism; (3) consideration of the CPE's Competitive Neutrality Rules; (4) NQC for BTM hybrid resources; and (4) other time-sensitive issues.

  Track 3.B will focus on an examination of the broader RA capacity structure to address energy attributes and hourly capacity requirements, given the increasing penetration of use-limited resources, greater reliance on preferred resources, rolling off of a significant amount of long-term tolling contracts held by utilities, and material increases in energy and capacity prices experienced in California over the past years. Other structural changes or refinements to the RA program identified during Track 1 or Track 2 will also be considered, including: (1) incentives for load-serving entities that are deficient in year-ahead RA filings, as discussed in D.20-06-031; (2) multi-year system and flexible RA requirements, as stated in D.20-06-002; and (3) refinements to the MCC buckets adopted in D.20-06-031.

  A future Track 4 will consider the 2022 program year requirements for System and Flexible RA, and the 2022-2024 Local RA requirements.

- **Details**: Energy Division's Track 3.B proposal provides a history of California RA markets, a summary of a variety of current concerns with the existing California RA market, and identifies three options to address its various concerns that would involve significantly modifying or replacing the existing peak capacity RA construct:
  1. Option 1: Making several fundamental modifications to the existing capacity construct including revising the MCC buckets to make them binding in order to address issues

associated with use-limited resources and revising the RA product to include a least-cost dispatch requirement or a bid cap;

2. Option 2: Enhancing or replacing the current RA capacity / CAISO must-offer obligation construct with a forward energy based system hourly load shape framework that requires load serving entities to demonstrate procurement of sufficient energy from specified physical resources that are contractually obligated to flow (or, in the case of DR, curtail) to meet their energy needs on a forward basis; or
3. Option 3: Replacing the current RA capacity / CAISO must-offer obligation construct with a fixed price forward energy requirement similar to Option 2, but including a financial hedging component that allows for risk arbitrage and price discovery on the part of generators, which can result in lower forward prices for customers.

In Track 3.A, CPUC, CAISO and CEC have also postponed (revised date TBD) a joint public workshop, originally scheduled for September 3, 2020, which was to consider the potential to provide RA credit to hybrid storage/solar behind-the-meter resources.

- **Analysis**: Regulatory developments under consideration in this proceeding that may impact VCE's capacity procurement obligations and RA compliance filing requirements include the consideration of hourly capacity requirements in light of the increasing penetration of use-limited resources; modifications to maximum cumulative capacity buckets and whether the RA program should *cap* use-limited and preferred resources such as wind and solar; the potential expansion of multi-year local forward RA to system or flexible resources; RA penalties and waivers; counting conventions for hydro, hybrid resources, and DR resources; and Marginal ELCC counting conventions for solar, wind and hybrid resources.
- **Next Steps**: In Track 3.A, working group reports and proposals are due September 11, 2020; reply comments are due September 18, 2020; and a Proposed Decision is anticipated in Q4 2020. The Joint Agency workshop date is TBD.

  In Track 3.B, working group meetings are anticipated for September, with possible workshop(s) on Energy Division and party proposals in late September-October, final Track 3 proposals due October 15, 2020; comments on workshop and all proposals due November 6, 2020; reply comments due November 20, 2020; and a Proposed Decision anticipated in Q1 2021.

  The schedule and scope of issues for Track 4 will be established in a later Scoping Memo.
- **Additional Information**: Ruling providing Energy Division's Track 3.B proposal (August 7, 2020); Amended Scoping Memo on Track 3 (July 7, 2020); D.20-06-031 on local and flexible RA requirements and RA program refinements (June 30, 2020); Ruling suspending Track 3 schedule (June 23, 2020); 2021 Final Flexible Capacity Needs Assessment (May 15, 2020); 2021 Final Local Capacity Technical Study (May 1, 2020); Scoping Memo and Ruling (January 22, 2020); Order Instituting Rulemaking (November 13, 2019); Docket No. R.19-11-009.

2020 IRP Rulemaking

On August 7, 2020, the CPUC issued Resolution E-5080, which implements an IRP Citation Program for non-compliance with IRP requirements. At its August 27, 2020, Meeting, the CPUC approved Resolution E-5100, authorizing PG&E's procurement of 423 MW of battery energy storage projects, and Resolution E-5101, authorizing SCE's procurement of 770 MW of battery energy storage projects, pursuant to D.19-11-016. On September 1, 2020, LSEs including VCE filed their 2020 IRPs, which included updates on each LSE's progress towards completing additional system RA procurement ordered for the 2021-2023 years under D.19-11-016.

- **Background**: In the CPUC's IRP process, the Reference System Portfolio (RSP) is essentially a proposed statewide IRP portfolio that sets a statewide benchmark for later IRPs filed by individual LSEs. The CPUC ultimately adopts a Preferred System Portfolio (PSP) after LSEs submit individual IRPs to be used in statewide planning and future procurement.

The OIR's preliminary scope defines a Planning Track and a Procurement Track. The Planning Track includes all of the work associated with developing the RSP and the PSP. The individual issues within this track include modeling, scenario selection, inputs and assumptions, GHG benchmarks, load forecasting issues, and filing requirements for individual LSE IRPs. The OIR states that it is now necessary to move beyond planning through 2030 and begin to move the planning horizon through at least 2035 in preparation for the 2045 goals established by SB 100 (e.g., a zero-carbon electricity sector).

The ALJ's June 5 Ruling on backstop procurement and cost allocation proposed "trigger points" and associated milestones to arrive at a determination of whether backstop procurement will be conducted for the procurement required by D.19-11-016. An LSE would need to meet each of these milestones in order to avoid backstop procurement taking place on its behalf. Compliance would be determined on a resource-specific basis, allowing for instances of partial compliance (*e.g.,* some projects meet the targets but others do not).

The ALJ's June 15 Ruling requested comments on a new version of the proposed schedule and sequencing of activities in the proceeding and scheduled a prehearing conference. The Ruling proposed a three-year cycle for the IRP process, instead of the current structure of conducting each cycle every two years. The proposed schedule provided for activities on four parallel work streams related to the development of the Reference System Portfolio, the Preferred System Portfolio, the Procurement Track, and the Transmission Planning Process. There would be opportunities for new procurement requirements at least twice during every three-year cycle, beginning with a Q1 2021 Ruling proposing resource procurement, followed by the issuance of a PD/Decision in Q2 2021 ordering additional procurement. Q1 2021 would also include the issuance of a PD finalizing a procurement framework. If the need determination is triggered in Q2 2021 via a Ruling, the CPUC would issue a PD ordering resource procurement, either stand-alone or combined with PSP PD, in Q3 2021.

- **Details**: The IRP Citation Program allows LSEs to cure deficiencies in an IRP identified by Energy Division staff within 10 business days, without having to pay a fine. The fine for deficiencies that are not cured within that period will be $1,000 per incident, plus $500 per day for the first ten days the filing was late and $1,000 for each day thereafter. It also specifies a process for appealing a citation. The Resolution incorporated modifications to the original draft resolution to the definition of "Specified Violation" to incorporate CalCCA's emphasis that violations be only for violations of "unambiguous" requirements. The Resolution also increased the cure period for IRP deficiencies from 5 days to 10 days after CalCCA recommended increasing it to 20 days.
- **Analysis**: This proceeding impacts VCE's compliance requirements, including its IRP filing, as well as issues that could impact VCE's autonomy over its procurement decisions and cost recovery of related procurement directives. The June 15, 2020 Ruling proposes changes to the IRP cycle that could change the frequency of IRP filings to once every three years and provide the CPUC two opportunities per three-year cycle to order additional procurement. Under the newly created IRP Citation Program, if the CPUC identifies any deficiencies in VCE's IRP filings, it will have 10 days to cure the identified deficiencies, after which time it would be subject to a financial penalty penalty.
- **Next Steps**: Parties are awaiting further direction by the ALJ in response to the submitted IRPs and in response to comments on the June rulings.
- **Additional Information**: Resolution E-5080 (August 7, 2020); Ruling on IRP cycle and schedule (June 15, 2020); Ruling on backstop procurement and cost allocation mechanisms (June 5, 2020); Order Instituting Rulemaking (May 14, 2020); Dock No. R.20-05-003.

2016 IRP Rulemaking

On August 24, 2020, the ALJ issued a Proposed Decision that would grant CalCCA's Petition for Modification of D.19-11-016 and close this proceeding.

- **Background**: In the CPUC's IRP process, the RSP is essentially a proposed statewide IRP portfolio that sets a statewide benchmark for later IRPs filed by individual LSEs. The CPUC ultimately adopts a Preferred System Portfolio (PSP) to be used in statewide planning and future procurement.

  D.19-11-016 directed VCE to procure 6.3 MW, 9.4 MW, and 12.6 MW of additional resources, to be online by line by August 1, 2021, August 1, 2022, and August 1, 2023, respectively. In addition, D.20-03-028 established a 2019-2020 RSP based on a GHG target for the electric sector for 2030 of 46 million metric tons (MMT), while also requiring LSEs to file an IRP scenario based on a more aggressive 38 MMT target in their IRPs due September 1, 2020.

- **Details**: The PD would grant CalCCA's Petition for Modification of D.19-11-016, which required LSEs to procure additional system RA to come online in 2021-2023. First, the PD would grant CalCCA's request and determine that the methodology included in D.20-06-031 will be used to determine Qualifying Capacity for hybrid resources used to comply with the requirements of D.19-11-016 (unless or until the methodology is modified again). Second, the PD would effectively punt on deciding the issue of cost recovery to the new IRP proceeding, R.20-05-003. CalCCA's PFM had argued that the Commission should modify the cost recovery mechanism adopted in D.19-11-016 by requiring an IOU that provides system resource adequacy backstop procurement to an LSE to bill that entity directly for all costs associated with the procurement. However, the PD would grant CalCCA's request to modify D.19-11-016 by eliminating the language that would have limited the mechanism to a customer-billed non-bypassable charge. Finally, the PD would close the docket.

- **Analysis**: CalCCA's PFM, if granted, would use the permanent hybrid counting methodology to be established in R.19-11-019, which CalCCA suggested is likely to be "less conservative and more accurate," instead of an interim methodology recently adopted, which Energy Division has interpreted as applying for compliance with D.19-11-016. CalCCA's PFM would also allow CCAs to recover backstop costs through their generation rates rather than having the IOU directly recover such costs through a non-bypassable charge on CCA customers.

- **Next Steps**: Comments and replies, respectively, on the PD are due September 14, 2020, and September 21, 2020. The proceeding will be closed upon issuance of the final decision. All other IRP issues will be addressed through R.20-05-003.

- **Additional Information**: Proposed Decision (August 24, 2020); Draft Resolution E-5100 on PG&E storage contracts (July 22, 2020); D.20-06-025 dismissing GenOn Holdings Application for Rehearing (June 22, 2020); Ruling correcting LSE load forecasts (May 20, 2020); Proposed Decision denying CESA's Petition for Modification (June 3, 2020); PG&E's Advice 5826-E (May 18, 2020); CalCCA PFM of D.19-11-016 (May 14, 2020); Ruling establishing LSE load forecasts (April 15, 2020); D.20-03-028 on RSP and 2020 IRP filing requirements (April 6, 2020); CESA's PFM of D.19-11-016 (April 1, 2020); List of Baseline Resources (December 2, 2019); D.19-11-016 (November 13, 2019); Ruling initiating procurement track (June 20, 2019); D.19-04-040 on 2018 IRPs and 2020 IRP requirements (May 1, 2019); Docket No. R.16-02-007.

RPS Rulemaking

On August 12, 2020, VCE filed a Motion requesting to update its 2020 RPS Procurement Plan to make several minor clerical corrections to its Plan and noting to the CPUC that VCE anticipated terminating its PPA with Rugged Solar in August. On August 19, 2020, the ALJs issued a Proposed Decision on new (i.e., not yet serving load) CCAs' 2019 RPS Procurement Plans. On August 21, 2020, the ALJs issued a Proposed Decision that would resume and modify the Renewable Market Adjusting Tariff (ReMAT) program. On September 1, 2020, the CPUC issued D.20-08-043, reopening the Bioenergy Market Adjusting Tarrif (BioMAT) program but refused to let CCAs participate by directly entering into BioMAT contracts.

- **Background**: This proceeding addresses ongoing RPS issues. VCE submitted its 2020 RPS Procurement Plan on July 6, 2020 and its 2019 RPS Compliance Report on August 3, 2020.

On February 27, 2020, the ALJ issued a Ruling requesting comments on a Staff Proposal making changes to confidentiality rules regarding the RPS program. Among other proposals, the Energy Division has proposed to make CCAs' RPS procurement contract terms (e.g., price, quantity, resource type, location, etc.) publicly available 30 days after deliveries begin. The contract price would also be publicly available six months after a contract is signed (if that occurs sooner than 30 days after deliveries begin).

- **Details**: The BioMAT decision D.20-08-043 adopts the staff proposal, with modifications, revising the BioMAT program. BioMAT procurement costs will be allocated through a non-bypassable charge to all customers in each investor-owned utility's service territory. The CPUC refused to adopt a provision of the staff proposal that was supported by Joint CCAs that would have allowed non-IOU LSEs (such as CCAs) to enter into BioMAT contracts and recover non-IOU LSEs' costs through the IOU's non-bypassable charge for the BioMAT program.

  The ReMAT PD would adopt a June 2020 Staff Proposal for revising the ReMAT program and direct the filing of Tier 2 advice letters by SCE and PG&E within 21 days of the issuance of a decision to implement the revisions. The ReMAT program is a feed-in tariff program for renewable facilities of 3 MW or less. The PD would adopt a pricing methodology for base ReMAT pricing based on recent, non-state mandated long-term RPS contracts (2013-2019), categorized by product category and averaged on a capacity-weighted basis. The calculation produced the following prices in the Staff Proposal: (1) As Available Non-Peaking: $57.54/MWh; (2) As-Available Peaking: $50.23/MWh; (3) Baseload: $79.72/MWh. The ReMAT standard contract is also to be updated to reflect the most recent utility time-of-day periods and factors. The resulting effective prices after these adjustments must be specified in the utility Advice Letters filed for program updates. Base pricing would be updated once annually under a CPUC Resolution process starting in May 2021, retaining a 7-year rolling time horizon.

  The PD on new CCA 2019 RPS Procurement Plans would approve the Plans, but order that these new CCAs file more robust RPS Plans in the future. The PD would not directly impact VCE, or address any filings made by VCE (such as VCE's 2020 RPS Procurement Plan). However, the PD includes language echoing previous Decisions that criticized CCAs for providing "scant information" and questions whether all CCAs will be able to fulfill their long-term RPS requirements.

- **Analysis**: D.20-08-043, which reopens the BioMAT program, will impact VCE customer rates, as the program and associated cost recovery is through a non-bypassable charge would be extended through 2025. It does not allow VCE to directly enter into BioMAT contracts.

  The reopening of the ReMAT program could impact VCE by reopening a program that could compete with VCE with respect to the procurement of small-scale renewable energy facilities.

  The pending Staff Proposal on RPS confidentiality rules includes provisions that, if adopted, would result in VCE being required to provide more transparency on various RPS information, such as RPS PPA pricing and other contract information.

  Other issues to be addressed in this proceeding could further impact future RPS compliance obligations, such as potentially allowing LSEs like VCE to forgo filing a separate RPS Procurement Plan in 2022 by using its 2022 IRP filing instead.

  Next Steps: Comments on the ReMAT PD are due September 10, 2020, reply comments are due September 15, 2020, and the PD may be adopted, at the earliest, at the September 24, 2020 CPUC meeting.

  Comments on the new CCAs' RPS Plan PD are due September 8, 2020, and September 14, 2020, respectively.

  A PD/Decision on the 2020 RPS Procurement Plans is anticipated in Q4 2020, after which retail sellers may file "Final" 2020 RPS Procurement Plans (also expected in Q4).

In 2020, the Energy Division is developing a proposal on integrating the IRP and RPS Procurement Plan filings, but the possibility of combining these filings will not occur prior to 2022, per D.19-12-042.

- **Additional Information**: D.20-08-043 resuming and modifying the BioMAT program (September 1, 2020); Proposed Decision resuming and modifying ReMAT (August 21, 2020); Proposed Decision on new CCA 2019 RPS Procurement Plans (August 19, 2020); VCE Motion to Update its 2020 RPS Procurement Plan (August 12, 2020); Ruling extending procedural schedule on RPS Procurement Plan review (July 10, 2020); Assigned Commissioner Ruling (ACR) establishing 2020 RPS Procurement Plan requirements (May 6, 2020); CalCCA Comments on RPS confidentiality (March 30, 2020); D.20-02-040 correcting D.19-12-042 on 2019 RPS Procurement Plans (February 21, 2020); Ruling on RPS confidentiality and transparency issues (February 27, 2020); D.19-12-042 on 2019 RPS Procurement Plans (December 30, 2019); D.19-06-023 on implementing SB 100 (May 22, 2019); Ruling extending procedural schedule (May 7, 2019); Ruling identifying issues, schedule and 2019 RPS Procurement Plan requirements (April 19, 2019); D.19-02-007 (February 28, 2019); Scoping Ruling (November 9, 2018); Docket No. R.18-07-003.

PG&E's 2019 ERRA Compliance

On August 14, 2020, the ALJ issued an Amended Scoping Memo and Ruling, dividing the proceeding into two phases. PG&E filed rebuttal testimony on August 21, 2020.

- **Background**: ERRA compliance review proceedings review the utility's compliance in the preceding year regarding energy resource contract administration, least-cost dispatch, fuel procurement, and the PABA balancing account (which determines the true up values for the PCIA each year). In its 2019 ERRA compliance application, PG&E requested that the CPUC find that its PABA entries for 2019 were accurate, it complied with its Bundled Procurement Plan in 2019 in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, RA sales, and least-cost dispatch of electric generation resources. PG&E also requests that the CPUC find that during the record period PG&E managed its utility-owned generation facilities reasonably. Finally, PG&E requests cost recovery of revenue requirements totaling about $4.0 million for Diablo Canyon seismic study costs.

  PG&E's supplemental testimony (1) described PG&E's PSPS Program and when it was used in 2019; (2) provided an accounting of the 2019 PSPS events, including a description of how balancing accounts forecast in PG&E's annual ERRA Forecast proceeding and reviewed in the 2019 ERRA Compliance Review proceeding may have been impacted and; (3) described the difference between load forecasting for ratemaking purposes and load forecasting for PSPS events.

  The Joint CCAs' testimony identifies $175.4 million in net reductions to the 2019 PABA balance that should be made, excluding interest. The Joint CCAs argue this amount should be credited back to customers. PG&E's rebuttal testimony states it will make all but $33.6 million of those adjustments as part of its August 2020 accounting close, with the remaining amount still in contention in the proceeding.

- **Details**: The Amended Scoping Memo and Ruling adds three issues related to PSPS in a second phase of this proceeding. Specifically, Phase II of this proceeding will consider the following additional issues:

  1. Should sales forecasting methods for adjusting revenue requirement under current decoupling policy be adjusted to account for power not sold during a PSPS event? If so, how?
  2. What methods should be used to account for sales lost during PSPS distinct from sales reductions due to conservation?

3. If a utility does not collect its entire revenue requirement due to lower volumetric sales during a PSPS, should it be prevented from adjusting future revenue requirements to make up for any undercollection? If so, how?

- **Analysis**: This proceeding addresses PG&E's balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2019. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Efforts from the Joint CCAs to date will reduce the level of the PCIA for VCE's customers in 2021 and/or 2022.
- **Next Steps**: A status report of settlement discussions is due September 14, 2020, in advance of evidentiary hearings scheduled for September 21-25, 2020. Opening and reply briefs, respectively, are due October 19, 2020, and November 9, 2020. The schedule for Phase II of this proceeding has not been issued yet.
- **Additional Information**: Amended Scoping Memo and Ruling (August 14, 2020); Scoping Memo and Ruling (June 19, 2020); PG&E's Application and Testimony (February 28, 2020); Docket No. A.20-02-009.

Wildfire Fund Non-Bypassable Charge (AB 1054)

Parties filed reply comments on August 11, 2020, and on August 19, 2020, the ALJ issued a Proposed Decision adopting the Wildfire Non-Bypassable Charge (NBC) of $0.00580/kWh for October 1, 2020, through December 31, 2020.

- **Background**: This rulemaking implemented AB 1054 and extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The scope of this proceeding was limited to consideration of whether the CPUC should authorize ratepayer funding of the Wildfire Fund established by AB 1054, enacted in July 2019, via the continuation of an existing non-bypassable charge (Department of Water Resources bond charge) that would have otherwise expired by the end of 2021. On August 26, 2019, the Bankruptcy Court tentatively granted PG&E's request to participate in the Wildfire Fund.

  D.19-10-056, issued in October 2019, approved the establishment of a non-bypassable charge on IOU customers to provide revenue for the newly established state Wildfire Fund pursuant to 2019 AB 1054. The charge will only be assessed on customers of utilities that participate in the Wildfire Fund (i.e., PG&E, SCE, and SDG&E), and will expire at the end of 2035. The Decision also provides that once a large IOU commits to Wildfire Fund participation, it may not later revoke its participation. The annual revenue requirement for the charge among the large IOUs will total $902.4 million, allocated at $404.6 million for PG&E, $408.2 million for SCE, and $89.6 million for SDG&E. There was a June 30, 2020, deadline for PG&E to satisfactorily complete its insolvency proceeding under AB 1054, and therefore become eligible to participate in the Wildfire Fund. The Wildfire Fund NBC will be collected on a $/kWh basis, with the revenue requirement allocated based on each class's share of energy sales. Residential CARE and medical baseline customers are exempt. The Wildfire Fund NBC cannot take effect until the DWR Bond charge sunsets, which may take place as early as the second half of 2020.
- **Details**: If the PD is approved, PG&E will collect the Wildfire NBC from eligible customers and file a Tier 1 Advice Letter to implement the Wildfire NBC by September 30, 2020. DWR estimates that the 2021 Wildfire Fund NBC will be comparable to the 2020 charge of $0.00580/kWh, but it will notify the CPUC of the 2021 charge amount by November 1, 2020.
- **Analysis**: This proceeding establishes a new non-bypassable charge on VCE customers beginning October 1, 2020, to fund the Wildfire Fund under AB 1054. The DWR Bond Charge would end at the end of September 2020.
- **Next Steps**: Comments and replies, respectively, on the PD are due September 8, 2020, and September 14, 2020. If the PD is approved, PG&E will file a Tier 1 Advice Letter implementing the

Wildfire NBC by September 30, 2020. The Wildfire Fund NBC is set to go into effect on October 1, 2020. DWR will propose the 2021 Wildfire NBC amount, which expected to be similar to the 2020 Wildfire NBC, to the CPUC by November 1, 2020.

- **Additional Information**: Proposed Decision adopting 2020 Wildfire NBC (August 19, 2020); D.20-07-014 approving servicing orders (July 24, 2020); Ruling on Wildfire NBC implementation (July 3, 2020); D.20-02-070 denying Application for Rehearing (March 2, 2020); D.19-10-056 approving a non-bypassable charge (October 24, 2019); Scoping Memo and Ruling (August 14, 2019); Order Instituting Rulemaking (August 2, 2019); Docket No. R.19-07-017. *See also* AB 1054.

PG&E's Phase 1 GRC

On August 13, 2020, the ALJs issued a Ruling modifying the procedures to be used for the confidential production of computer model runs using PG&E's Results of Operations model to generate the tables needed for decision support due to the COVID-19 pandemic. Also on August 13, 2020, PG&E filed a Motion to make numerous corrections to Appendix B of the Settlement Agreement that was filed in December 2019. The Motion was not opposed by any parties to the Settlement Agreement, although Joint CCAs filed a response that criticized the transparency and accuracy of PG&E's information throughout the proceeding.

- **Background**: PG&E's three-year GRC covers the 2020-2022 period. For 2020, it has requested an additional $1.058 billion (from $8.518 billion to $9.576 billion), or a 12.4% increase over its 2019 authorized revenue requirement, comprised of increases related to its gas distribution ($2.097 billion total, or a $134 million increase), electric distribution ($5.113 billion total, or a $749 million increase), and generation ($2.366 billion total, or a $175 million increase) services. If approved, it would increase a typical monthly residential electric (500 kWh) and natural gas (34 therms) customer bill by $10.57, or 6.4%, comprised of an electric bill increase of $8.73 and a gas bill increase of $1.84. For 2021 and 2022, PG&E requested total increases of $454 million and $486 million, respectively. PGE's GRC does not include a request for cost recovery related to 2017 and 2018 wildfire liabilities.

  The Settlement Agreement, filed December 30, 2019, would result in an increase in PG&E's 2020 revenue requirement of $575 million (*i.e.*, $483 million lower than PG&E's original request), with additional increases of $318 million, or 3.5% in 2021, and $367 million, or 3.9%, in 2022. The Settlement Agreement would result in PG&E withdrawing its proposal for a non-bypassable charge related to its hydroelectric facilities. It would require PG&E to develop new and enhanced reporting to provide increased visibility into the work it performed. It also provides for PG&E's ability to purchase insurance coverage up to $1.4 billion to protect against wildfire risk and other liabilities, reflected in PG&E's forecast as a cost of $307 million. The consolidated 2020 electric and gas bill impact would be 3.4%.

- **Details**: Joint CCAs' responded to PG&E's Motion point out that, while PG&E's Motion does not impact the revenue requirements in the Settlement or specific CCA arguments in this proceeding, it is yet another example of PG&E transparency and accuracy issues that have been a repeated issue throughout this proceeding. Joint CCAs urged the CPUC to order PG&E in future general rate cases to (1) exercise greater care to improve the accuracy of its filings, (2) more carefully track the utilization of its various common Customer Care services between bundled and unbundled customers and use those numbers to propose proper functionalization methods, and (3) present its allocations of all shared costs more transparently.

- **Analysis**: PG&E's GRC proposals included shifting substantial costs associated with its hydroelectric generation from its generation rates (applicable only to its bundled customers) into a non-bypassable charge affecting all of its distribution customers, including VCE customers, which would negatively affect the competitiveness of VCE's rates relative to PG&E's. However, that proposal would be withdrawn if the Settlement Agreement is approved. The remaining CCA-related issues in the case include the Joint CCAs' recommendations that the Commission:

1. Revise the allocation of certain customer-service costs since unbundled customers use those services far less than bundled customers.
2. Ensure CCAs can connect clean generation to PG&E's temporary microgrids during PSPS events.
3. Revise the settlement's exorbitant decommissioning costs for PG&E's PCIA-eligible facilities.
4. Revise the settlement to ensure grid modernization data is accessible to CCAs to ensure a level playing field in the provision of grid services.

- **Next Steps**: The ALJs will issue a proposed decision.
- **Additional Information**: PG&E Motion to update the Settlement Agreement (August 13, 2020); Ruling adopting confidential modeling procedures (August 13, 2020); E-mail Ruling granting in part PG&E's Motion for Official Notice and Joint CCAs Motion to file sur-reply (June 5, 2020); Joint CCAs' PG&E Motion for Official Notice of Facts (January 27, 2020); Joint Motion for Settlement Agreement (January 14, 2020); E-Mail Ruling modifying procedural schedule (December 2, 2019); E-Mail Ruling suspending briefing deadlines (November 25, 2019); D.19-11-014 (November 14, 2019); Ruling setting public participation hearings (May 7, 2019); Scoping Memo and Ruling (March 8, 2019); Joint CCAs' Protest (January 17, 2019); Application and PG&E GRC Website (December 13, 2018); Docket No. A.18-12-009.

PG&E's Phase 2 GRC

On August 17, 2020, the ALJ issued a Proposed Decision that would approve ratepayer funding for the Essential Usage Study (EUS) capped at approximately $845,000. On August 20, 2020, the ALJ issued a Ruling scheduling two public participation hearings for November 6, 2020. Two Email Rulings issued by the ALJ on August 27, 2020, request that intervenor testimony due on November 20, 2020, address real-time pricing issues.

- **Background**: PG&E's 2020 Phase 2 General Rate Case (GRC) addresses marginal cost, revenue allocation and rate design issues covering the next three years. PG&E's pending Phase 1 GRC (filed in December 2018 via a separate proceeding) will set the revenue requirement that will carry through to the rates ultimately adopted in this proceeding.

  In this proceeding, PG&E seeks modifications to its rates for distribution, generation, and its public purpose program (PPP) non-bypassable charge. PG&E proposes to implement a plan to move all customer classes to their full cost of service over a six-year period (the first three years of which are covered by this GRC Phase 2) via incremental annual steps. PG&E proposes to use marginal costs for purposes of revenue allocation and to adjust distribution one-sixth of the way to full cost of service each year over a six-year transition period.

  Of note, PG&E is proposing changes to the DA/CCA event-based fees that were not updated in the 2017 Phase 2 GRC proceeding. In addition, PG&E proposes to remove the PCIA revenue from bundled generation revenue and allocate that cost separately to bundled customers, collecting the PCIA from bundled customers on a non-time differentiated, per-kWh basis (i.e., the same way it is collected from DA/CCA customers). PG&E will continue to display the PCIA with other generation charges on customer bills, but will unbundle the PCIA as part of unbundled charges in each rate schedule.

  PG&E's final EUS plan describes how the IOUs' study will identify the essential usage of electricity for the IOUs' residential customers. The EUS will determine what constitutes essential usage for residential customers (*e.g.*, cooking, lighting, space conditioning) in the different IOU service territories and climate zones. The apparent use case is that essential service be reflected in the Tier I baseline quantities.

- **Details**: The PD would authorize each large IOU to file a Tier 1 advice letter that will establish an EUS cost recovery balancing account for tracking each IOUs' respective share of the actual costs associated with the EUS, with a cost allocation of: PG&E, 45%; SCE, 43%; and SDG&E, 12%. The IOUs estimate that the final EUS report will be completed in January 2022.

  The Email Rulings requesting intervenor testimony on real-time pricing rates requests that the testimony specifically address the benefits and tradeoffs inherent to real-time pricing, including whether and to what extent it could result in revenue shortfall and intra-class cost shifts and bill comparisons and any other relevant data that can facilitate a complete evaluation of customer impacts under specific real-time pricing designs.

- **Analysis**: This proceeding will not impact the transparency between a bundled and unbundled customer's bills because of the Working Group 1 decision in the PCIA rulemaking. However, it will affect the allocation of PG&E's revenues requirements among VCE's different rate classes. It will also affect distribution and PPP charges paid by VCE customers to PG&E. Further, PG&E includes a cost-of-service study the purpose of which is to establish the groundwork for separating net metering customers into a separate customer class in the utility's next rate case. If PG&E's proposed CCA fee revisions are adopted, it will increase the cost VCE pays to PG&E for various services.

- **Next Steps**: Comments and replies, respectively, on the EUS PD are due September 7, 2020, and September 14, 2020.

  With respect to other issues in this proceeding, Cal Advocates' testimony is due October 23, 2020. Two public participation hearings are scheduled for November 6, 2020. Intervenor testimony is due November 20, 2020. Rebuttal testimony is due February 15, 2021. An evidentiary hearing is tentatively scheduled for March 1-12, 2021. A CPUC decision is anticipated for September 2021.

- **Additional Information**: Ruling scheduling public participation hearings (August 20, 2020); Ruling extending procedural schedule (July 13, 2020); Exhibit (PG&E-5) (May 15, 2020); Scoping Memo and Ruling (February 10, 2020); Application, Exhibit (PG&E-1): Overview and Policy, Exhibit (PG&E-2): Cost of Service, Exhibit (PG&E-3): Revenue Allocation, Rate Design and Rate Programs, and Exhibit (PG&E-4): Appendices (November 22, 2019); Docket No. A.19-11-019.

PG&E Regionalization Plan

Fourteen parties filed responses or protests to PG&E's regionalization plan application on August 5, 2020, to which PG&E filed a reply on August 17, 2020. A prehearing conference was held August 20, 2020.

- **Background**: PG&E was directed to file a regionalization proposal as a condition of CPUC approval of its Plan of Reorganization in I.19-09-016. On June 30, 2020, PG&E filed its regionalization proposal, which describes how it plans to reorganize operations into new regions. PG&E proposes to divide its service area into five new regions: North Coast, Sierra, Bay Area, Central Coast, and Central Valley. The regional boundaries will align with county boundaries. Yolo County would be part of PG&E Region 1 (North Coast), grouped together with the following counties: Colusa, Glenn, Humboldt, Lake, Mendocino, Napa, Sacramento, Solano, Sonoma, and Trinity. PG&E will appoint a Regional Vice President by June 2021 to lead each region, along with Regional Safety Directors to lead its safety efforts in each region.

  The new regions would include five functional groups that report to the Regional Vice President encompassing various functions including: (1) Customer Field Operations, (2) Local Electric Maintenance and Construction, (3) Local Gas M&C, (4) Regional Planning and Coordination, and (5) Community and Customer Engagement. Other functions will remain centralized, such as electric and gas operations, risk management, enterprise health and safety, the majority of existing Customer Care and regulatory and external affairs, supply, power generation, human resources, finance, and general counsel. PG&E will propose in a separate proceeding the

enterprise-level safety and operational metrics it is developing that could also be considered to evaluate the effectiveness of its regionalization implementation. PG&E proposes a phased implementation, with progress establishing all regions in 2021, although some functions would not be fully shifted until 2022. PG&E also proposes to establish a Regional Plan Memorandum Account to record any incremental costs PG&E may incur in connection with development and implementation of regionalization.

- **Details**: South San Joaquin Irrigation District filed a Protest arguing that PG&E's regionalization effort should not create a moratorium or interfere with municipalization efforts. Five CCAs filed responses or protests to PG&E's application, with MCE and EBCE filing protests and City of San Jose, City and County of San Francisco, and Pioneer Community Energy filing responses. CCA responses/protests sought more information on the implications of regionalization on CCA customers, CCA operations, and CCA-PG&E coordination; PG&E's overarching purpose, goals, and metrics to judge success of regionalization; the delineation between centralized and decentralized functions in PG&E's application; and budgets and cost recovery related to regionalization, among other issues. CCAs also identified various concerns specific to their CCAs (e.g., EBCE's and MCE's service areas would both be split across two PG&E regions; SJCE expressed concern with its service area being assigned to the Central Coast region; Pioneer expressed concern that it would be the only CCA in its region, which would be the only region not to be "anchored" by an urban area). PG&E's reply defended the sufficiency of its application, stated that it will supply more details on the impacts of its regionalization plan through discovery and workshops, agreed with SJCE's proposal to extend the procedural schedule, and noted that its proposal is a starting point and will be modified to reflect feedback.
- **Analysis**: As noted in the responses and protests of CCAs, the implications of PG&E's regionalization plan on CCA operations, customers, and costs is largely unclear based on the information presented in PG&E's application. PG&E's regionalization plan could impact PG&E's responsiveness and management of local government relations and local and regional issues, such as safety, that directly impact VCE customers beginning in 2021. As part of Region 1, VCE would be grouped with several coastal and northern counties.
- **Next Steps**: A scoping memo and ruling is expected to be issued next to establish the scope and schedule of this proceeding. PG&E must engage its Regional Vice Presidents and Regional Safety Directors by June 1, 2021.
- **Additional Information**: Ruling setting prehearing conference (August 5, 2020); Application (June 30, 2020); A.20-06-011.

Investigation of PG&E Bankruptcy Plan

On July 15, 2020, the ALJ issued a Ruling indicating this proceeding will likely be closed soon and requesting comments on how to proceed with remaining issues in I.15-08-019 (PG&E Safety Culture) that were not addressed in this proceeding. *See updates in I.15-08-019 above for more details.*

- **Background**: This case addressed regulatory review and approval of PG&E's bankruptcy plan, in particular whether the plan meets the AB 1054 Wildfire Fund requirements, which imposes a June 30, 2020 deadline. Under AB 1054, in order for PG&E to be eligible to participate in the Wildfire Fund, its plan must be "neutral, on average, to ratepayers." This proceeding considered the ratemaking implications of the proposed plan and settlement agreement, whether the plan satisfactorily resolves claims for monetary fines of penalties for PG&E's pre-petition conduct, whether to approve the governance structure of the utility and the appropriate disposition of potential changes to PG&E's corporate structure and authorization to operate, whether to make any other approvals related to the confirmation and implementation of the plan, and any other findings necessary to approve a proposed settlement, including but not limited to whether doing so is in the public interest.

  D.20-05-053 approved the financial elements of PG&E's reorganization plan, including:

1. $13.5 billion Fire Victim Trust. The reorganization plan also specifies that the Fire Victim Trust would be funded through $6.75 billion in cash, and $6.75 billion in stock of reorganized PG&E Corp.
2. $11 billion settlement with insurance claim holders and companies.
3. Reinstatement of $9.575 billion in existing, prepetition PG&E-funded debt claims.
4. Refinancing of $11.85 billion in existing, prepetition PG&E debt with newly issued debt.
5. Payment in full of general unsecured claims and certain other liabilities, with interest at the legal rate.
6. A $7.5 billion post-emergence 30-year securitization transaction.

D.20-05-053 also approved, with modifications, numerous proposals put forth by CPUC President Batjer for providing more oversight of PG&E along with management and operational changes at PG&E. The Decision did not address the Joint CCAs' recommendation that the CPUC develop a plan to phase out PG&E's retail electric generation service to customers or CCA requests that the CPUC require PG&E to undertake asset sales, instead determining that the PG&E Safety Culture proceeding (I.15-08-019) is the more appropriate forum for these issues. The Decision also rejected the Joint CCAs' request to revoke PG&E's existing holding company structure. Among other determinations, the Decision:

7. Requires that PG&E implement regional restructuring, resulting in local PG&E operating regions led by an officer of the utility that reports directly to the CEO. PG&E is required to file an application for regionalization by June 30, 2020.
8. Requires PG&E to have a separate Chief Risk Officer (CRO) and Chief Safety Officer (CSO). It establishes an Independent Safety Monitor that would functionally act in the same capacity as the federal court monitor after the termination of the federal monitor. The details on implementing the Independent Safety Monitor would be determined in the future.
9. Clarifies and expands the authority of the Safety and Nuclear Oversight (SNO) Committees of PG&E's boards of directors (e.g., the SNO Committees would have oversight over PG&E's Wildfire Mitigation Plan and PSPS program, among others).
10. Provides for the establishment of additional requirements applicable to the boards of directors of PG&E and PG&E Corp., but allows their membership to remain largely the same.
11. Finds that PG&E may not seek cost recovery for 2017/2018 wildfire claims except via the proposed securitization.
12. Declines to adopt a safety-based earnings adjustment mechanism, but it will continue to be considered it in the future, either in the PG&E Safety Culture proceeding (I.15-08-019) or another proceeding.
13. Requires PG&E to reimburse the CPUC for, and bar cost recovery on, various costs the CPUC incurred for outside expertise in relation to the Chapter 11 bankruptcy cases.
14. Adopt an Enhanced Oversight and Enforcement process for PG&E, revised and detailed in Appendix A, designed to provide a clear roadmap for how the CPUC will closely monitor PG&E's performance. The proposal specifies various steps that PG&E could progress through if repeatedly found to be non-compliant, with the last step being a review and possible revocation of its certificate of public convenience and necessity.

- **Details**: The July 15, 2020 Ruling confirmed that this proceeding will be closed in the near future, absent a compelling reason to keep it open. The Ruling requested party comments on how to proceed in proceeding I.15-08-019, which is described in more detail above.

- **Analysis**: The Decision in this proceeding provided the CPUC's approval for allowing PG&E to emerge from bankruptcy under PG&E's reorganization plan, with some additional changes required to its operations, management, and oversight, although keys aspects of requirements related to regionalization and the independent monitor remain to be determined in the future. The Decision excluded consideration of municipalization issues and did not address VCE's bid to PG&E to purchase the transmission and distribution assets of PG&E as part of PG&E's restructuring, along with other proposals for more significant reforms of PG&E's structure and operations.
- **Next Steps**: This proceeding is expected to be closed soon, with remaining issues to be addressed in the PG&E Safety Culture proceeding (I.15-08-019).
- **Additional Information**: Ruling (July 15, 2020); D.20-05-053 (June 1, 2020); PG&E Motion for official notice and Plan of Reorganization (March 24, 2020); Order Instituting Investigation (October 4, 2019); Docket No. I.19-09-016.

Investigation into PG&E Violations Related to Wildfires

No updates this month. On June 8, 2020, Thomas Del Monte and the Wild Tree Foundation filed applications for rehearing of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-2018 wildfires.

- **Background**: The scope of the proceeding included violations of law by PG&E with respect to the 2017 and 2018 wildfires, including the 2017 Tubbs Fire and the 2018 Camp Fire, what penalties should be assessed, what remedies or corrective actions should occur, and what if any systemic issues contributed to the ignition of the wildfires. SED issued a Fire Report on June 13, 2019 that found deficiencies in PG&E's vegetation management practices and procedures and equipment operations in severe conditions. CAL FIRE also found that PG&E's electrical facilities ignited all but one of the fires addressed in this investigation. This investigation ordered PG&E to take immediate corrective actions to come into compliance with CPUC requirements.

  The terms of the Settlement Agreement between PG&E, SED, the CPUC's Office of the Safety Advocate, and CUE would have resulted in $1.675 billion in PG&E penalties. Specifically, PG&E would not have been permitted seek rate recovery of wildfire-related expenses and capital expenditures totaling $1.625 billion. In addition, PG&E would have been required to spend $50 million in shareholder-provided settlement funds on specified System Enhancement Initiatives.

  The Presiding Officer's Decision provided for penalties on PG&E totaling $2.137 billion. The total included an increase of $198 million in the disallowances for wildfire-related expenditures that was provided in the Settlement Agreement. It also increased PG&E's System Enhancement Initiatives and corrective actions by $64 million and added a $200 million fine payable to the General Fund. In total, these changes increased PG&E's penalties by $462 million relative to the Settlement Agreement. The Presiding Officer's Decision also required any tax savings associated with the shareholder payments under the settlement agreement, as modified by this decision, to be returned to the benefit of ratepayers.

  D.20-05-019 approved with modifications the Settlement Agreement, as provided in Commissioner Rechtschaffen's "Decision Different." It approved penalties totaling $2.137 billion, however the $200 million fine payable to the General Fund is permanently suspended, resulting in an effective penalty total of $1.937 billion. In addition, the decision required any tax savings associated with the shareholder obligations for *operating expenses* under the Settlement Agreement (but not tax savings associated with capital expenditures, in order to avoid any potential legal conflict with IRS normalization rules) to be returned to the benefit of ratepayers in PG&E's next GRC. Finally, the decision rejected PG&E's attempt to classify the $200 million fine as a Fire Victim Claim or Fire Claim.
- **Details**: The Wild Tree Foundation and Thomas Del Monte each filed Applications for Rehearing (attached) of D.20-05-019, which approved penalties on PG&E for its role in igniting the 2017-

2018 wildfires. The Applications for Rehearing both challenge the permanent suspension of the $200 million fine imposed on PG&E, as well as other aspects of the settlement that was approved with modifications.

- **Analysis**: D.20-05-019 resulted in the largest penalty in CPUC history. It required additional spending by PG&E to mitigate future wildfire risk, potentially positively impacting the quality of service experienced by VCE customers. The decision did not hinder PG&E's reorganization plan from moving forward, whereas PG&E had argued that provisions in the original Presiding Officer's Decision could have imperiled the plan.
- **Next Steps**: The applications for rehearing are the only remaining items in this proceeding.
- **Additional Information**: Thomas Del Monte Application for Rehearing (June 8, 2020); Wild Tree Foundation Application for Rehearing (June 8, 2020); D.20-05-019 (May 8, 2020); Decision Different of Commissioner Rechtschaffen (April 20, 2020); Motion by Commissioner Rechtschaffen (March 27, 2020); Presiding Officer's Decision approving the settlement agreement with modifications (February 27, 2020); Joint Motion for Approval of Settlement Agreement (December 17, 2019); Amended Scoping Memo and Ruling (October 28, 2019); GO 95 Rule 31.1; GO 95 Rule 35; GO 95 Rule 38; Order Instituting Investigation (June 27, 2019); Docket No. I.19-06-015.

Direct Access Rulemaking

No update this month. On March 24, 2020, the ALJ informed parties that the release of Energy Division's report has been delayed. The procedural schedule will be updated accordingly following its release.

- **Background**: Phase 1 issues were resolved on May 30, 2019. For Phase 2 of this proceeding, the CPUC will address the SB 237 mandate requiring the CPUC to, by June 1, 2020, provide recommendations to the Legislature on "implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory." The Commission is required to make certain findings regarding the consistency of its recommendation with state climate, air pollution, reliability and cost-shifting policies.
- **Details**: The Energy Division held a workshop on January 8, 2020, and accepted post-workshop informal comments and reply comments on January 21, 2020 and January 27, 2020, respectively.
- **Analysis**: This proceeding will impact the CPUC's recommendations to the Legislature regarding the potential future expansion of DA in California, including a potential lifting of the existing cap on nonresidential DA transactions altogether. Further expansion of DA in California could result in non-residential customer departures from VCE and make it more difficult for VCE to forecast load and conduct resource planning. CalCCA has argued that further expansion of nonresidential DA is likely to adversely impact attainment of the state's environmental and reliability goals, and will result in cost-shifting to both bundled and CCA customers.
- **Next Steps**: A report containing the Energy Division's draft recommendations to the Legislature will be published in the future, which will be followed by a ruling updating the procedural schedule. There will be an opportunity for comments on the report, followed by a proposed decision.
- **Additional Information**: Amended Scoping Memo and Ruling adding issues and a schedule for Phase 2 (December 19, 2019); Docket No. R.19-03-009; *see also* SB 237.

Wildfire Cost Recovery Methodology Rulemaking

No updates this month. An August 7, 2019, PG&E Application for Rehearing remains pending regarding the CPUC's recent Decision establishing criteria and a methodology for wildfire cost recovery, which has

been referred to as a "Stress Test" for determining how much of wildfire liability costs that utilities can afford to pay (D.19-06-027).

- **Background**: SB 901 requires the CPUC to determine, when considering cost recovery associated with 2017 California wildfires, that the utility's rates and charges are "just and reasonable." In addition, and notwithstanding this basic rule, the CPUC must "consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

  D.19-06-027 found that the Stress Test cannot be applied to a utility that has filed for Chapter 11 bankruptcy protection (i.e., PG&E) because under those circumstances the CPUC cannot determine essential components of the utility's financial status. In that instance, a reorganization plan will inevitably address all pre-petition debts, include 2017 wildfire costs, as part of the bankruptcy process. The framework proposed for adoption in the PD is based on an April 2019 Staff Proposal, with some modifications. The framework requires a utility to pay the greatest amount of costs while maintaining an investment grade rating. It also requires utilities to propose ratepayer protection measures in Stress Test applications and establishes two options for doing so.

  PG&E's application for rehearing challenges the CPUC's prohibition on applying the Stress Test to utilities like itself that have filed for Chapter 11 bankruptcy. PG&E's rationale is that SB 901 requires the CPUC to determine that the stress test methodology to be applied to all IOUs. Several parties filed responses to PG&E's application for rehearing disagreeing with PG&E.

- **Details**: N/A.
- **Analysis**: This proceeding established the methodology the CPUC will use to determine, in a separate proceeding, the specific costs that the IOUs (other than PG&E) may recover associated with 2017 or future wildfires.
- **Next Steps**: The only matter remaining to be resolved in this proceeding is PG&E's application for rehearing. This proceeding is otherwise closed.
- **Additional Information**: PG&E Application for Rehearing (August 7, 2019); D.19-06-027 (July 8, 2019); Assigned Commissioner's Ruling releasing Staff Proposal (April 5, 2019); Scoping Memo and Ruling (March 29, 2019); Order Instituting Rulemaking (January 18, 2019); Docket No. R.19-01-006. *See also* SB 901, enacted September 21, 2018.

Glossary of Acronyms

AB	Assembly Bill
AET	Annual Electric True-up
ALJ	Administrative Law Judge
BioMAT	Bioenergy Market Adjusting Tariff
BTM	Behind the Meter
CAISO	California Independent System Operator
CAM	Cost Allocation Mechanism
CARB	California Air Resources Board
CEC	California Energy Commission
CPE	Central Procurement Entity
CPUC	California Public Utilities Commission

CPCN	Certificate of Public Convenience and Necessity
CTC	Competition Transition Charge
DA	Direct Access
DWR	California Department of Water Resources
ELCC	Effective Load Carrying Capacity
ERRA	Energy Resource and Recovery Account
EUS	Essential Usage Study
GRC	General Rate Case
IEPR	Integrated Energy Policy Report
IFOM	In Front of the Meter
IRP	Integrated Resource Plan
IOU	Investor-Owned Utility
ITC	Investment Tax Credit
LSE	Load-Serving Entity
MCC	Maximum Cumulative Capacity
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
PABA	Portfolio Allocation Balancing Account
PD	Proposed Decision
PG&E	Pacific Gas & Electric
PFM	Petition for Modification
PCIA	Power Charge Indifference Adjustment
PSPS	Public Safety Power Shutoff
PUBA	PCIA Undercollection Balancing Account
QC	Qualifying Capacity
RA	Resource Adequacy
RDW	Rate Design Window
ReMAT	Renewable Market Adjusting Tariff
RPS	Renewables Portfolio Standard
SCE	Southern California Edison
SED	Safety and Enforcement Division (CPUC)
SDG&E	San Diego Gas & Electric
TCJA	Tax Cuts and Jobs Act of 2017
TOU	Time of Use
TURN	The Utility Reform Network
UOG	Utility-Owned Generation
WMP	Wildfire Mitigation Plan

WSD	Wildfire Safety Division (CPUC)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager, VCEA

SUBJECT: Customer Enrollment Update (Information)

DATE: September 10, 2020

RECOMMENDATION

Receive and review the attached Customer Enrollment update as of September 1, 2020.

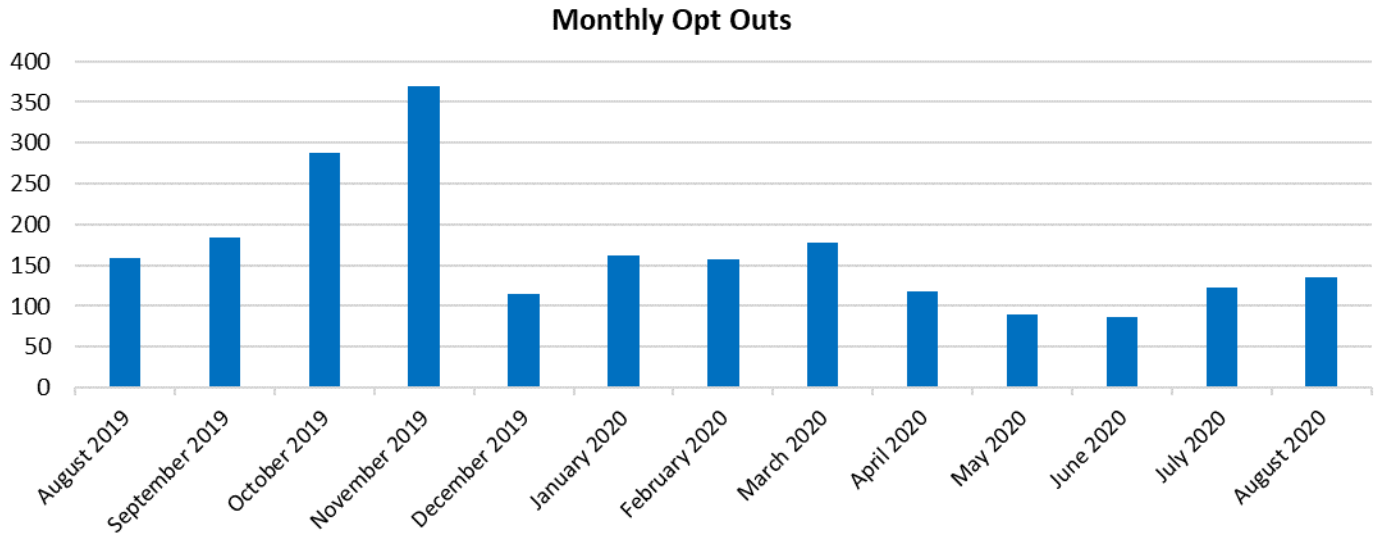
Item 9 - Enrollment Update

	Davis	Woodland	Yolo Co	Total	Residential	Commercial	Industrial	Ag	NEM	Non-NEM
VCEA customers	26,902	20,138	10,429	57,469	49,781	5,834	6	1,848	7,138	50,331
Eligible customers	29,096	23,346	12,170	64,612	55,935	6,504	7	2,166	8,169	56,443
Participation Rate	92%	86%	86%	89%	89%	90%	86%	85%	87%	89%

- There are currently 1,544 NEM customers not included in this table. They will enroll throughout the remainder of 2020.

% of Load Opted Out

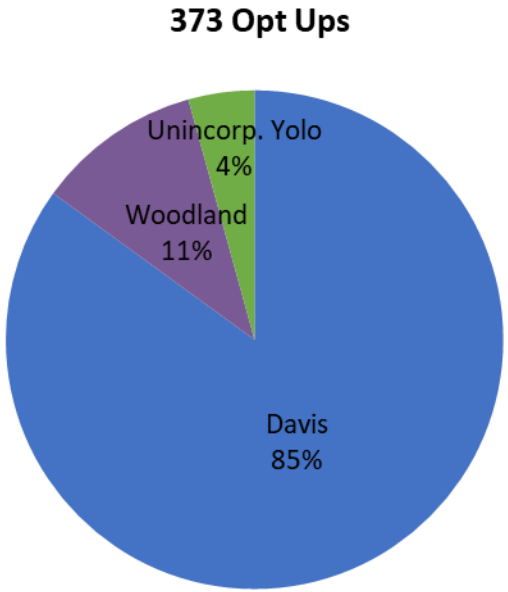
Residential	Commercial	Industrial	Ag	Total
11%	10%	14%	14%	11%

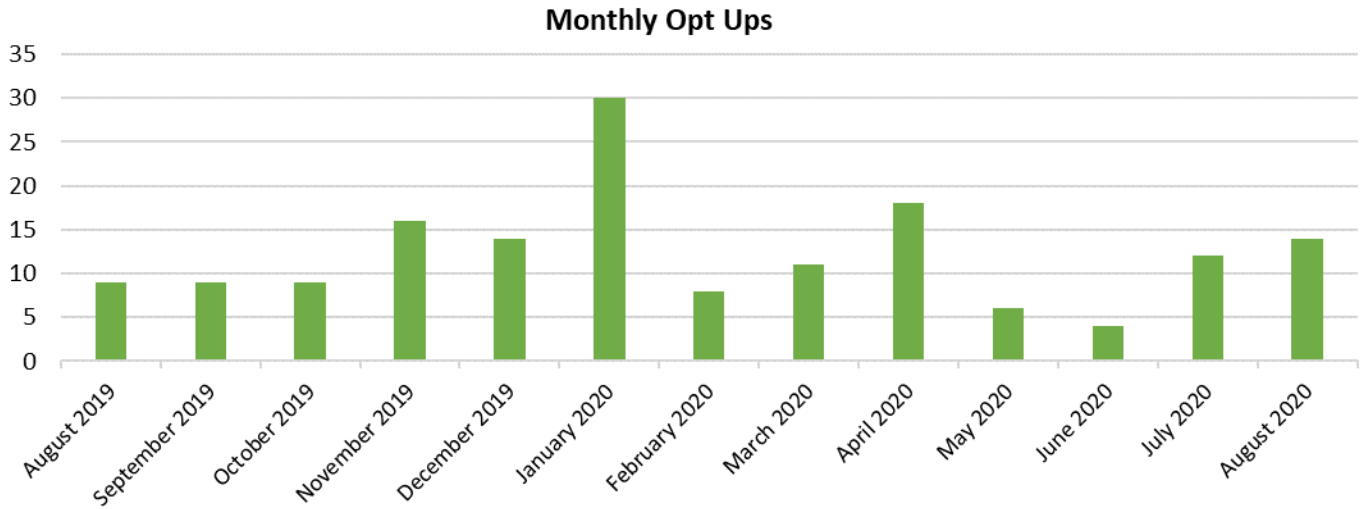


Status Date: 9/1/20

VALLEY CLEAN ENERGY

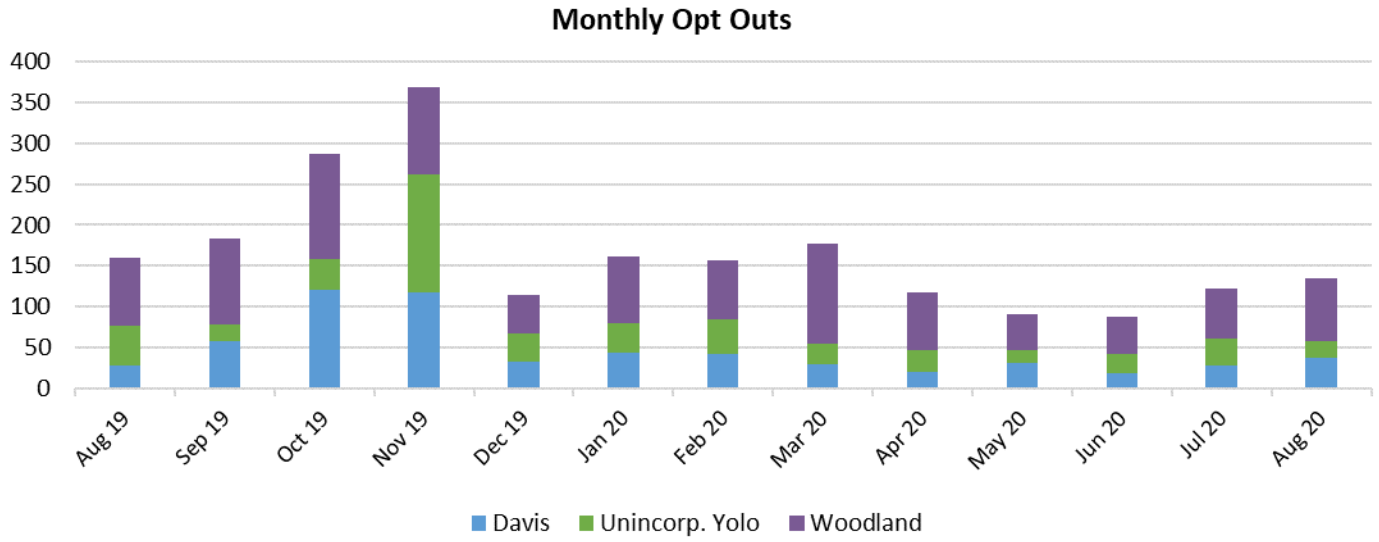
Item 9 - Enrollment Update

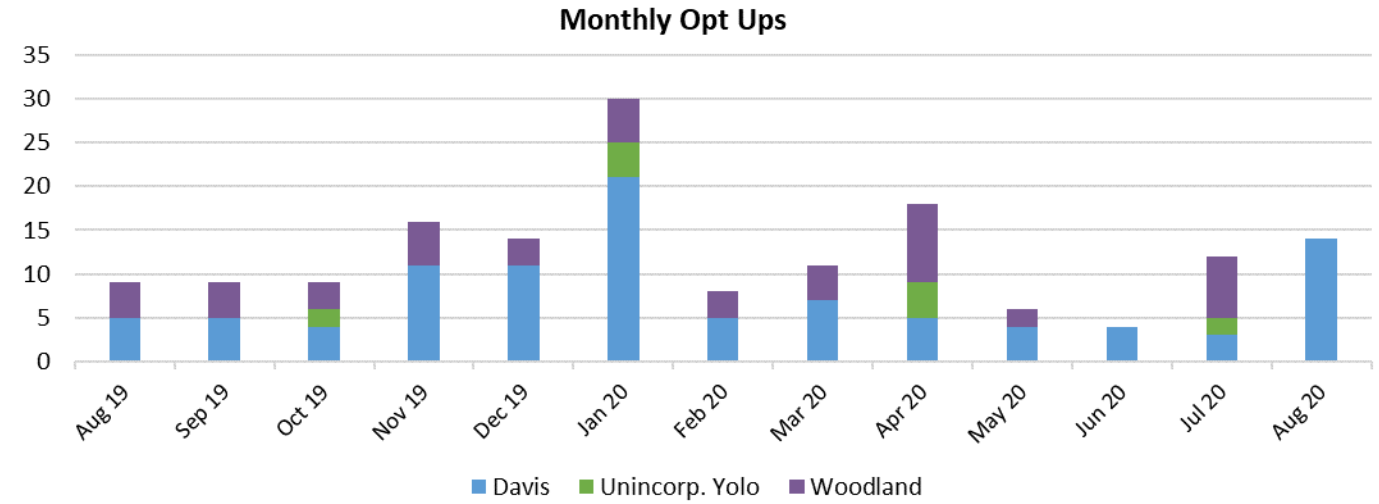




Status Date: 9/1/20

Item 9 - Enrollment Update



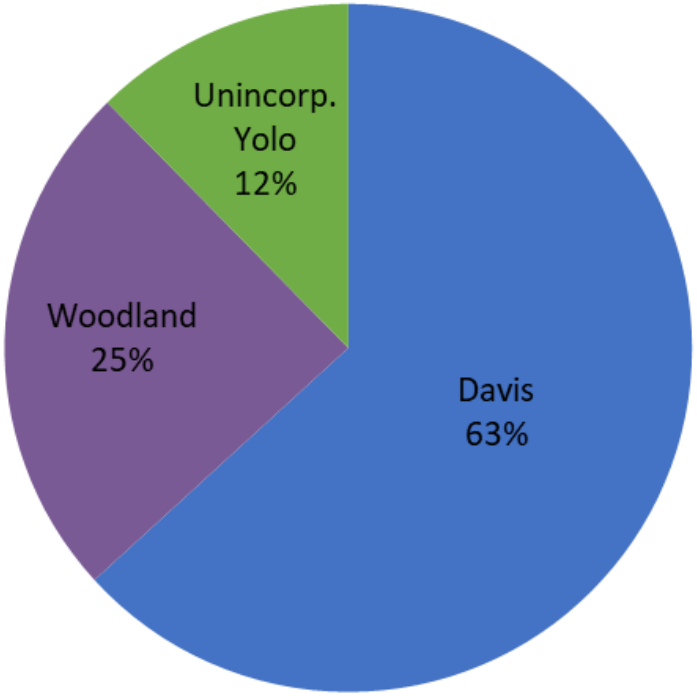


VALLEY CLEAN ENERGY

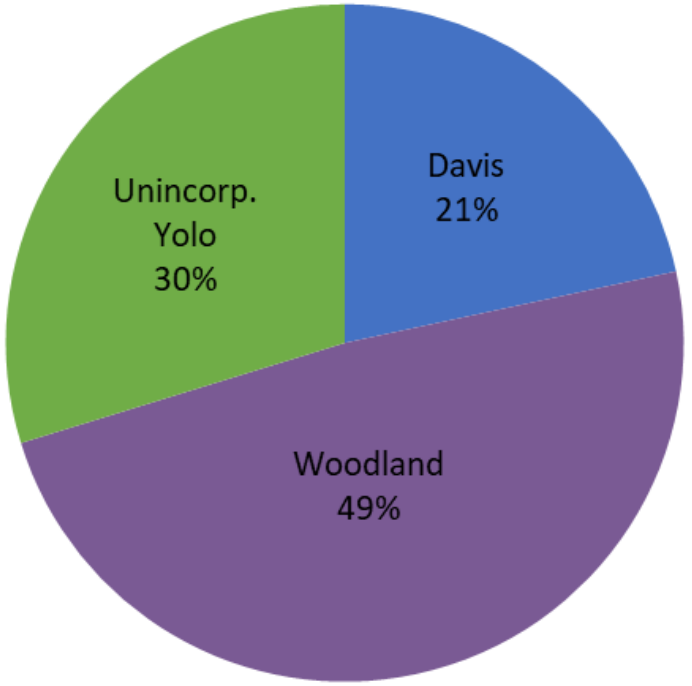
Status Date: 9/1/20

Item 9 - Enrollment Update

348 Opt Ups



8783 Opt Outs



VALLEY CLEAN ENERGY

Status Date: 9/1/20

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Community Advisory Committee August 27, 2020 Meeting Summary

DATE: September 10, 2020

This report summarizes the Community Advisory Committee's meeting held via zoom on Thursday, August 27, 2020 at 5 p.m.

A. **Strategic Plan Process (Informational):** Shawn Marshall of LEAN Energy, VCE's consultant to the Strategic Plan effort was present to guide CAC Members through the review and discussion of the draft 3-year Strategic Plan. CAC Members provided valuable input on the draft plan, focusing on the goals outlined in the draft. Comments and suggestions were provided to staff and Ms. Marshall, some of which may be incorporated into the plan as appropriate. A subsequent draft will be presented to the CAC at their September meeting to be considered for making a recommendation to the Board for adoption in October.

B. **VCE draft statement on current environmental and social justice issues (Discussion/ Action):** VCE Staff Rebecca Boyles provided an overview and status of the draft VCE statement on environmental and social justice. CAC Members suggested a number of additions and clarifications to the statement. Their feedback will be shared with the Board working group. . The CAC requested that a redraft of the statement be provided at their next meeting for review and to be considered for recommendation to the Board for adoption in October.

C. **Long Range Calendar:** Staff noted that a quarterly update on renewable content has been added to the calendar for the month following the quarter when the data is available, with the first update to be provided in October 2020. An item to be included on a future CAC meeting is a discussion of VCE working towards a long term goal for carbon neutrality by 2030 with an invitation to SMUD to attend and provide additional information on their statement. Lastly, Staff informed the CAC that the next request for offers (RFO) is scheduled to go out in mid 2021. Prior to the RFO being developed, Staff will schedule several meetings for the CAC to discuss the types of energy technology to be considered as well as prioritizing those technologies.

D. **Public Comment:** Juliette Beck of the Yolo Climate Emergency Coalition provided public comment at the beginning of the CAC meeting. She informed the CAC that their group has been working on a climate emergency resolution that they hope to have before the

Yolo County Board of Supervisors on Sept 29th. She requested the CAC look at it and consider recommending support. It was suggested she send the final version to VCE's Board Clerk for distribution as soon as it is ready. It was noted that numerous jurisdictions, including the City of Davis, have passed climate emergency resolutions.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Approval of Amendment 19 to Task Order 4 (Operation Staff Services) of the SMUD Professional Services Agreement

Date: September 10, 2020

RECOMMENDATION
Adopt a resolution authorizing the Interim General Manager to sign Amendment 19 to Task Order 4 (Operational Staff Services).

BACKGROUND AND ANALYSIS
On October 12, 2017 the VCE Board approved a Professional Services Agreement with the Sacramento Municipal Utility District (SMUD) and Task Orders 1 and 2 to provide Program Launch Support, and Data Management and Customer Call Center Services, respectively. Soon thereafter, a series of additional Task Orders were added to the Agreement, including Task Order 3 to provide Wholesale Energy Services and Task Order 4 to provide Operational Staff Services to VCE. Over the past few years, Task Order 5 (Long Term Renewable Procurement Services) and Task Order 6 (Expansion of VCE Service to Winters, CA) have been added to the Agreement.

In June 2020, the Board approved Amendment 17 to Task Order 4 (Operational Staff Services) which included extending the Director of Finance and Operations dedicated operational staff position through September 30, 2020 and fixed the annual fee for the Director of Finance and Operations position to $280,000, effective July 1, 2020. After a thorough review and discussion of current VCE projects, staff believes that VCE will benefit from preserving the continuity of current staff by providing stability and short-term efficiency , specifically extending the Director of Finance and Operations' position through December 31, 2020. This extension is reflected in the attached Amendment 19 to Task Order 4 (attached).

Financial Impact
The monthly fee for the Director of Finance and Operations dedicated operational staff increased approximately 9.8% on July 1, 2020 (Amendment 18 to Task Orders 2, 3, and 4 adopted 8/13/20) resulting in an increase from $21,250 to $23,333 monthly. These cost changes are included in the recently adopted FY2020/2021 operating budget.

CONCLUSION
Staff is recommending the VCE Board adopt the attached resolution authorizing the Interim General Manager to sign Amendment 19 to Task Order 4 (Operational Staff Services).

Attachments
1. Amendment 19 to Task Order 4 (Operational Staff Services)
2. Resolution Authorizing Interim General Manager to sign Amendment 19 to the VCE-SMUD Professional Services Agreement

AMENDMENT 19 TO EXHIBIT A: Scope of Services

A.4 Task Order 4 – Operational Staff Services

SMUD and VCEA agree to the following services, terms, and conditions described in this Amendment 19 to Exhibit A, Task Order No. 4 (Amendment 19), the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Amendment 19 conflict with any general provisions in the Agreement or Task Order 4, the provisions of this Amendment 19, shall take precedence. Capitalized terms used in this Amendment which are not defined in this Amendment will have the respective meanings ascribed to them in the Agreement or an Amendment thereof.

The Effective Date of this Amendment 19 is the date of last signature below.

The Parties hereto mutually agree to the following changes to Task Order No. 4:

A. Amend Section 4.1, Term of Task Order 4. Sub-section 4.1.1, Dedicated Operational Staff, *Title and Paragraph 1,* are deleted and replaced with the following:

"**4.1.1, Dedicated Operational Staff and Power Director**

Notwithstanding Section 4.1, Term of Task Order 4, SMUD will assign dedicated operational staff as described in Section 1.1 of this Task Order 4 for Finance and Operations to be available onsite at VCEA offices. SMUD will provide the Finance and Operations Director through December 31, 2020. The Parties may mutually agree to extend or modify any portion of the operational staff services as provided in Section 4.2.1 of Task Order No. 4."

SIGNATURES

The Parties have executed this Amendment 19, and it is effective as of the date of last signature below.

Valley Clean Energy Alliance

By: _____

Name: **Mitch Sears**

Title: **Interim General Manager**

Date: _____

Approved as to Form: **N/A**

Sacramento Municipal Utility District

By: _____

Name: Arlen Orchard

Title: Chief Executive Officer and General Manager

Date: _____

Approved as to Form: _____

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT 19 TO TASK ORDER 4 OF THE SACRAMENTO MUNICIPAL UTILITIES DISTRICT PROFESSIONAL SERVICES AGREEMENT AND AUTHORIZING THE INTERIM GENERAL MANAGER TO SIGN THE AMENDMENT ON BEHALF OF VALLEY CLEAN ENERGY

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

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

WHEREAS, on December 12, 2017, the VCE Board approved Task Order 4 to provide Operational Staff Services to VCE for program launch and operations; and,

WHEREAS, Task Order 4 was set to expire February 28, 2019 and Interim General Manager Mitch Sears signed Amendment 7 to Task Order 4 extending the term to June 30, 2019; and,

WHEREAS, in October 2018 Amendments 3 and 5 to Task Order 4 were approved adding scope of services related to power purchase agreements and designating an On-call Proxy Power Director, and set compensation for said services;

WHEREAS, in December 2018 Amendment 6 to Task Order 4 was approved extending dedicated operational staff through February 28, 2019; and,

WHEREAS, in February 2019 Amendment 7 to Task Order 4 was approved extending dedicated operational staff through June 30, 2019; and,

WHEREAS, in April 2019 Amendment 8 to Task Order 4 was approved 1) extending dedicated operational staff and the Power Director through June 30, 2020, 2) replacing sub-section 4.2.1

term and termination notification, and 3) increasing the fixed fee for operational staff effective July 1, 2019; and,

WHEREAS, in August 2019, Amendment 13 to Task Orders 3 and 4 was approved updating compensation for services and extending the term through June 30, 2020;

WHEREAS, on February 13 2020, Amendment 15 to Task Order 4 was approved canceling the On-call Proxy Power Director effective December 20, 2019, adding scope of services to transition the Power Proxy Director to a VCEA employee, and updating compensation for services to an hourly rate for professional services;

WHEREAS, on June 11, 2020, Amendment 17 to Task Order 4 was approved extending the Director of Finance and Operations dedicated operational staff through September 30, 2020 and increased the fixed annual fee effective July 1, 2020, for this position;

WHEREAS, on August 13, 2020, Amendment 18 to Task Orders 2, 3, and 4 was approved increasing billable rates by 2.0% effective July 1, 2020 for dedicated operational staff; and,

WHEREAS, Amendment 19 to Task Order 4 extends the Director of Finance and Operations dedicated operational staff through December 31, 2020.

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

1. approve Amendment 19 to Task Order 4 (operational staff services) and authorize the Interim General Manager to sign the Amendment on behalf of VCE.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Don Saylor, VCE Chair

_____
Alisa M. Lembke, VCEA Board Secretary

Attachment Exhibit A - Amendment 19 to Master Professional Services Agreement Task Order 4

EXHIBIT A

Amendment 19 to Master Professional Services Agreement Task Order 4

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations

Subject: Renewal of Revolving Line of Credit and Modification of Term Note

Date: September 10, 2020

RECOMMENDATION

Adopt a resolution approving an Amended and Restated Credit Agreement for $7,000,000 (RLOC Agreement) and Modification of Valley Clean Energy's (VCE) Term Note from River City Bank (RCB).

BACKGROUND AND ANALYSIS

At the December 14, 2017 Board meeting, the Board adopted a resolution to select RCB as the credit and banking services vendor for VCE and authorized the Interim General Manager to execute a letter of intent and enter into negotiations for final contracts with RCB for VCE credit facilities. On March 7, 2018, the Interim General Manager executed a term sheet for up to $11,000,000 in total credit facilities for VCE with RCB.

At the May 10, 2018 Board meeting, the Board approved the Credit Agreement with RCB and authorized the Board Chair to approve and execute the Credit Agreement. The availability of the RLOC was set to expire 1 year from execution of agreement (May 15, 2019) with an option to extend the line for another 6 months for a total of 18 months.

At the April 11, 2019 Board meeting, the Board authorized VCE to extend the line for another 6 months, through November 15, 2019.

Since November, VCE has received a series of extensions to the RLOC from RCB. The current renewal is set to expire on August 31, 2020.

<u>RLOC Renewal</u>

Since August 2018, VCE has not drawn on the RLOC and the outstanding balance of the line is currently $0. VCE is in compliance with all its financial covenants stipulated in the Credit Agreement.

In discussions with RCB regarding the RLOC renewal, VCE staff and RCB concluded that the existing line ($11M), significantly exceeded VCE's needs over the next year. Internal analysis and past use of the line indicated that a lower total amount would meet VCE's needs. Broadly,

these anticipated needs include possible letters of credit to secure future power purchase agreements (PPA's), as well as reserve funding in addition to VCE's $14.4M cash reserves (July 31, 2020). Based on this analysis, VCE staff are recommending acceptance of an RLOC with a limit of $5,000,000 available for cash advances and an additional $2,000,000 available for Letters of Credit, for a total RLOC of $7,000,000.

Staff believes that with the continued uncertainty of the PCIA fee, resource adequacy costs, and PG&E rates for 2020 and 2021, the renewal of the RLOC for another year provides additional financial flexibility for VCE.

To renew the RLOC Agreement, VCE will be required to pay fees of $14,500 up-front. At the end of each year of the RLOC Agreement, VCE will be required to pay a Non-Utilization Fee equal to 0.10% of the average unused portion of the $7,000,000 available credit. Thus, if VCE doesn't utilize the RLOC at all, the fee would be $7,000 at the end of the term.

Conversion of RLOC Balance to Fixed Term Loan

At the October 10, 2019 Board meeting, the Board authorized VCE to convert the $1,976,610 RLOC balance to an amortizing 5-Year Loan. VCE converted the RLOC to the loan and has paid it down to $1,647,175 as of the date of this report.

As part of receiving the RLOC renewal described above, the Term Loan Note will be modified to mature on September 1, 2021 (Attachment 2 - Modification of Term Note). Though this is significantly earlier than the original 5-year term, the payment has been factored into cash forecasts for VCE. On September 1, 2021 a final payment of approximately $1.28 million will be due to pay off the Term Loan. Note: RCB has communicated that there is a high probability the payment due date could be extended when the next RLOC renewal occurs in September 2021.

CONCLUSION

Staff recommends the Board adopt a resolution that approves the attached draft Amended and Restated Credit Agreement (RLOC Agreement) and attached draft Modification of Term Note from River City Bank (RCB), and authorizes the Interim General Manager to conduct any final negotiations and sign all necessary related documents on behalf of VCE.

Attachments

1. Amended and Restated Credit Agreement Draft Sep 2020
2. Modification to Term Note Draft Sep 2020
3. Resolution Extending Credit Agreement and Approving Modification to Term Note

AMENDED AND RESTATED

CREDIT AGREEMENT

Dated as of September __, 2020

by and between

VALLEY CLEAN ENERGY ALLIANCE,
as Borrower

and

RIVER CITY BANK,
as Lender

AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (this *"Agreement"*) is entered into as of September __, 2020, by and between **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (*"Borrower"*), and **RIVER CITY BANK**, a California corporation (*"Lender"*).

W I T N E S S E T H:

WHEREAS, Borrower and Lender have entered into that certain Credit Agreement (the *"Original Credit Agreement"*) dated as of May 16, 2018, pursuant to which Lender agreed to make available to Borrower a revolving credit facility;

WHEREAS, Borrower and Lender desire to amend, restate and replace the Original Credit Agreement, on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION.

Section 1.1. Definitions. All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them in **Exhibit A**.

Section 1.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words "hereof", "herein", "hereunder" and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term "documents" includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term "including" is not limiting and means "including without limitation."

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and

including." If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and $. All references to "dollars" or "$" refer to United States dollars.

Section 1.3. Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to "fiscal year", "fiscal quarter" and "fiscal month" refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower's financial condition will be the same after such change in GAAP as if such change had not been made.

SECTION 2. THE REVOLVING LINE OF CREDIT.

Section 2.1. Revolving Credit. Subject to the terms and conditions of this Agreement, Lender agrees to make a revolving credit facility (the *"Revolving Credit"*) available to Borrower for the sole purpose of (a) providing working capital (each a *"Cash Advance"*) in an aggregate principal amount not to exceed, at any one time, $5,000,000.00 (the *"Cash Advance Sublimit"*) and (b) supporting the issuance of Letters of Credit (each a *"Letter of Credit Advance"*) in accordance with Section 4. The Revolving Credit will be disbursed in one or more advances (each, an *"Advance"*), provided that all outstanding Advances shall not exceed in the aggregate, at any one time, the Revolving Credit Commitment, and provided further that the conditions precedent to Advances specified in Section 9 are satisfied. Subject to the Cash Advance Sublimit, the Revolving Credit Commitment and the other terms and conditions of this

Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

Section 2.2. Advances. Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

Section 2.3. Revolving Note. The Revolving Credit is evidenced by a Revolving Credit Promissory Note (the *"Revolving Note"*) made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note in the form (with appropriate insertions) attached hereto as **Exhibit C** (a "*Letter of Credit Note*") in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining Availability and the non-utilization fee described in Section 5.1(c). However, each Letter of Credit Note will evidence Borrower's obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the *"Unreimbursed Amount"*) of any drawing actually paid by Lender under a Letter of Credit, in accordance with Section 4.3. All references to "Advances" in Sections 2.4, 3.1 and 3.2 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount(s) evidenced by the corresponding Letter of Credit Note.

Section 2.4. Repayment.

(a) *Revolving Credit Termination Date.* All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the Notes. Except for the Term Loan, any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

Section 3.1. Interest Payments.

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full, as provided herein and in the Revolving Note. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date. Interest on Advances will

be payable monthly in arrears on each Payment Date. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates. All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

Section 3.3. Prepayments.

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Termination Date, as the case may be.

(b) Mandatory Prepayment. If for any reason at any time the aggregate total outstanding amount of Advances exceeds the Revolving Credit Commitment, then Borrower shall, without notice, prepay Advances (together with all accrued but unpaid interest thereon) in an amount equal to such excess.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

Section 3.4. Place and Application of Payments and Collections. All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank
Loan Center
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

Section 3.5. Notations. All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of any Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

SECTION 4. LETTERS OF CREDIT.

Section 4.1. Letter of Credit Commitment.

(a) Subject to the terms and conditions of this Agreement, Lender agrees (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The initial expiry date of the requested Letter of Credit is more than twelve (12) months after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit is more than twelve (12) months after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply (1) if the Letter of Credit is secured by cash collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit does not provide Lender with the opportunity to decline to renew the Letter of Credit at least annually, or requires Lender to provide a notice of non-renewal, if any, earlier than sixty (60) days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;

(vi) Any order, judgment or decree of any Governmental Authority or arbitrator shall by it terms purport to enjoin Lender from issuing such Letter of Credit, or any law applicable to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally, or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which Lender in good faith deems material to it;

(vii) The issuance of such Letter of Credit would violate one or more policies of Lender generally applicable to the issuance of letters of credit;

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate outstanding amount of all Advances to exceed the Revolving Credit Commitment at the time of issuance.

Section 4.2. Issuance of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender's standard Letter of Credit Application completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than ten (10) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

Section 4.3. Drawings and Reimbursements of Letters of Credit. Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender determines to be in compliance with the conditions for payment thereunder, Lender will notify Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the *"Reimbursement Date"*) that is three (3) Business Days after any payment by Lender under a Letter of Credit (each such date, an *"Honor Date"*), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower's failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement.

Section 4.4. Unexpired Letters of Credit. Borrower agrees that, if any Letter of Credit has been issued by Lender or its correspondent and remains unexpired on the Revolving Credit Termination Date, then Borrower shall immediately provide Cash Collateral to Lender with a value of not less than 110% of the aggregate principal amount of all Letter of Credit Advances with respect to unexpired Letters of Credit.

Section 4.5. Obligations Absolute.

(a) The obligation of Borrower to reimburse Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by Lender of any requirement that exists for Lender's protection and not the protection of Borrower or any waiver by Lender that does not in fact materially prejudice Borrower;

(v) any honor of a demand for payment presented electronically, even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must

be received under such Letter of Credit if presentation after such date is authorized by the UCC, the International Standby Practices ("*ISP*") or the Uniform Customs and Practice for Documentary Credits ("*UCP*"), as applicable;

(vii) any payment by Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

Section 4.6. Role of Lender as L/C Issuer. Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender's willful misconduct or gross negligence or Lender's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial

Telecommunications (*"SWIFT"*) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

Section 4.7. Applicability of ISP, Limitation of Liability. Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender's rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

Section 4.8. Letter of Credit Fees. Borrower shall pay to Lender (i) fees upon the issuance of each Letter of Credit in an amount equal to the greater of two percent (2.00%) per annum of the face amount thereof over the anticipated expiration period the (*"Issuance Fee"*) or Four Hundred and 00/100 Dollars ($400.00) (the *"Flat Fee"*), (ii) a documentation fee in connection with the issuance or amendment of any Letter of Credit in an amount equal to Two Hundred Fifty and 00/100 Dollars ($250.00), and (iii) reasonable and customary fees upon the occurrence of any other activity with respect to any Letter of Credit (including without limitation, the transfer or cancellation of any Letter of Credit). The fee for any increase to a Letter of Credit shall be an amount equal to the greater of the Issuance Fee (based on the amount of the increase and remaining period) or the Flat Fee. Borrower shall pay to Lender market prices as reasonably determined by Lender for Letters of Credit issued by Lender's correspondent banks. All Letter of Credit Fees will be due and payable in full upon request by Lender. Borrower acknowledges and agrees that (i) the fees listed above are Lender's current fees, (ii) Lender may change such fees from time to time upon notice to Borrower, and (iii) Borrower will pay such fees as changed by Lender from time to time

Section 4.9. Billing and Payment of the Issuance Fee. The Issuance Fee will be calculated by Lender and due and payable upon issuance of each Letter of Credit. Lender will calculate the Issuance Fee as 2.00% of the face amount of the Letter of Credit, divided by 360 to arrive at a daily per diem. The daily per diem will be multiplied by the number of days in the anticipated expiration period to arrive at the Issuance Fee.

SECTION 5. FEES.

Section 5.1. Borrower shall pay to Lender fees in connection with the Revolving Credit as follows:

(a) Loan Fee. A Loan Fee in an amount equal to 0.20% of the Revolving Credit Commitment ($14,000.00).

(b) Documentation Fee. A Documentation Fee in the amount of $500.00.

(c) Non-Utilization Fee. Borrower agrees to pay to Lender an annual non-utilization fee in an amount equal to 0.10% of the Average Daily Unused Amount of the Revolving Credit Commitment. *"Average Daily Unused Amount"* means the sum of each calendar day's Availability during the applicable period, divided by the number of calendar days within the period. *"Availability"* means the difference between $7,000,000.00 and the sum of all outstanding Advances at the close of business each day. The non-utilization fee for the period from the date of this Agreement to the Revolving Credit Termination Date shall be due and payable by no later than thirty (30) days after the Revolving Credit Termination Date. Notwithstanding the foregoing, upon the termination of the Revolving Credit Commitment (a) at the request of Borrower or (b) following the occurrence of any Event of Default, the non-utilization fee for the period from the date of this Agreement to the date of termination shall be due and payable immediately.

(d) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other costs and expenses incurred by Lender associated with the underwriting, documentation and administration of this Agreement, including any reasonable fees and expenses of legal counsel retained by Lender.

SECTION 6. [Intentionally omitted.]

SECTION 7. COLLATERAL.

Section 7.1. Debt Service Reserve Account. As a condition to Lender's obligation to make any Advances under the Revolving Credit, Borrower will open and establish a restricted deposit account, which may be interest bearing, with Lender (the *"Debt Service Reserve Account"*), with a balance of not less than $1,100,000.00 at all times. The Debt Service Reserve Account will be held in the name of Borrower and will serve as collateral for the Obligations. Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account.

Section 7.2. Pledge and Security. As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in all Accounts, Revenues, Resource Adequacy Contracts, and the Debt Service Reserve Account, and (i) all replacements, substitutions or proceeds of the foregoing, (ii) all instruments and documents now or hereafter evidencing the of the foregoing, (iii) all powers, options, rights, privileges and immunities relating to the foregoing, and (iv) all interest, income, profits and proceeds of the foregoing. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds then remaining in the Debt Service Reserve Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in

its sole discretion, (B) exercise any and all rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under the Assignment of Deposit Account shall be cumulative.

Section 7.3. Restrictions on Debt Service Reserve Account. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that Borrower may withdraw funds from the Debt Service Reserve Account from time to time if (1) the balance of the Debt Service Reserve Account will not be less than $1,100,000.00 after giving effect to such withdrawal, (2) no Default or Event of Default has occurred and is continuing, and (3) no Event of Default would occur as a result of such withdrawal.

Section 7.4. General Obligation. Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, Borrower hereby acknowledges and agrees that payment of all Obligations (including, without limiting the foregoing, payments of principal of and interest on each Advance) is a general obligation of Borrower secured by a first priority lien on the collateral described in this Agreement. Lender acknowledges that the Obligations of Borrower hereunder are solely obligations of Borrower and are not debts, liabilities or obligations of any of the JPA Members and no taxing power of any of the foregoing is pledged therefore. Borrower has no taxing powers.

Section 7.5. Lockbox Accounts. Notwithstanding anything to the contrary in this Section 7 or elsewhere in this Agreement, Lender acknowledges that Borrower has established a lockbox "revenue" account and lockbox "reserve" account with Lender (collectively, the *"Lockbox Accounts"*) into which Revenues collected by Sacramento Municipal Utility District (*"SMUD"*) on behalf of Borrower will be deposited and from which excess Revenues after payment of amounts due to SMUD will be transferred to Borrower's operating account. The amounts on deposit in the Lockbox Accounts, to the extent of SMUD's interest therein, will not be subject to setoff or other exercise of Lender's rights and remedies.

SECTION 8. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender that, as of the date of this Agreement, as of the date of each Advance, and at all times any Obligations remain outstanding to Lender:

Section 8.1. Organization and Qualification; Authority; Consents. Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other

Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Amended Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any power purchase agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

Section 8.2. Legal Effect. This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

Section 8.3. Subsidiaries. Borrower has no Subsidiaries.

Section 8.4. Use of Proceeds. Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Amended Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

Section 8.5. Financial Reports. Effective with the delivery to Lender of the financial statements required by Section 10.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

Section 8.6. Full Disclosure. The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

Section 8.7. Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

Section 8.8. Good Title. Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

Section 8.9. Members. Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 8.10. Compliance with Laws. Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 8.11. Other Agreements. Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 8.12. No Default. No Default or Event of Default has occurred or is continuing.

Section 8.13. Sovereign Immunity. Borrower is not entitled to immunity from legal proceedings to enforce this Agreement or any other Loan Document to which Borrower is a party (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with this Agreement or any other Loan Document to which Borrower is a party.

Section 8.14. Anti-Terrorism Laws. Borrower is not in violation of any law relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the Patriot Act.

SECTION 9. CONDITIONS PRECEDENT.

Section 9.1. All Advances. The obligation of Lender to make any Advance is subject to the following conditions precedent:

(a) Each of the representations and warranties set forth in Section 8 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 8.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 10.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Notes, the Assignment of Deposit Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

(c) Lender shall have received properly completed and executed originals of the following in form and substance satisfactory to Lender:

(i) this Agreement, the Revolving Note, the Assignment of Deposit Account and Document Summary;

(ii) the First Modification of Term Note in the form provided herewith, advancing the Maturity Date of the Term Loan from November 1, 2024 to the Revolving Credit Termination Date;

(iii) the Amended Joint Powers Agreement;

(iv) a favorable written legal opinion from Borrower's counsel as to the formation, existence and good standing of Borrower; the power and authority of Borrower to enter into this Agreement and perform its Obligations hereunder; and the due execution, validity and enforceability of this Agreement and the other Loan Documents;

(v) in the case of a Cash Advance, a Request for Advance in the form of **Exhibit D** with supporting documentation;

(vi) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;

(vii) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;

(viii) evidence of Borrower's good standing in the state of California;

(ix) payment by Borrower of all fees and other amounts required to be paid pursuant to Sections 5.1 and 12.4(a) of this Agreement;

(x) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;

(xi) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require; and

(xii) evidence of Liability Insurance in form and substance satisfactory to Lender.

(d) In the case of a Letter of Credit Advance, the request is made in accordance with Section 4;

(e) The Debt Service Reserve Account shall be funded with a balance of not less than $1,100,000.00; and

(f) Any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

SECTION 10. COVENANTS.

Borrower covenants and agrees as follows:

Section 10.1. Maintenance of Business. Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

Section 10.2. Financial Reports. Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

(a) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an unaudited balance sheet of Borrower as of the last day of the month then ended and statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred eighty (180) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of the last day of the Fiscal Year End and CPA-audited statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in

comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;

(c) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an aged list of accounts receivable and accounts payable;

(d) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(e) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(f) promptly upon request, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 10.2 shall be accompanied by a written certificate signed by the Director of Finance of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

Section 10.3. Maintenance of Debt Service Reserve Account. Borrower shall ensure that the Debt Service Reserve Account remains pledged and assigned to Lender as collateral for the Obligations in accordance with Section 7.

Section 10.4. Exclusive Deposit Relationship. Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on all outstanding Notes will immediately increase by an additional **2.00** percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

Section 10.6. Adjusted Tangible Unrestricted Net Position. Borrower shall maintain a minimum Adjusted Tangible Unrestricted Net Position not at any time less than Eight Million and

00/100 Dollars ($8,000,000.00), measured annually as of Fiscal Year End commencing with the fiscal year ending June 30, 2020.

"Adjusted Tangible Unrestricted Net Position" means total Adjusted Unrestricted Net Position less any intangible assets.

"Adjusted Unrestricted Net Position" means Net Position, less temporarily and permanently restricted net assets as presented in Borrower's financial statements, plus the balance of deposits in the Debt Service Reserve Account.

"Net Position" means total assets less total liabilities.

Section 10.7. Change in Net Position. Borrower must achieve a cumulative (year-to-date) change in Net Position, measured as of the end of each fiscal quarter, equal to or better than:

Period	Maximum Loss
6/30/2020 – 9/30/2020	($50,000.00)
6/30/2020 – 12/31/2020	($340,000.00)
6/30/2020 – 3/31/2021	($3,300,000.00)
6/30/2020 – 6/30/2021	($3,400,000.00)

Section 10.8. Total Liabilities to Tangible Unrestricted Net Position. Borrower shall maintain a maximum Total Liabilities to Tangible Unrestricted Net Position not at any time greater than **1.50:1.00**, measured quarterly as of the end of each calendar quarter.

"Total Liabilities to Tangible Unrestricted Net Position" means the sum of all current liabilities, non-current liabilities and Contingent Liabilities, divided by Tangible Unrestricted Net Position.

"Tangible Unrestricted Net Position" means Net Position, less temporarily and permanently restricted net assets as presented in Borrower's financial statements, less intangible assets.

"Contingent Liabilities" means any present obligation that arises from past events, but is not recognized because (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or (ii) the amount of the obligation cannot be measured with sufficient reliability. Contingent Liabilities include all outstanding Letter of Credit Advances, and exclude power purchase contingencies and amounts available for Advances under the Revolving Credit Commitment.

Section 10.9. Inspection. Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be

advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

Section 10.10. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of $200,000 at any one time outstanding;

(d) Liens created pursuant to an approved power purchase agreement; and

(e) Liens arising under the Loan Documents or otherwise in favor of Lender.

The Liens described in clauses (a) through (e) of this Section 10.10 are collectively referred to in this Agreement as the "*Permitted Liens*."

Section 10.11. Investments, Acquisitions, Loans, Advances and Guaranties. Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports

an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

Section 10.12. Compliance with Laws. Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

Section 10.13. Contracts With Members. Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

Section 10.14. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower's financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

Section 10.15. Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

Section 10.16. Performance. Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

Section 10.17. Compliance Certificates. Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Section 10.18. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

Section 10.19. Indebtedness for Borrowed Money. As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money. Without Lender's prior written consent, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money in excess of Five Hundred Thousand Dollars ($500,000.00) in the aggregate; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

Section 10.20. Resource Adequacy. As soon as available, Borrower will deliver to Lender all material information with respect to any Resource Adequacy Contract entered into by Borrower from and after the date of this Agreement, and will promptly execute and deliver to Lender such documents, instruments, assignments, consents and agreements as Lender may reasonably request for the purpose of creating, perfecting, maintaining and enforcing Lender's security interest therein.

SECTION 11. EVENTS OF DEFAULT AND REMEDIES.

Section 11.1. Events of Default. Any one or more of the following will constitute an *"Event of Default"* hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under the Notes, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars ($1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's operations or financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired, or a new law or regulation is passed (or an existing law or regulation is changed) which has a material adverse effect on Borrower; or

(g) a JPA Member fails to continue to be a member of Borrower; or

(h) Borrower (i) takes any steps to effect a Winding-Up, or (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due;

(i) any custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, whether by court order, by operation of law or otherwise, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or

(j) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

Section 11.2. Non-Insolvency Default Remedies. Upon the occurrence of any Event of Default described in clauses (a) through (g) or (j) of Section 11.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

Section 11.3. Insolvency Default Remedies. Upon the occurrence of any Event of Default described in Section 11.1(h)-(i), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

SECTION 12. MISCELLANEOUS.

Section 12.1. Holidays. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

Section 12.2. No Waiver, Cumulative Remedies. No delay or failure on the part of Lender or on the part of the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 12, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 12.3. Amendments, Etc. No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

Section 12.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

Section 12.5. Indemnity. Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an *"Indemnified Person"*) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the *"Indemnified Liabilities"*); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 12.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 12.5 shall be paid within thirty (30) days after demand.

Section 12.6. Right of Set Off. To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

Section 12.7. Survival of Representations. All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this

Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 12.8. Notices. Except as otherwise specified herein, all notices hereunder will be in writing (including by hand, post, courier, email or telecopy) and will be given to the relevant party at its address, email address or telecopier number set forth below, or such other address or telecopier number as such party may hereafter specify by notice to the other given by certified or registered mail, by Federal Express or DHL, by telecopy or by other telecommunication device (including electronic mail) capable of creating a written record of such notice and its receipt. Notices hereunder will be addressed:

To Borrower at:

Valley Clean Energy Alliance
604 2nd Street
Davis, CA 95616
Attention: Mitch Sears, Interim General Manager

To Lender at:

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833
Telephone: (916) 567-2700
Fax: (916) 567-2780
Attention: R.J. Wood, Loan Center

Each such notice, request or other communication will be effective (i) if given by telecopier, when such telecopy or email is transmitted to the telecopier number or email address specified in this Section and a confirmation of such telecopy or email has been received by the sender, (ii) if given by mail, three (3) days after such communication is deposited in the mail, certified or registered with return receipt requested, addressed as aforesaid or (iii) if given by any other means, when delivered at the addresses specified in this Section 12.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

Section 12.9. Headings. Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 12.10. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the

extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.11. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

Section 12.12. Assignments, Binding Nature, Governing Law, Etc. This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

Section 12.13. Submission to Jurisdiction; Waiver of Jury Trial. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

Section 12.14. Time is of the Essence. Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

Section 12.15. Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further

waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Section 12.16. No Recourse Against Constituent Members of Borrower. Borrower is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Amended Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

Section 12.17. Restated Credit Agreement. This Agreement amends, restates and replaces in its entirety that certain Credit Agreement between Borrower and Lender dated May 16, 2018, as previously amended from time to time.

[*Signatures appear on following page.*]

Upon your acceptance hereof in the manner hereinafter set forth, this Agreement will constitute a contract between us for the uses and purposes hereinabove set forth.

Executed and delivered in Sacramento, California, as of the first date written above.

VALLEY CLEAN ENERGY ALLIANCE

By: _____

Name: Mitch Sears

Its: Interim General Manager

RIVER CITY BANK

By: _____

Name: _____

Its: _____

EXHIBIT A

Definitions

"Accounts" means all rights to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) for energy provided or to be provided.

"Adjusted Tangible Unrestricted Net Position" is defined in Section 10.6.

"Adjusted Unrestricted Net Position" is defined in Section 10.6.

"Advance" is defined in Section 2.1.

"Agreement" means this Amended and Restated Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

"Amended Joint Powers Agreement" means the amended Joint Powers Agreement of Borrower effective as of _____.

"Applicable Rate" means, for the Revolving Credit, a variable rate of interest equal to the One-Month UST plus 2.00% per annum, subject to a floor of 2.00% per annum. The Applicable Rate is subject to increase as provided in Section 10.4.

"Assignment of Deposit Account" means the Assignment of Deposit Account dated as of the date of this Agreement, executed by Borrower with respect to the Debt Service Reserve Account.

"Authorized Representative" means those persons shown on the list of officers provided by Borrower pursuant to Section 9.1(c)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

"Availability" is defined in Section 5.1(c).

"Average Daily Unused Amount" is defined in Section 5.1(c).

"Borrower" is defined in the introductory paragraph.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

"CAL ISO" means California Independent System Operator.

"Capital Lease" means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

"Capitalized Lease Obligation" means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

"Cash Advance" is defined in Section 2.1.

"Cash Advance Sublimit" is defined in Section 2.1.

"Cash Collateralize" means, to pledge and deposit with or deliver to Lender, as collateral for the Obligations, in each case, in Dollars and in such amount as Lender may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to Lender. *"Cash Collateral"* shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Contingent Liabilities" is defined in Section 10.8.

"CPUC" means the California Public Utilities Commission.

"Debt Service Reserve Account" is defined in Section 7.1.

"Debtor Relief Laws" means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

"Default Rate" means the Applicable Rate plus five percent (5.0%).

"Dollars and $" mean lawful money of the United States.

"Event of Default" is defined in Section 11.1.

"Fiscal Year End" means June 30.

"Flat Fee" is defined in Section 4.8.

"GAAP" means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity

exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

"Honor Date" is defined in Section 4.3.

"Indebtedness for Borrowed Money" means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker's acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

"Indemnified Liabilities" is defined in Section 12.5.

"Indemnified Person" is defined in Section 12.5.

"Initial Rate Set Date" means September 1, 2020.

"ISP" is defined in Section 4.5.

"Issuance Fee" is defined in Section 4.8.

"JPA Members" means the City of Woodland, the City of Davis, the City of Winters and the County of Yolo.

"Lender" is defined in the introductory paragraph.

"Letter of Credit Advance" is defined in Section 2.1.

"Letter of Credit Note" is defined in Section 2.3.

"Lien" means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

"Loan Documents" means this Agreement, the Notes, the Assignment of Deposit Account, and all other documents, certificates, instruments and agreements executed by Borrower in connection with the Revolving Credit.

"Lockbox Accounts" is defined in Section 7.5.

"Maintenance and Operation Costs" shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and

necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and a consulting engineer, and including Borrower's share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

"Maturity Date" means, for any Note, the date so specified in such Note as the Maturity Date.

"Net Position" is defined in Section 10.6.

"Notes" refers collectively to the Revolving Note, the Letter of Credit Note(s) and the Term Note.

"Obligations" means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower thereunder.

"One-Month UST" means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the average yield of a range of U.S. Treasury securities adjusted to a constant maturity of one (1) month as published by the Board of Governors of the Federal Reserve System on page H.15 (or, if Lender determines, in its sole discretion, that this rate has become unavailable or unreliable, either temporarily, indefinitely or permanently, Lender may amend this Agreement and/or the Notes by designating a substantially similar rate and add a positive or negative margin (percentage added to or subtracted from the substitute rate) as part of the rate determination) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

"Payment Date" means, other than the Revolving Credit Termination Date or any Maturity Date, the first day of each calendar month.

"Permitted Liens" is defined in Section 10.10.

"Person" means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Rate Change Date" means the first calendar day of each calendar month.

"Reimbursement Date" is defined in Section 4.3.

"Related Parties" means, with respect to any Person, such Person's affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's affiliates.

"Resource Adequacy Contract" means any agreement entered into by Borrower for the purpose of complying with CPUC resource adequacy requirements.

"Revenues" means the revenues of Borrower, as determined in accordance with GAAP; but excluding (i) any unrealized gain or loss resulting from changes in the value of investment securities, (ii) any gains on the sale or other disposition of fixed or capital assets not in the ordinary course of business and (iii) earnings resulting from any reappraisal, revaluation or write-up of fixed or capital assets.

"Revolving Credit" is defined in Section 2.1.

"Revolving Credit Commitment" means $7,000,000.00.

"Revolving Note" is defined in Section 2.3.

"Revolving Credit Termination Date" means September 1, 2021.

"SMUD" is defined in Section 7.5.

"System" means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

"Tangible Unrestricted Net Position" is defined in Section 10.8.

"Term Loan" means the loan evidenced by the Term Note.

"Term Note" means that certain Term Note dated as of October 17, 2019, made by Borrower and payable to the order of Lender in the original principal amount of $1,976,610.13, as amended from time to time.

"Total Liabilities to Tangible Unrestricted Net Position" is defined in Section 10.8.

"UCC" means the Uniform Commercial Code as enacted in the State of California.

"UCP" is defined in Section 4.5.

"Unreimbursed Amount" is defined in Section 2.3.

"Winding-Up" means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person's Properties.

EXHIBIT B

REVOLVING CREDIT PROMISSORY NOTE

$7,000,000.00 September ___, 2020

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower"*), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of SEVEN MILLION and No/100 Dollars ($7,000,000.00), pursuant to the terms of that certain Amended and Restated Credit Agreement (the *"Credit Agreement"*) dated as of September __, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note (this *"Note"*) shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on October 1, 2020, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an

agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

This Note amends, restates and replaces in its entirety that certain Revolving Credit Promissory Note dated May 16, 2018, made by Borrower and payable to the order of Lender in the original principal amount of $11,000,000.00.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

VALLEY CLEAN ENERGY ALLIANCE

By:_____

Name:_____

Its:_____

EXHIBIT C

LETTER OF CREDIT NOTE

$_____ Date: _____

FOR VALUE RECEIVED, **VALLEY CLEAN ENERGY ALLIANCE,** a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower"*), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of _____ ($_____,000.00) pursuant to the terms of that certain Amended and Restated Credit Agreement (the *"Credit Agreement"*) dated as of September __, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Letter of Credit Note (this *"Note"*) shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Letter of Credit. This Note is executed in connection with a Letter of Credit issued by _____ ("*Issuing Bank*"), dated _____, in the face amount of $_____, in favor of _____ (as Beneficiary) and identified as number: _____ (the "*Letter of Credit*").

Draw or Demand under the Letter of Credit. Borrower directs and authorizes Lender to immediately advance funds under this Note to repay in full any demand or draw request form Beneficiary under the Letter of Credit (the "*Disbursement*").

Payment Terms. Borrower agrees to pay any Disbursement immediately upon demand from Lender and in no event less than 3 calendar days from the date of the Disbursement (the "*Demand Date*"). From the date of the Disbursement to the Demand Date, Borrower shall pay interest only on the unpaid principal balance of this Note (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after the Demand Date (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The repayment obligations from Borrower to Lender under this Note shall remain in full force and effect until the original Letter of Credit including any and all amendments is surrendered to Issuing Bank undrawn and cancelled to the satisfaction of Issuing Bank.

Credit Agreement and Cash Collateral. If (i) the Letter of Credit has been issued and remains unexpired on the Revolving Credit Termination Date, or (ii) the Revolving Credit Commitment terminates or is unavailable to Borrower for any reason prior to the surrender of the Letter of Credit as provided above, or (iii) the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, upon request by Lender, Borrower shall immediately provide

cash collateral to Lender with a value of not less than 110% of the stated principal amount of this Note or the amount by which the amount of all Letter of Credit Advances exceeds the Revolving Credit Commitment, as applicable.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

EXHIBIT D

REQUEST FOR ADVANCE

$7,000,000 REVOLVING CREDIT

VALLEY CLEAN ENERGY ALLIANCE ("BORROWER") HEREBY REQUESTS AN ADVANCE UNDER THE REVOLVING CREDIT IN ACCORDANCE WITH THE AMENDED AND RESTATED CREDIT AGREEMENT DATED AS OF SEPTEMBER ___, 2020, BETWEEN BORROWER AND RIVER CITY BANK ("LENDER").

DATE OF REQUEST: _____

AMOUNT OF REQUESTED ADVANCE: $_____

PURPOSE OF ADVANCE:

___ - THIS ADVANCE WILL BE USED TO FUND RESERVES IN ACCORDANCE WITH THE FOLLOWING POWER PURCHASE AGREEMENT: _____.

___ - THIS ADVANCE WILL COVER THE POWER PURCHASE PAYMENT FOR THE MONTH ENDING _____, 20__. YOU ARE AUTHORIZED TO DEPOSIT LOAN PROCEEDS INTO CHECKING ACCOUNT: 8855413324

____ - ATTACHED IS THE INVOICE FOR SUCH POWER PURCHASE PAYMENT.

____ - YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO THE POWER SUPPLIER AS FOLLOWS:

COMPANY NAME:_____

WIRE INSTRUCTIONS:
BANK NAME: _____
ADDRESS: _____
_____
ROUTING NUMBER: _____
ACCOUNT NUMBER: _____
OTHER REFERENCE: _____

BORROWER CERTIFICATION:

BORROWER HEREBY CERTIFIES THAT:

(I) AFTER MAKING THE ADVANCE REQUESTED ON THE ADVANCE DATE ABOVE, THE SUM OF ALL OUTSTANDING ADVANCES WILL NOT EXCEED THE REVOLVING CREDIT COMMITMENT THEN IN EFFECT;

(II) THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH ADVANCE DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND

(III) NO EVENT HAS OCCURRED AND IS CONTINUING OR WOULD RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY THAT WOULD CONSTITUTE AN EVENT OF DEFAULT OR A DEFAULT.

(IV) THIS ADVANCE IS BEING USED FOR THE PURPOSE INTENDED AS PROVIDED IN THE CREDIT AGREEMENT AND NO PORTION OF THIS ADVANCE IS BEING USED TO FUND OPERATING LOSSES.

VALLEY CLEAN ENERGY ALLIANCE

BY:_____

NAME:_____

ITS:_____

FIRST MODIFICATION OF TERM NOTE

This FIRST MODIFICATION OF TERM NOTE (this *"Modification"*) is entered into as of August ___, 2020, by and between VALLEY CLEAN ENERGY ALLIANCE, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower"*), and RIVER CITY BANK ("*Lender*"), with reference to the following facts:

WHEREAS, Borrower has executed and delivered to Lender that certain Term Note (the *"Term Note"*) dated as of October 17, 2019, made by Borrower and payable to the order of Lender in the original principal amount of $1,976,610.13;

WHEREAS, the Term Note evidences a loan (the *"Term Loan"*) from Lender to Borrower representing the conversion of outstanding advances under a revolving line of credit in accordance with the terms of that certain Credit Agreement (the *"Original Credit Agreement"*) dated as of May 16, 2018, between Borrower and Lender;

WHEREAS, Borrower and Lender have entered into that certain Amended and Restated Credit Agreement (the *"Amended and Restated Credit Agreement"*) dated as of August ___, 2020, pursuant to which the parties have agreed to certain modifications of the Original Credit Agreement, including but not limited to an extension of the Revolving Credit Termination Date (as such term is defined therein) to September 1, 2021;

WHEREAS, it is a condition to the Amended and Restated Credit Agreement that the maturity date of the Term Loan be advanced to coincide with the Revolving Credit Termination Date;

NOW THEREFORE, in consideration of the foregoing recitals and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree to modify the Term Note as follows:

1. Borrower will pay this loan in equal principal payments of $32,943.50 each. Borrower's next principal payment is due September 1, 2020, and all subsequent principal payments are due on the same day of each month after that. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning September 1, 2020, with all subsequent interest payments to be due on the same day of each month after that. Borrower's final payment is due **September 1, 2021**, and will be for all outstanding principal and all accrued interest not yet paid.

Except as expressly modified herein, the terms of the Term Note shall remain unchanged and in full force and effect. Nothing in this Modification shall constitute a satisfaction of the Term Loan or a waiver of Lender's right to require strict performance of the Term Loan and all other obligations of Borrower to Lender.

This Modification contains the entire agreement between the parties with respect to the matters addressed herein and supersedes all prior agreements and understandings with respect to thereto. This Modification may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement.

IN WITNESS WHEREOF, the undersigned have executed this Modification as of the date first written above.

VALLEY CLEAN ENERGY ALLIANCE

By:_____

Name: Mitch Sears

Its: Interim General Manager

RIVER CITY BANK

By:_____

Name: _____

Its: _____

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE AUTHORIZING THE EXTENSION OF REVOLVING LINE OF CREDIT WITH RIVER CITY BANK AND MODIFICATION OF TERM NOTE

WHEREAS, the 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;

WHEREAS, VCEA solicited competitive bids for banking and credit services and selected River City Bank (RCB) to lend VCEA up to $11 million as a revolving line of credit to fund power purchases as part of administrating CCE programs, which had a term of 12-months at variable rates with an option to extend another 6 months and was convertible to a five-year term loan with a fixed interest rate;

WHEREAS, on May 10, 2018, the VCEA Board via Resolution 2018-012 approved the Credit Agreement between VCEA, as borrower, and the RCB, as lender;

WHEREAS, the $11 million revolving line of credit expired on May 15, 2019 and on April 11, 2019, the Board via Resolution 2019-005 extended the line of credit for another 6 months, extending the term to November 15, 2019;

WHEREAS, on October 10, 2019, the Board approved via Resolution 2019-014 converting the $1,676,610 Revolving Line of Credit (RLOC) balance to an amortized 5-year term loan; approved the renewal terms consistent with the October 3, 2019 term sheet for the existing RLOC for a new expiration date of November 15, 2020; and authorized VCE interim General Manager, in consultation with VCE Legal Counsel, to negotiate the Credit Agreement with RCB based on the renewal terms;

WHEREAS, Since November 15, 2019, VCE has received a series of extensions to the RLOC from RCB. The current renewal expired on August 31, 2020; and,

WHEREAS, RCB and VCE have agreed in principal to a one-year extension of the RLOC to September 1, 2021, with a revised limit of $7 million, of which all is available for Letters of Credit and $5 million is available for Cash Advances to fund operational needs. Additionally, RCB and VCE have agreed in principal to a modification to the Term Note, including an earlier Final Payment date of September 1, 2021, which may be extended by RCB at the next renewal period.

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

Approves the attached draft Amended and Restated Credit Agreement (RLOC Agreement) and attached draft Modification of Term Note from River City Bank (RCB), and authorizes the Interim General Manager to conduct any final negotiations and sign all necessary related documents on behalf of VCE.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Don Saylor, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachments:

1. Draft Amended and Restated Credit Agreement
2. Draft Modification of Term Note from River City Bank

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Valley Clean Energy Alliance Board of Directors

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

SUBJECT: Long-Term Resource Adequacy Contracts with (1) Viridity Energy Solutions and (2) Leapfrog Power

DATE: September 10, 2020

RECOMMENDATION

1. Adopt resolutions approving the following resource adequacy (RA) agreements:
    A. VESI 10 LLC (stand-alone battery storage);
    B. Leapfrog Power, Inc. (aggregated demand response– residential and commercial / industrial load reduction)

OVERVIEW

As discussed previously with the Board, all California load-serving entities (LSEs) including VCE have been directed by the California Public Utilities Commission (CPUC) to procure RA[1] from sources deemed as "incremental" (those not included in a CPUC list of existing baseline resources)[2]. The LSEs are required to meet procurement milestones in mid-2021, mid-2022, and mid-2023. VCE staff have recently negotiated contracts to help meet the 2021 and 2022 requirements, which are being presented here to the Board.[3]

As approved by the Board earlier this year, staff issued a request for offers (RFO), for long-term incremental RA jointly with fellow community choice aggregator Redwood Coast Energy Authority (RCEA) in April 2020. In late May 2020, the CCAs received proposals for RA from six companies for a variety of technologies. Over the summer, VCE and RCEA evaluated proposals, shortlisted entities and completed final negotiations.

The primary objectives of the effort include: (1) providing clean resource adequacy energy to help meet VCE's cost effective clean energy goals, (2) develop and demonstrate effective

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[1] Resource Adequacy (RA) is a state-mandated, load-serving entity obligation to procure sufficient electric generation capacity for maintaining grid reliability during periods of high demand.

[2] See CPUC Decision 19-11-016.

[3] Additional incremental RA for 2022 and 2023 compliance is anticipated to come from the Aquamarine Solar project currently under development.

partnerships with other CCA's (RCEA), (3) help create a more stable California grid, and (4) meet VCE's regulatory obligations.

BACKGROUND

VCE partnered with a similar sized CCA in RCEA as both entities are in need of satisfying the CPUC obligation for incremental RA. Via this joint solicitation, VCE and RCEA sought proposals to fulfill their procurement obligations pursuant to the CPUC November 2019 Decision Requiring Electric System Reliability Procurement for 2021-2023 (D.19-11-016). Respondents provided proposals for eligible new or existing RA resources per the RFO guidelines and the requirements of D.19-11-016.

VCE and RCEA seek to procure up to 20 MW of incremental RA through this solicitation, with at least 11.7 MW online by August 1, 2021 and the remainder online by August 1, 2022. VCE and RCEA are not interested in capacity that becomes available after August 1, 2022. For reference, the compliance obligations for both CCAs are shown in the table below.

Procurement year (online by August 1)	**2021**	**2022**	**2023**
Percent of obligation required by year	50%	75%	100%
RCEA cumulative obligation (MW)	5.4	8.0	10.7
VCE cumulative obligation (MW)	6.3	9.4	12.6

Summary of Responses

Incremental RA RFO bids were received from six entities on May 15, 2020. Bids consisted of both behind-the-meter (i.e. customer side of the meter) and in-front of the meter solutions:

- Number of bidders: 6
- Number of unique proposals: 14

Technology types: Demand response, rooftop PV +BESS, Stand-alone BESS

Final Selection

Based on criteria including overall price and customer value; respondent experience, qualifications, and creditworthiness; environmental impact of proposed capacity resource; and location and community economic benefit of proposed capacity products, our joint RCEA-VCE review team selected two projects to provide RA to both CCAs. Each CCA intends to contract separately for portions of these resources scaled to our respective RA needs:

- The Tierra Buena battery energy storage project from Viridity Energy Solutions, to be contracted with Viridity's project company VESI 10 LLC. The project is being built in Sutter County, CA with an expected online date a few months prior to the 2022 compliance deadline. Viridity is a subsidiary of Ormat, an energy project developer with over five decades of experience. VCE's share of the project's capacity will be 2.5 MW
- Aggregated demand response from Leapfrog Power, Inc. Leapfrog's demand response portfolio includes enrolled residential and commercial customers across California, with a portion of them within RCEA's and VCE's service areas. Customer loads Leapfrog can call upon for demand response control include residential smart thermostats,

commercial HVAC, energy storage, EV charging, food processing and cold storage, agricultural pumping, and municipal water pumping. VCE's share of the portfolio's capacity, to be available prior to the 2021 compliance deadline, will be 7.0 MW.

CONCLUSION

Staff is seeking approval from the Board for the two incremental RA projects to: (1) provide clean resource adequacy energy to help meet VCE's cost effective clean energy goals, (2) develop and demonstrate effective partnerships with other CCA's, (3) help create a more stable California grid, and (4) meet VCE's regulatory obligations.

Attachments

1. VESI 10 LLC Resource Adequacy Agreement redacted
2. Leapfrog Power, Inc. Resource Adequacy Agreement redacted
3. Resolution: VESI 10 LLC (stand-alone battery storage)
4. Resolution: Leapfrog Power, Inc. (aggregated demand response– residential and commercial / industrial load reduction)

RESOURCE ADEQUACY AGREEMENT

Between

VESI 10 LLC

and

VALLEY CLEAN ENERGY ALLIANCE

TABLE OF CONTENTS

PREAMBLE

This Resource Adequacy Agreement ("Agreement") is entered into between **VESI 10 LLC** ("Seller") and **Valley Clean Energy Alliance**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties," as of September 11, 2020 (the "Effective Date").

COVER SHEET

A. Unit Information

Project Name:	Tierra Buena Energy Storage
Location:	Sutter County, CA
CAISO Resource ID:	TBD
Unit SCID:	TBD
Unit NQC:	5.0 MW
Unit EFC:	5.0 MW
Resource Type:	Energy Storage
Resource Category (1, 2, 3 or 4):	4
FCR Category (1, 2 or 3):	3
Path 26 (North or South):	North
Local Capacity Area (if any, as of Effective Date):	Sierra
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	N/A

B. RA Product and Attributes

RAR and LAR Attributes

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

☐ RAR Attributes

☒ RAR Attributes with FCR Attributes

☒ LAR Attributes

☐ LAR Attributes with FCR Attributes

☐ FCR Attributes

☒ **Flexible RA Product**

During the Delivery Term, Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Units, as measured in MWs, in accordance with the terms and conditions of this Agreement.

☒ **Contingent Firm RA Product**

Seller shall provide Buyer with Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if the Units are not available to provide the full amount of the Contract Quantity on account of an Outage, a reduction in Unit NQC or Unit EFC, or Force Majeure, then Seller may reduce the Contract Quantity pursuant to Section 3.5 hereof or Seller may, but is not obligated to, provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

C. Delivery Term

The Delivery Term is set forth in Section 2.1(b).

D. Contract Quantities

Subject to reduction pursuant to Section 3.5, the Contract Quantities for the entire Delivery Term shall be:

RAR Attributes: __2.5___ MW NQC

LAR Attributes: __2.5___ MW, subject to revision pursuant to Section 3.1.

FCR Attributes: __2.5___ MW EFC, Category 3

E. Contract Price

The Contract Price shall be (a) [redacted] per kw-month of Contract Quantity of RAR Attributes for every Showing Month of the Delivery Term prior to June 2022, if any, and (b) [redacted] per kw-month of Contract Quantity of RAR Attributes for the Showing Month of June 2022 and each Showing Month of the Delivery Term thereafter.

F. Performance Security Amount

The Performance Security Amount shall be [redacted]kW of Contract Quantity of RAR Attributes.

G. Milestones

Milestone	**Date for Completion**
Evidence of Site control	Complete
Executed Interconnection Agreement	Complete
Resource Added to "Other" tab of NQC list	[redacted]

Milestone	Date for Completion
Expected Construction Start Date	[redacted]
Commercial Operation Date	[redacted]

H. Initial Delivery Date

The Expected Initial Delivery Date shall be June 1, 2022.

The Initial Delivery Date Deadline shall be [redacted].

I. Notices

Seller Notices

Delivery Address:

Viridity Energy Solutions, Inc
[redacted]

Mail Address:
Viridity Energy Solutions, Inc
Attn: Asset Management
Phone: [redacted]
Email: [redacted]

DUNS: [redacted]
Federal Tax ID Number: [redacted]

Invoices:
Attn: VESI Settlements Group & Ormat AP
Phone: [redacted]
Facsimile:
Email: [redacted]

Scheduling:
Attn: VESI Network Operations Center
Phone 1: [redacted]
Phone 2:
Email: [redacted]

Payments:
Attn: VESI Settlements Group
Phone: [redacted]
Facsimile:
Email: [redacted]

Buyer Notices

Delivery Address:

Valley Clean Energy
604 2Nd St.
Davis, CA 95616

Mail Address:
Attn: [redacted]
Title: [redacted]
Phone: [redacted]
Email: [redacted]

DUNS: [redacted]
Federal Tax ID Number: [redacted]

Invoices:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email: [redacted]

Scheduling:
Attn:
Day Ahead Desk Phone:
Real Time Desk Phone:
Email: [redacted]

Payments:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email: [redacted]

Wire Transfer:
BNK: [redacted]
ABA: [redacted]
ACCT: [redacted]

Credit and Collections:
Attn: VESI Settlements Group
Phone: [redacted]
Email: [redacted]

Notices of an Event of Default to:
Attn: Manager of Asset Management
Phone: [redacted]
Facsimile:
Email: [redacted]

With additional notices of an Event of Default to:
Attn: US Legal Counsel
Phone: [redacted]
Facsimile:
Email: [redacted]

Wire Transfer:
BNK: [redacted]
ABA: [redacted]
ACCT: [redacted]

Credit and Collections:
Attn: [redacted]
Phone: [redacted]
Email: [redacted]

Notices of an Event of Default to:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email: [redacted]

With additional notices of an Event of Default to:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email: [redacted]

ARTICLE 1: DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

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

1.3 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 3.6.

1.4 "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.

1.5 "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.

1.6 "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.

1.7 "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.

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

1.9 "Buyer" has the meaning set forth in the Preamble.

1.10 "Buyer's Share" means fifty percent (50%).

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

1.12 "CAISO Control Area" means the Control Area (as defined in the Tariff) that is operated by the CAISO.

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

1.14 "CAISO RA Enhancement" means a change to the CAISO tariff provisions and business practice manuals that is limited to (a) changing the basis for submission and assessment of Supply Plans

from (i) a value reflecting installed capacity (currently, NQC) to (ii) a value that takes into account historical performance of a facility (such as "Unforced Capacity" or "UCAP," as referenced in CAISO's Resource Adequacy Enhancements Fifth Revised Straw Proposal dated July 7, 2020), and (b) eliminating the application of Resource Adequacy Availability Incentive Mechanism (RAAIM) charges to forced outage periods.

1.15 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.8 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 Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

1.16 "Change in RA Requirements" means a change, occurring after the Effective Date, in Applicable Laws (other than the CAISO RA Enhancement) that address the calculation of Unit EFC, the calculation of Unit NQC, or the performance obligations and penalties associated with the Product that (i) has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to the Product, or (ii) would reduce the Unit EFC or Unit NQC.

1.17 "Claiming Party" has the meaning set forth in Section 3.12.

1.18 "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.

1.19 "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 EPC Contractor to Seller for commercial operations.

1.20 "Commercial Operation Date" has the meaning set forth in Section 16.2(a).

1.21 "Compliance Adjusted Unit EFC" means the Unit EFC of the Project following a Change in RA Requirements.

1.22 "Compliance Adjusted Unit NQC" means the Unit NQC of the Project following a Change in RA Requirements.

1.23 "Compliance Adjustment Factor" means a ratio, the numerator of which is the Contract Quantity and the denominator of which is the Compliance Adjusted Unit NQC.

1.24 "Compliance Obligation" means the RAR, Local RAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

1.25 "Construction Start Date" has the meaning set forth in Section 16.1(a).

1.26 "Contingent Firm RA Product" has the meaning set forth in the "Contingent Firm RA Product" paragraph in Section B of the Cover Sheet.

1.27 "Contract Price" has the meaning set forth in Section E of the Cover Sheet.

1.28 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section D of the Cover Sheet, which Seller has agreed to provide to Buyer from the Unit for such Showing Month, as such amount may be adjusted pursuant to Section 3.5.

1.29 "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.

1.30 "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 a Transaction.

1.31 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P or Moody's.

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

1.33 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 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, 19-11-016 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.34 "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.

1.35 "Defaulting Party" has the meaning set forth in Section 5.1.

1.36 "Delivery Point" has the meaning set forth in Section 3.4.

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

1.38 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, minus any reductions to Contract Quantity made in accordance with Section 3.5 with respect to which Seller has not elected to provide Alternate Capacity.

1.39 "Development Cure Period" has the meaning set forth in Section 16.2(b).

1.40 "Dispute" has the meaning set forth in Section 17.11(a).

1.41 "Dispute Notice" has the meaning set forth in Section 17.11(a).

1.42 "Early Termination Date" has the meaning set forth in Section 5.2.

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

1.44 "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.

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

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

1.47 "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.

1.48 "Event of Default" has the meaning set forth in Section 5.1.

1.49 "Exigent Circumstance" means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Project or portion thereof.

1.50 "Expected Construction Start Date" is the date set forth on the Cover Sheet.

1.51 "Expected Initial Delivery Date" is the date set forth in Section H of the Cover Sheet.

1.52 "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.

1.53 "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.

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

1.55 "Flexible Capacity Category" has the meaning set forth in the CPUC Decisions.

1.56 "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.

1.57 "Flexible RA Product" has the meaning specified in Section B of the Cover Sheet.

1.58 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the

loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. 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, including the disease designated COVID-19 or the related virus designated SARS-CoV-2 or any mutations thereof (collectively, "COVID-19"), if the elements of Force Majeure 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) have been satisfied; provided, however, 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.

1.59 "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.

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

1.61 "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.

1.62 "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.

1.63 "Governmental Charges" has the meaning set forth in Section 8.2.

1.64 "Initial Delivery Date" has the meaning set forth in Section 2.1.

1.65 "Initial Delivery Date Deadline" has the meaning set forth in Section H of the Cover Sheet.

1.66 "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.

1.67 "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.

1.68 "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.

1.69 "Investment Grade" means a Credit Rating of at least "BBB-" from S&P and/or "Baa3" from Moody's (or, if such entities cease to provide Credit Ratings, from another comparable rating agency that is reasonably acceptable to the Parties).

1.70 "Joint Powers Agreement" means that certain agreement dated June 13, 2017 and executed by the Cities of Davis and Woodland, and the County of Yolo, as amended from time to time, creating Valley Clean Energy Alliance.

1.71 "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 in other regulatory proceedings or legislative actions.

1.72 "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.

1.73 "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.

1.74 "Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least "A-" with an outlook designation of "stable" from S&P or "A3" with an outlook designation of "stable" from Moody's, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.

1.75 "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.

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

1.77 "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).

1.78 "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.

1.79 "Milestones" has the meaning set forth in Section G of the Cover Sheet.

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

1.81 "Monthly RA Capacity Payment" has the meaning specified in Section 3.10(a) hereof.

1.82 "Moody's" means Moody's Investor Services, Inc. or its successor.

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

1.84 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by NERC. 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.

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

1.86 "Network Upgrades" has the meaning set forth in the Tariff.

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

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

1.89 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.90 "Notification Deadline" has the meaning set forth in Section 3.6.

1.91 "Notifying Party" has the meaning set forth in Section 17.11(a).

1.92 "NQC" means Net Qualifying Capacity.

1.93 "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).

1.94 "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").

1.95 "Performance Security" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to Buyer.

1.96 "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.

1.97 "Product" has the meaning set forth in Section 3.1.

1.98 "Progress Report" means a report substantially in the form set forth in Exhibit F, the requirements for which are further set forth in Section 16.1(b).

1.99 "Project" means the facility described in Section A of the Cover Sheet and in Exhibit D.

1.100 "Project Safety Plan" means Seller's written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Exhibit G.

1.101 "Prudent Electrical Practices" means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to energy storage facilities in the Western United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

1.102 "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.

1.103 "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.

1.104 "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.

1.105 "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.

1.106 "Recipient Party" has the meaning set forth in Section 17.11(a).

1.107 "Regulatory Event" has the meaning set forth in Section 17.8.

1.108 "Remediation Event" means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of Applicable Laws, permits, codes, standards, or regulations issued by Government Bodies which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Project's operating procedures; (e) a failure or compromise of an existing Safeguard; or (f) any actual condition related to the Project or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Project or a Site.

1.109 "Replacement Capacity" has the meaning specified in Section 3.8 hereof.

1.110 "Replacement Unit" means a generating unit meeting the requirements specified in Section 3.6 hereof.

1.111 "Residual Unit Commitment" has the meaning set forth in the Tariff.

1.112 "Resold Product" has the meaning set forth in Article 12.

1.113 "Resource Adequacy Resource" has the meaning set forth in the Tariff.

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

1.115 "RMR Contracts" has the meaning set forth in the Tariff.

1.116 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.117 "Safeguard" means any procedures, practices, or actions with respect to the Project, a Site or work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

1.118 "Safety Remediation Plan" means a written notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller's plans to resolve the Remediation Event.

1.119 "Safety Requirements" means Prudent Electrical Practices, CPUC General Order No. 167, and all applicable requirements of Applicable Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC.

1.120 "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.

1.121 "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.

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

1.123 "Security Interest" has the meaning set forth in Section 14.2(a).

1.124 "Seller" has the meaning set forth in the Preamble.

1.125 "Serious Incident" means a harmful event that occurs on a Site during the term arising out of, related to, or connected with the Project or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller's contractors or subcontractors, Seller's employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars ($100,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by permits, codes, standards, regulations, Applicable Laws or Governmental Bodies; (e) environmental impacts exceeding those authorized by permits or Applicable Law.

1.126 "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 5.2.

1.127 "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.

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

1.129 "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.

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

1.131 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.132 "Termination Payment" has the meaning set forth in Section 5.3.

1.133 "Third Party Sale" has the meaning set forth in Section 2.1(d).

1.134 "Transmission Provider" means the CAISO.

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

1.136 "Unit" or "Units" shall mean the storage assets described in Section A of the Cover Sheet and Exhibit D 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.

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

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

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

1.140 "Work" means (a) work or operations performed by a Party or on a Party's behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "a Party's work"; and (ii) the providing of or failure to provide warnings or instructions.

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) and the Performance Security is released and/or returned as applicable. Upon Seller's request, Buyer will promptly confirm in writing the Effective Date. 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 17.2 (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 11 (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 a period of ten (10) Contract Years from the Initial Delivery Date unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The "Expected Initial Delivery Date" is set forth in Section H of the Cover Sheet.

(d) Subject to Section 2.2, the "Initial Delivery Date" is the first day of the first Showing Month for which Product is delivered hereunder. If the Project (or any portion thereof) becomes Commercially Operable and is capable of providing RAR Attributes, LAR Attributes, and/or FCR Attributes prior to the Expected Initial Delivery Date, Seller, at its sole election, may either (i) sell such RAR Attributes, LAR

Attributes, and/or FCR Attributes of the Project to Buyer at the Contract Price pursuant to the terms of this Agreement, and Buyer agrees to purchase such Product from Seller, provided that Seller has achieved the Initial Delivery Date, or (ii) sell such RAR Attributes, LAR Attributes, and/or FCR Attributes of the Project to one or more third parties (a "Third Party Sale"). Any Third Party Sale shall be limited to a delivery period that ends before the Expected Initial Delivery Date. Seller shall have the right to all revenues generated from such Third Party Sale, and will be responsible for any costs, charges, fees, fines, or penalties associated with such sale.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall take all actions and obtain all approvals necessary to perform Seller's obligations under this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement. The following obligations of Seller are conditions precedent to the Initial Delivery Date and must be satisfied at least forty-five (45) days before the Initial Delivery Date, unless a different deadline is set forth below, in which case such other deadline shall govern:

(a) Seller shall have provided to Buyer updated correct and complete copies of (A) Seller's most recent annual report, audited consolidated financial statements, and unaudited consolidated financial statements; and (B) Seller's organizational documents (including any certification of formation, certification of incorporation, charter, operating agreement, partnership agreement, bylaws, or similar documents) and any amendments thereto.

(b) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver the Product to Buyer.

(c) Seller shall have secured Site control.

(d) Seller shall have provided to Buyer a certification of Seller and a licensed professional engineer, substantially in the form attached hereto as Exhibit C, demonstrating that the Commercial Operation Date has occurred.

(e) Seller shall have provided Performance Security to Buyer as required by Section 14.1.

(f) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing.

(g) Seller shall have submitted to Buyer a Project Safety Plan.

(h) Subject to Section 3.10(b), Seller shall have obtained an NQC for the Project of at least [redacted] MW and an EFC for the Project of at least [redacted] MW.

(i) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Unit's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month and (ii) submitted, or caused the Unit's SC to submit, a Supply Plan to CAISO.

(j) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(k) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including damages pursuant to Section 16.2(c).

(l) If any applicable Governmental Body required Seller to develop a decommissioning plan as part of any permitting process for the Project, then Seller shall have provided such decommissioning plan to Buyer.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section B of the Cover Sheet to this agreement, and the Contract Quantity shall be a Contingent Firm RA Product, as specified in Section B of the Cover Sheet (the "Product"); provided, that, notwithstanding anything to the contrary herein (i) the Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with 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 shall include all LAR Attributes related to such local Capacity Area; and (v) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing RAR or Flexible Capacity Requirements, LAR Attributes or RAR Attributes, or attributes of the Unit whereby the Unit, or a portion of the Unit which did not previously qualify, subsequently qualifies to satisfy RAR or Flexible Capacity Requirements, the Product shall include Buyer's Share of all FCR Attributes or RAR Attributes of the Unit, including any FCR Attributes or RAR Attributes with respect to any portion of Buyer's Share of the Unit which previously was not able to satisfy RAR or Flexible Capacity Requirements, as applicable. Specifically, no energy or ancillary services associated with any 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 Unit that is in excess of that 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 Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity. 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 Unit EFC and Unit NQC.

(a) Unit EFC. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the Effective Date of this Agreement occurs prior to the CAISO's setting of a Unit EFC for the applicable Unit, the initial Unit EFC as of the Effective Date shall be as agreed to by the Parties and specified in Section A of the Cover Sheet and Seller represents that this Unit EFC is consistent with the CAISO's methodology for determining Unit EFC as of the Effective Date. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit EFC, Seller shall not be liable for any costs or damages related to such reduction and the Unit EFC shall be reduced per Section 3.5 of this Agreement.

(b) Unit NQC. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity. To the extent the Effective Date of this Agreement occurs prior to the CAISO's setting of a Unit NQC for the applicable Unit, the initial Unit NQC as of the Effective Date shall be as agreed to by the Parties and specified in Section A of the Cover Sheet and Seller represents that this Unit NQC is consistent with the CAISO's methodology for determining Unit NQC as of the Effective Date. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Unit NQC, Seller shall not be liable for any costs or damages related to such reduction and the Unit NQC shall be reduced per Section 3.5 of this Agreement.

3.4 Delivery Point.

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

3.5 Adjustments to Contract Quantity.

(a) Planned Outages: Seller is obligated to meet the Tariff obligations with respect to securing Planned Outage approvals from CAISO. Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a CAISO-approved Planned Outage during the applicable Showing Month; provided, that Seller notifies Buyer, no later than the Notification Deadline for that Showing Month, of the amount of Product from the Unit that Buyer is permitted to include in Buyer's RAR Showings, LAR Showings and/or FCR Showings applicable to that month as a result of such Planned Outage. If Seller elects not to provide the applicable Contract Quantity for a Showing Month, or any portion thereof, because of a Planned Outage of a Unit, Seller has the right, but not the obligation, to provide Product for such Showing Month from one or more Replacement Units; provided, that, Seller provides and identifies such Replacement Units in accordance with Section 3.6 hereof. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.

(b) Reductions in Unit NQC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced at Seller's option if the Unit experiences a reduction in Unit NQC as determined by the CAISO and Seller has provided notice of such reduction to Buyer by no later than twenty (20) Business Days following the date on which the CAISO publishes the final annual Net Qualifying Capacity values for Resource Adequacy Resources for the compliance year in which such Showing Month occurs. Seller may reduce the Contract Quantity for each remaining Showing Month by an amount that is not more than the product of (a) the applicable Showing Month Contract Quantity and (b)

the total amount (in MW) that the Unit NQC was reduced since the Effective Date, divided by (c) Unit NQC as of the Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the right, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units; provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 3.6.

(i) If (A) the CAISO implements the CAISO RA Enhancement, and (B) the RA Capacity is reduced due to Seller's failure to properly operate or maintain the Unit in accordance with Prudent Electrical Practices or Seller's submission of discretionary bids or schedules for the Unit, then, notwithstanding Section 3.5(b), Seller's obligation to deliver the applicable Contract Quantity will not be reduced on the basis of such reduction.

(c) Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced at Seller's option if the Unit experiences a reduction in Unit EFC as determined by the CAISO and Seller has provided notice of such reduction to Buyer by no later than twenty (20) Business Days following the date on which the CAISO publishes the final annual Net Qualifying Capacity values for Resource Adequacy Resources for the compliance year in which such Showing Month occurs. Seller may reduce the Contract Quantity for each remaining Showing Month by an amount that is not more than the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Unit EFC was reduced since Effective Date, divided by (c) Unit EFC as of the Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 3.6.

(d) The Parties acknowledge that Contract Quantity as stated in the table in Section D of the Cover Sheet is based on an expected Effective Flexible Capacity for the Project as of the Effective Date, and the intention herein is for Seller to sell to Buyer, and Buyer to buy from Seller, Buyer's Share of the entire Effective Flexible Capacity of the Project.

3.6 Alternate Capacity and Replacement Units.

(a) The "Notification Deadline" for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO supply plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 3.5, 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 Alternate Capacity 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 that in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends, as applicable (i) not to provide or (ii) to provide with Alternate Capacity from identified Replacement Units meeting the above requirements no later than the Notification Deadline; and provided further that such Alternate Capacity shall be required to comply with the requirements of D.19-11-016 only to the extent required for the Product purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under D.19-11-016

as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties. If Seller notifies Buyer in writing as to the particular Replacement Units in accordance with this Section 3.6 and such Replacement Units otherwise meet the requirements of a Unit under this Agreement, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

(c) In the event that Seller fails to provide the Contract Quantity to Buyer in connection with a Planned Outage or a reduction in Unit NQC or Unit EFC and Seller has provided Buyer with timely notice pursuant to Section 3.5(a) of Seller's intent not to provide Alternate Capacity due to a Planned Outage or a reduction in Unit NQC or Unit EFC in an amount equal to the portion of the Contract Quantity of that Showing Month that is unavailable due to such Planned Outage or a reduction in Unit NQC or Unit EFC, Seller shall not be liable for damages or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof if Seller has delivered written notice of such failure to Buyer by the Notification Deadline.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than fifteen (15) Business Days prior to the applicable Showing Month deadline, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each pertinent Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month or the annual RA compliance filing during the Delivery Term, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with D.19-11-016 compliant capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity. Buyer will purchase Replacement Capacity that is D.19-11-016 compliant capacity only to the extent required for the Product purchased hereunder to be applied towards Buyer's compliance with its procurement obligations under D.19-11-016 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties.

(b) 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 Replacement Capacity, plus (B) the product of the Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 3.8(a), and (ii) the product of the Designated RA Capacity not provided by Seller for the applicable Showing Month times the Contract Price times 1,000 for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

3.9 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 Designated RA Capacity for the respective Showing Month for the Delivery Term;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity consistent with Sections 3.6 and 3.7; or

(c) A Unit Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder for the respective Showing Month 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 3.9 in respect of the portion of the Designated RA Capacity for any portion of the Delivery Term for which Seller has paid damages for Replacement Capacity under Section 3.8. 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.

3.10 Monthly RA Capacity Payment.

(a) Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. Each 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 Designated RA Capacity 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).

(b) Following a Change in RA Requirements, (i) Seller will be excused from delivering the portion of the applicable Contract Quantity equal to the difference between the applicable Contract Quantity and the Compliance Adjusted Unit NQC or Compliance Adjusted Unit EFC, as applicable, and (ii) the Designated RA Capacity for each Showing Month thereafter shall be multiplied by the Compliance Adjustment Factor for purposes of calculating the Monthly RA Capacity Payment pursuant to Section 3.10(a).

3.11 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 other 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 storage 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 Designated RA Capacity of any Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts for any Unit, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.11(a) above).

(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(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 3.11(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 Designated RA Capacity 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.

3.12 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch.

The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent any Unit is in 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 each Unit's Designated RA Capacity 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 Designated RA Capacity 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: EVENTS OF DEFAULT; REMEDIES

5.1 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 3.8 and 3.9) if such failure is not remedied within thirty (30) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof if such failure is not remedied within ten (10) Business Days after written notice;

(f) 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.

5.2 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 liquidate and 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. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 14, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 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 5.2 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 6: PAYMENT AND NETTING

6.1 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.

6.2 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 twentieth (20th) day of each month, or tenth (10th) 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.

6.3 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 6.3 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.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other 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 any related damages calculated pursuant to Sections 3.8, 3.9, or 16.2(c), 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.

6.5 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, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 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 8: GOVERNMENTAL CHARGES

8.1 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.

8.2 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 6 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 9: SAFETY

9.1 Safety.

(a) Seller shall, and shall cause any Affiliates performing any design, construction, operation or maintenance, and decommissioning of the Project and contractors to, design, construct, operate, maintain, and decommission the Project and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and contractors to, take all actions to comply with the Safety Requirements.

(b) Seller shall document a Project Safety Plan and incorporate the Project Safety Plan's features into the design, development, construction, operation, maintenance, and decommissioning of the Project. Seller shall submit for Buyer's review a Project Safety Plan by the Construction Start Date, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements and (B) Seller's consideration of the Project Safety Plan items in Part Two (Project Design and Description) of Exhibit G. Upon notice to Buyer, Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, maintaining, or decommissioning the Project, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, maintain, or decommission the Project safely or in accordance with the Safety Requirements.

(c) Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's notice.

(d) Seller shall remove any contractor that engages in repeated, material violations of the Project Safety Plan or Safety Requirements, unless doing so would present an ongoing material adverse effect to the operation of the Project.

9.2 Reporting Serious Incidents.

Seller shall provide notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The notice of Serious Incident must include the time, date, and location of the incident, the contractor involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance, and cause each of its contractors to cooperate and provide reasonable

assistance, to Buyer with any investigations and inquiries by Governmental Bodies that arise as a result of the Serious Incident.

9.3 Remediation.

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(b) Seller shall cooperate, and cause each of its contractors to cooperate, with Buyer in order for Seller to provide any report relating to a Remediation Event, in a form and level of detail that is acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as requested by Buyer.

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 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 of its Affiliates 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.

10.2 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 12. 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 and Designated 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 this Transaction 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.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

(a) 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;

(b) 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;

(c) 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;

(d) Each Unit is within the CAISO Control Area;

(e) 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;

(f) 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;

(g) 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;

(h) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(i) Seller has notified the Scheduling Coordinator of each 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 Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(j) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 3.11 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;

(k) As between Seller and Buyer, Seller shall be solely responsible for the decommissioning of the Project.

10.4 Buyer's Representations and Warranties.

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 Law.

(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 warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

ARTICLE 11: CONFIDENTIALITY

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or its Affiliates' employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

Notwithstanding the foregoing, the Parties agree that Buyer may disclose the Designated RA Capacity 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 the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans; 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. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to effect such resale transaction, provided that such other party agrees to keep such information confidential.

Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* ("Public Records Act") in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer

shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect and copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

ARTICLE 12: BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement ("Resold Product"), Seller agrees, and agrees to cause the Unit's Scheduling Coordinator, to follow Buyer's reasonable instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees, and agrees to cause the Unit's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale:

i. Benefitting load serving entity SC identification number (SCID),

ii. Volume (in MW) of Resold Product,

iii. Subsequent sale delivery period for Resold Product.

ARTICLE 13: [RESERVED]

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 Performance Security.

To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer within ten (10) business days of the Effective Date. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security not allocated to invoiced but unpaid amounts. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

14.2 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Security, Buyer may do any one or more of the following:

(i) Exercise any of its rights and remedies with respect to the Performance Security, including any such rights and remedies under Applicable Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and

(iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the Term, Seller shall procure and maintain the following insurance coverage and require and cause its contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than one million dollars ($1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar ($1,000,000) policy limit will apply to each employee.

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars ($2,000,000) per occurrence, and an annual aggregate of not less than five million dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's insurable indemnity obligations under this Agreement and including Buyer as an additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars ($10,000,000).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(c) Business Auto.

(i) Business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence.

(ii) Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(d) Construction All-Risk Insurance.

(i) During the construction of the Project prior to the Commercial Operation Date, construction all-risk form property insurance covering the Project during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will be at least two million dollars ($2,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Buyer as additional insured but only to the extent of Seller's insurable indemnity obligations under this Agreement.

15.2 Evidence of Insurance.

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any material modification, reduction, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: PROJECT CONSTRUCTION AND COMMERCIAL OPERATION

16.1 Construction of the Project.

(a) Construction Start. "Construction Start" will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Project, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Project may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract (or equivalent agreements) and issued thereunder a notice to proceed or its equivalent that authorizes the contractor to mobilize to Site and begin physical construction of the Project at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit B hereto, and the date certified therein shall be the "Construction Start Date." The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Expected Construction Start Date.

(b) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start and (ii) each calendar month from the first calendar month following the Construction Start until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit F. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller shall also provide Buyer with any information in Seller's possession that is reasonably requested by Buyer for Buyer to demonstrate to the CPUC, CAISO, or other Governmental Bodies that Buyer has met its applicable resource adequacy requirements, including providing status reports to the CPUC with respect to the Project.

16.2 Commercial Operation.

(a) Commercial Operation Date. "Commercial Operation Date" means the date on which the Project became Commercially Operable, as stated by Seller in the written notice provided to Buyer substantially in the form of Exhibit C. Seller shall use commercially reasonable efforts to notify Buyer that it intends to achieve Commercial Operation Date at least sixty (60) days before the anticipated Commercial Operation Date.

(b) Extension of the Expected Initial Delivery Date. The Expected Initial Delivery Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances:

(i) Seller has not acquired all material Governmental Approvals required for Seller to own, construct, interconnect, operate or maintain the Project, and to permit the Seller and Project to make available and sell Product by the Expected Initial Delivery Date, despite the exercise of commercially reasonable efforts by Seller;

(ii) The Interconnection Facilities or Network Upgrades, if applicable, are not complete and ready for the Project to connect and sell Product at the Delivery Point by the Expected Initial Delivery Date despite the exercise of commercially reasonable efforts by Seller; or

(iii) An Event of Force Majeure occurs.

(c) If Seller has not achieved the Initial Delivery Date by the Expected Initial Delivery Date, then for each month thereafter until Seller achieves the Initial Delivery Date or this Agreement is terminated, Seller shall pay Buyer, or the Performance Security shall be drawn upon to promptly pay Buyer, for an amount equal to the amount that Seller would owe to Buyer pursuant to Section 3.8 for such month if such month had occurred during the Delivery Term and Seller had failed to provide Buyer with the Designated RA Capacity of Product for the applicable month.

(d) Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not extend the Expected Initial Delivery Date beyond the Initial Delivery Date Deadline, for any reason, including an event of Force Majeure. No extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines (other than in the case of the extension set forth in Section 16.2(c)). Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's failure to take such commercially reasonable actions (other than in the case of the extension set forth in Section 16.2(c)).

(e) Termination for Failure to Achieve Initial Delivery Date. If the Project has not achieved the Initial Delivery Date by the Initial Delivery Date Deadline, then either Party may terminate this Agreement upon written notice to the other Party. If either Party terminates this Agreement under this Section 16.2(e), Buyer has the right to collect as liquidated damages an amount equal to the remaining Performance Security; provided, that payment of such amount shall constitute liquidated damages and Buyer's sole and exclusive remedy for such termination and Seller's failure to achieve the Initial Delivery Date. Notwithstanding anything to the contrary herein, in no event will Seller's liability hereunder prior to the Initial Delivery Date exceed the amount of the Performance Security.

ARTICLE 17: MISCELLANEOUS

17.1 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 Designated RA Capacity 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.

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective 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 Seller's operation and/or maintenance of the Project, including without limitation 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 Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. 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, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in the case of any such assignment pursuant to clause (ii) or clause (iii), any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in a form that is commercially reasonable and customary in the industry.

17.4 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.

17.5 Notices.

All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

17.6 Workforce Development and Community Investment Obligations.

Seller shall conduct outreach with qualified local contractors, so that local firms have a fair opportunity to compete for Project construction contracts. In addition, Seller shall require that construction contractors utilize locally sourced and union labor to the extent practicable. Buyer shall contribute an amount equal to or greater than ten thousand dollars ($10,000) to a clean energy or battery storage workforce training program, or science, technology, engineering, and math (STEM) educational program, located within twenty (20) miles of the Project.

17.7 Mobile-Sierra.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, 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), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008); *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010.

Notwithstanding any provision of this Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by Applicable Laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.

17.8 General.

This Agreement (including the exhibits, schedules and any written supplements hereto, if any) constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use commercially reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

17.9 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 Designated RA Capacity 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.

17.10 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

17.11 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.11) (a "Dispute"), any Party (the "Notifying Party") may deliver to the other Parties (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party's position on the Dispute and a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.11(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.11(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.12 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.13 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

[Remainder of Page Intentionally Left Blank]

Acknowledged and agreed to as of the Effective Date.

VESI 10, LLC	**Valley Clean Energy Alliance, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of [Buyer], a California joint powers authority ("Beneficiary"), [Address], for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Agreement dated as of _____ and as amended (the "Agreement") between [Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt) with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's

account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

_____

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

_____

Name and Title of Authorized Representative

Date_____

EXHIBIT B: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [Seller] ("Seller") to [Buyer], a California joint powers authority ("Buyer") in accordance with the terms of that certain Agreement dated [date] ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer that the Construction Start (as defined in the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[Seller]

By:_____

Its:_____

Date:_____

EXHIBIT C: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by [Seller] ("Seller") to [Buyer], a California joint powers authority ("Buyer") in accordance with the terms of that Agreement dated [date] ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____[DATE]_____, Seller hereby certifies and represents to Buyer the following:

a) The Project is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
b) Seller has installed equipment for the Storage Project with a nameplate capacity of no less than [redacted] of the Contract Capacity.
c) The Storage Project is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Contract Capacity and receiving instructions to charge, store and discharge energy.
d) Authorization to parallel the Project was obtained by the Participating Transmission Owner, PG&E on___[DATE]____.

SELLER:

Signature:_____

Name:_____

Title:_____

Date:_____

ENGINEER

Signature:_____

Name:_____

Title:_____

Date:_____

EXHIBIT D: DESCRIPTION OF PROJECT

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

Project name: __Tierra Buena Energy Storage_____

Resource type: _BESS_____

Nameplate capacity: __5.0_____MW

Location: _Sutter County, CA_____

Project physical address: _[redacted]_____

Project elevation: _62 feet_____

Project latitude: [redacted](decimal form)

Project longitude: [redacted] (decimal form)

Interconnection: _PG&E 12.47 kV Distribution_____

CAISO transmission access charge area (e.g. PG&E): _PG&E_____

Point of interconnection: _[redacted]_____

Point of interconnection address: _[redacted]_____

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

PNode: TBD_____

CAISO Resource ID: TBD_____

Substation: Point of interconnection is near PG&E's Pease Substation_____

EXHIBIT E: OPERATIONAL CHARACTERISTICS

The following describes the Operational Characteristics to determine the amount of Capacity Attributes of Product. Physical Location and Point of Interconnection shall be as set forth in Exhibit D. The amounts set forth below reflect the full Project. Buyer is only entitled to the Contract Quantity of Product as adjusted pursuant to the terms of this Agreement.

Discharging and Charging

Maximum continuous discharge power (Dmax): _5__ MW

Minimum continuous discharge power (Dmin): _0__ MW

Maximum discharge duration at constant Dmax: _4.0__ (hours)

Maximum continuous charge power (Cmax): _5_ MW Minimum continuous charge power (Cmin): __0__ MW

Maximum charge duration at constant Cmax: _[redacted]__ (hours)

Amount of Energy released to fully discharge: _20__ MWh

Amount of Energy required to fully charge: [redacted]___ MWh

Round-trip efficiency: _____[redacted]%_at BOL

Ramp Rates

Dmin to Dmax: [redacted] MW/second

Cmin to Cmax: [redacted] MW/second

Dmax to Dmin[redacted] MW/second

Cmax to Cmin:[redacted] MW/second

System Response Time

Idle to Dmax: [redacted] second

Idle to Cmax: [redacted] second

Dmax to Cmax: [redacted] second

Cmax to Dmax: [redacted] second

Dmin to Cmin: [redacted] second

Cmin to Dmin: [redacted] second

Discharge Start-up time (from notification to Dmin): [redacted]seconds

Charge Start-up time (from notification to Cmin): [redacted]seconds

Discharge Start-up Fuel: [redacted]MMBtu

EXHIBIT F: PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.

2. Project description.

3. Site plan of the Project.

4. Description of any material planned changes to the Project or the Site.

5. Schedule showing progress on Project construction generally and achieving each of the Milestones, the Commercial Operation Date, and the Initial Delivery Date.

6. Summary of activities during the previous month, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to the Milestones, the Commercial Operation Date, and the Initial Delivery Date, including whether Seller is on schedule with respect to the same.

9. List of issues that are likely to potentially affect achievement of the Milestones, the Commercial Operation Date, and the Initial Delivery Date.

10. Progress and schedule of the EPC Contract, all major equipment supply agreements, Governmental Approvals, technical studies, and financing arrangements.

11. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.

12. Compliance with workforce and prevailing wage requirements.

13. Any other documentation reasonably requested by Buyer.

EXHIBIT G: PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related codes, standards, and regulations (CSR) which govern the design, construction, operation, maintenance of the Project using the proposed technology. Describe the Seller's and the Seller's contractor(s)' safety programs and policies. Describe Seller's compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

Part Two: Project Design and Description

Describe Seller's safety engineering approach to select equipment and design systems and the Project to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a list of major Project components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

a) Equipment manufacturer's datasheet, model numbers, etc.,

b) Technical specifications,

c) Equipment safety-related certifications (e.g. UL),

d) Safety-related systems, and

e) Approximate volumes and types of hazardous materials expected to be on Site.

Part Three: Project Safety Management

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Project. Describe the Seller's applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

a) Engineering controls,

b) Work practices,

c) Administrative controls,

d) Personal protective equipment and procedures,

e) Incident response and recovery plans,

f) Contractor pre-qualification and management

RESOURCE ADEQUACY AGREEMENT

Between

LEAPFROG POWER, INC.

and

VALLEY CLEAN ENERGY ALLIANCE

TABLE OF CONTENTS

PREAMBLE

This Resource Adequacy Agreement ("Agreement") is entered into between **Leapfrog Power, Inc.** ("Seller") and **Valley Clean Energy Alliance**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties," dated as of **September 11, 2020** (the "Effective Date"), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3.1 of this Agreement.

COVER SHEET

A. Portfolio Information

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes, from the Portfolio described on attached Exhibit D-1. The Portfolio shall consist of the Units and, potentially, Replacement Units as set forth from time to time on the Portfolio List attached as Exhibit D-2.

B. RA Product and Attributes

RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity of RAR Attributes and, if applicable, LAR Attributes, from the Portfolio, as measured in MWs, in accordance with the terms and conditions of this Agreement.

☒ RA Attributes

☐ RA Attributes with Flexible RA Attributes

☐ LAR Attributes

☐ LAR Attributes with Flexible RA Attributes

☐ Flexible RA Attributes

☐ **Flexible RA Product**

Seller shall provide Buyer with Designated RA Capacity of FCR Attributes from the Portfolio in the amount of the applicable Contract Quantity.

☐ **Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Portfolio in the amount of the Contract Quantity. If the Units are not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including, without limitation, any Outage or any adjustment of the RA Capacity of any Unit, pursuant to Section 3.5, then, Seller shall provide Buyer with Designated RA Capacity from Alternate Capacity pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with Alternate Capacity pursuant to Section 3.6, then Seller shall be liable for damages and/or be required to indemnify Buyer for CAISO costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof.

☒ **Contingent Firm RA Product**

Seller shall provide Buyer with Product from the Portfolio in the amount of the applicable Contract Quantity; provided, however, that if the Units are not available to provide the full amount of the Contract Quantity on account of an Outage or Force Majeure, then Seller may provide Buyer with Designated RA Capacity from Alternate Capacity pursuant to Section 3.6 hereof. If Seller fails to provide Buyer with the Designated RA Capacity, then Seller shall be liable for damages and/or be required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof; provided, however, that Seller shall not be liable for damages and/or required to indemnify Buyer for costs, penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof in connection with a Planned Outage if, and only if, Seller has provided Buyer with timely notice pursuant to Section 3.5(a) of Seller's intent not to provide Alternate Capacity due to a Planned Outage in an amount equal to the portion of the Contract Quantity of that Showing Month that is unavailable due to such Planned Outage.

C. Delivery Term

The Delivery Term is set forth in Section 2.1(b).

D. Contract Quantities and Payment Quantity

The Contract Quantities and Payment Quantity for the entire Delivery Term shall be:

RA Attributes: at least 7 MW NQC

Local RA Attributes: 0 MW

Flexible RA Attributes: 0 MW EFC, Category N/A

Payment Quantity: 7MW

E. Contract Price

The Contract Price for every month of Contract Years 2021-2025 of the Delivery Term shall be [redacted] per kw-month, and the Contract Price for every month of Contract Years 2026-2030 shall be [redacted] per kw-month, subject to reduction for any Showing Month prior to the Expected Initial Delivery Date as specified in Section 3.10(b).

F. Performance Security Amount and Milestones

The Performance Security Amount shall be an amount equal to [redacted]/kW of the Payment Quantity, which for this Agreement is equal to $[redacted], proportional amounts of which shall be returned to Seller following the completion of the milestones as specified under Section 16.1(a).

G. Initial Delivery Date

The Expected Initial Delivery Date shall be June 1, 2021.

The Initial Delivery Date Deadline shall be August 1, 2021.

H. Notices

Seller Notices

Delivery Address:
1700 Montgomery St. Suite 200
San Francisco, CA 94111

Mail Address:
Attn: Andrew Hoffman
Title: Chief Development Officer
Phone: [redacted]
Email: [redacted]

DUNS: [redacted]
Federal Tax ID Number: [redacted]

Invoices:
Attn: Thomas Folker
Phone: [redacted]
Facsimile:
Email: [redacted]

Scheduling:
Attn: Stefan Nagy
Phone 1: [redacted]
Phone 2:
Email: [redacted]

Payments:
Attn: Thomas Folker
Phone: [redacted]
Facsimile: **N/A**
Email: [redacted]

Wire Transfer:
BNK: [redacted]
ABA: [redacted]
ACCT: [redacted]

Buyer Notices

Delivery Address:
Valley Clean Energy
604 2Nd St.
Davis, CA 95616
Mail Address:
Attn: [redacted]
Title: [redacted]
Phone: [redacted]
Email: [redacted]

DUNS: [redacted]
Federal Tax ID Number: [redacted]

Invoices:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email: [redacted]

Scheduling:
Attn:
Day Ahead Desk Phone:
Real Time Desk Phone:
Email: [redacted]

Payments:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email: [redacted]

Wire Transfer:
BNK: [redacted]
ABA: [redacted]
ACCT: [redacted]

Credit and Collections:
Attn: Thomas Folker
Phone: [redacted]
Email: [redacted]

Credit and Collections:
Attn: [redacted]
Phone: [redacted]
Email:
[redacted]

Notices of an Event of Default to:
Attn: Andrew Hoffman
Phone: [redacted]
Facsimile: N/A
Email:[redacted]

Notices of an Event of Default to:
Attn: [redacted]
Phone: [redacted]
Facsimile:
Email:
[redacted]

With additional Notices of an Event of Default to:
Attn: Amaani Hamid
Phone:[redacted]
Facsimile: N/A
Email: [redacted]

With additional Notices of an Event of Default to:
Attn: [redacted]
Phone:[redacted]
Facsimile:
Email: [redacted]

ARTICLE 1: DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

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

1.3 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 3.6(b).

1.4 "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.

1.5 "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.

1.6 "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.

1.7 "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, (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.

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

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

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

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

1.12 "CAISO Markets" has the meaning set forth in the Tariff.

1.13 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.8(a) 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 Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.14 "Change Notice" has the meaning set forth in Section 3.5(b)(i).

1.15 "Claiming Party" has the meaning set forth in Section 3.12.

1.16 "Compliance Obligation" means the RAR, LAR, FCR, and any other resource adequacy or capacity procurement requirements imposed on Load Serving Entities (as defined in the Tariff) by the CPUC pursuant to the CPUC Decisions, by the CAISO, by the WECC, or by any other Governmental Body having jurisdiction.

1.17 "Contingent Firm RA Product" has the meaning set forth in Section B of the Cover Sheet.

1.18 "Contract Price" has the meaning set forth in Section E of the Cover Sheet.

1.19 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Term, the amount of Product (in MWs) set forth in Section D of the Cover Sheet, which Seller has agreed to provide to Buyer from the Portfolio for such Showing Month, as such amount may be adjusted pursuant to Section 3.5.

1.20 "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.

1.21 "Contractor" means the EPC Contractor and its subcontractors, as well as Seller or Seller's Affiliates if any such entities are developing, constructing, operating or maintaining the Portfolio, and any entity or person under contract with Seller or Seller's Affiliates for the purpose of developing, constructing, operating or maintaining the Portfolio.

1.22 "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 a transaction.

1.23 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P or Moody's.

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

1.25 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 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, 19-11-016 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.26 "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.

1.27 "Defaulting Party" has the meaning set forth in Section 5.1.

1.28 "Delivery Point" has the meaning set forth in Section 3.4.

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

1.30 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Term, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity that Seller has elected to provide Alternate Capacity with respect to, minus any reductions to Contract Quantity made in accordance with Section 3.5 with respect to which Seller has not elected to provide Alternate Capacity.

1.31 "Development Cure Period" has the meaning set forth in Section 16.2(a).

1.32 "Dispute" has the meaning set forth in Section 17.11(a).

1.33 "Dispute Notice" has the meaning set forth in Section 17.11(a).

1.34 "Early Termination Date" has the meaning set forth in Section 5.2.

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

1.36 "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.

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

1.38 "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.

1.39 "Event of Default" has the meaning set forth in Section 5.1.

1.40 "Exigent Circumstance" means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Portfolio or portion thereof.

1.41 "Expected Initial Delivery Date" is the date set forth in Section G of the Cover Sheet.

1.42 "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.

1.43 "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.

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

1.45 "Firm RA Product" has the meaning specified in Section B of the Cover Sheet.

1.46 "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.

1.47 "Flexible RA Product" has the meaning specified in Section B of the Cover Sheet.

1.48 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under the Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

1.49 "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.

1.50 "Generic RA Product" means Designated RA Capacity consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

1.51 "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 Portfolio.

1.52 "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.

1.53 "Governmental Charges" has the meaning set forth in Section 8.2.

1.54 "Initial Delivery Date" has the meaning set forth in Section 2.1(d).

1.55 "Initial Delivery Date Deadline" has the meaning specified in Section G of the Cover Sheet.

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

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

1.58 "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.

1.59 "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 in other regulatory proceedings or legislative actions.

1.60 "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.

1.61 "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.

1.62 "Lender" means, collectively, any person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, or decommissioning of the Portfolio, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Portfolio or purchasing equity ownership interests of Seller or its Affiliates for purposes of providing financing or refinancing for the Portfolio, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Portfolio.

1.63 "Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form as set forth in Exhibit A or as otherwise acceptable to Buyer.

1.64 "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.

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

1.66 "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).

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

1.68 "Monthly RA Capacity Payment" has the meaning set forth in Section 3.10.

1.69 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.70 "MW" means megawatts in alternating current, unless expressly stated in terms of direct current.

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

1.72 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by NERC. 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.

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

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

1.75 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.76 "Notification Deadline" has the meaning set forth in Section 3.6(a).

1.77 "Notifying Party" has the meaning set forth in Section 17.11(a).

1.78 "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).

1.79 "Payment Quantity" has the meaning set forth in Section D of the Cover Sheet.

1.80 "Performance Security" means (i) cash or (ii) a Letter of Credit in the amount specified in Section F of the Cover Sheet.

1.81 "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.

1.82 "Portfolio EFC" means the Effective Flexible Capacity set by the CAISO for the Portfolio. If the CAISO adjusts the Effective Flexible Capacity of a Portfolio after the Effective Date, then for the period in which the adjustment is effective, the Portfolio EFC shall be deemed the lesser of (i) the Portfolio EFC as of the Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity.

1.83 "Portfolio NQC" means the Net Qualifying Capacity set by the CAISO for the Portfolio.

1.84 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.85 "Portfolio" means the aggregated group of resources, consisting of Shown Units and Replacement Units, as applicable, providing the Product. The Shown Units in the Portfolio may be removed and replaced by Seller from time to time in compliance with this agreement. "Portfolio" is further described in Section A of the Cover Sheet and in Exhibit D-1.

1.86 "Product" has the meaning set forth in Section 3.1.

1.87 "Project Safety Plan" means Seller's written plan that includes the Safeguards and plans to comply with the Safety Requirements.

1.88 "Prudent Electrical Practices" means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to demand response resources during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

1.89 "Qualified Transferee" means a person or entity with (i) equal or superior creditworthiness of the applicable Party and (ii) at least three (3) years of experience operating or managing units and portfolios of similar technology, size, and complexity as the Portfolio.

1.90 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in this Agreement.

1.91 "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.

1.92 "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.

1.93 "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.

1.94 "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.

1.95 "Recipient Party" has the meaning set forth in Section 17.11(a).

1.96 "Recording" has the meaning set forth in Section 17.7.

1.97 "Regulatory Event" has the meaning set forth in Section 17.8.

1.98 "Remediation Event" means the occurrence of any of the following with respect to the Portfolio or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of Applicable Laws, permits, codes, standards, or regulations issued by any Governmental Body that requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Portfolio's operating procedures; (e) a failure or compromise of an existing Safeguard; or (f) any actual condition related to the Portfolio or a Site with the potential to adversely impact the safe construction, operation, or maintenance of the Portfolio or a Site.

1.99 "Replacement Capacity" has the meaning set forth in Section 3.8(a).

1.100 "Replacement Price" has the meaning set forth in Section 1.13.

1.101 "Replacement Unit" means a demand response resource or generating unit meeting the requirements set forth in Section 3.6(b).

1.102 "Resold Product" has the meaning set forth in Article 12.

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

1.104 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.105 "Safeguard" means any procedures, practices, or actions with respect to the Portfolio, a Site or work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

1.106 "Safety Remediation Plan" means a written notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller's plans to resolve the Remediation Event.

1.107 "Safety Requirements" means Prudent Electrical Practices, CPUC General Order No. 167, and all applicable requirements of Applicable Laws, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC.

1.108 "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.

1.109 "Scheduling Coordinator" or "SC" has the same meaning as in the Tariff.

1.110 "Security Interest" has the meaning set forth in Section 14.2(a).

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

1.112 "Serious Incident" means a harmful event that occurs on a Site during the term arising out of, related to, or connected with the Portfolio or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, Seller's Contractors or subcontractors, Seller's employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars ($100,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by permits, codes, standards, regulations, Applicable Laws or Governmental Bodies; (e) environmental impacts exceeding those authorized by permits or Applicable Laws.

1.113 "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 5.2.

1.114 "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.

1.115 "Site" means the real property on which a Unit is located.

1.116 "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.

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

1.118 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.119 "Termination Payment" has the meaning set forth in Section 5.3.

1.120 "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.

1.121 "Utility Distribution Company" has the meaning set forth in the Tariff.

1.122 "Unit" or "Units" shall mean demand response resources described in Exhibit D-2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer. A Unit or Replacement Unit may not include a coal-fired or nuclear generating resource.

1.123 "Work" means (a) work or operations performed by a Party or on a Party's behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness,

quality, durability, performance or use of "a Party's work"; and (ii) the providing of or failure to provide warnings or instructions.

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) and the Performance Security is released and/or returned as applicable. 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 17.2 (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 11 (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 a period of ten (10) Contract Years from the Initial Delivery Date unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The "Expected Initial Delivery Date" is set forth in Section F of the Cover Sheet.

(d) Subject to Section 2.2, the "Initial Delivery Date" is the first day of the first Showing Month for which Product is delivered.

2.2 Conditions Precedent to Initial Delivery Date.

Seller shall take all actions and obtain all approvals necessary to meet the obligations of this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement. The following obligations of Seller are conditions precedent to the Initial Delivery Date (collectively the "Conditions Precedent") and must be satisfied at least forty-five (45) days before the Initial Delivery Date, unless a different deadline is set forth below, in which case such other deadline shall govern, to Buyer's reasonable satisfaction:

(a) Seller shall have provided to Buyer updated correct and complete copies of (A) Seller's most recent annual report, audited consolidated financial statements, and unaudited consolidated financial statements; and (B) Seller's organizational documents (including any certification of formation, certification of incorporation, charter, operating agreement, partnership agreement, bylaws, or similar documents) and any amendments thereto.

(b) Seller shall have secured all CAISO and Governmental Approvals as are necessary for the safe and lawful operation and maintenance of the Portfolio and to enable Seller to deliver the Product to Buyer, including at the Contract Quantity.

(c) Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Portfolio successfully completed all applicable testing and registration procedures required by CAISO to bid into the CAISO Markets.

(d) Seller shall have provided Performance Security to Buyer as required by Section 14.1 and as subject to the terms of Section 16.1(a).

(e) As of the Initial Delivery Date, no Event of Default on the part of Seller shall have occurred and be continuing and no Remediation Event shall have occurred and remain unresolved.

(f) Seller shall have submitted to Buyer a Project Safety Plan.

(g) Seller shall have obtained certification of the Product in accordance with the Tariff and CPUC requirements applicable to the Product (i) resulting in certifications of not less than the Contract Quantity and (ii) so as to ensure the Portfolio is fully deliverable such that Seller is able to deliver Product in the Contract Quantity to Buyer for purposes of counting towards Buyer's Compliance Obligations.

(h) In accordance with Section 3.7(a), Seller shall have (i) submitted, or caused the Portfolio's SC to submit, a notice to Buyer including Seller's proposed Supply Plan for the first Showing Month and (ii) submitted, or caused the Portfolio's SC to submit, a Supply Plan to CAISO.

(i) Seller shall have delivered to Buyer all insurance documents required under Article 15.

(j) As of the Initial Delivery Date, Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including damages pursuant to Sections 3.8, 3.9, or 16.2(c).

(k) If any applicable Governmental Body requires Seller to develop a decommissioning plan as part of any permitting process for the Portfolio, then Seller shall provide such decommissioning plan to Buyer.

ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT

3.1 Resource Adequacy Capacity Product.

During the Delivery Term, Seller shall provide to Buyer, pursuant to the terms of this Agreement, the Designated RA Capacity in the amount of the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified in Section B of the Cover Sheet to this agreement, and the Contract Quantity shall be either a Firm RA Product or a Contingent Firm RA Product, as specified in Section B of the Cover Sheet (the "Product"); provided, that, notwithstanding anything to the contrary herein (i) the Product does not confer to Buyer any right to the electrical output from the Portfolio, other than the right to

include the Designated RA Capacity associated with 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 Portfolio or any 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 Portfolio or any Unit subsequently qualifies for a local capacity area, the Product shall include all LAR Attributes or RAR Attributes related to such local capacity area; and (v) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing RAR or Flexible Capacity Requirements, LAR Attributes or RAR Attributes, or attributes of the Portfolio or any Unit whereby a Unit which did not previously qualify, subsequently qualifies to satisfy RAR or Flexible Capacity Requirements, the Product shall include all LAR Attributes or RAR Attributes of the Unit, including any LAR Attributes or RAR Attributes with respect to any portion of the Portfolio which previously was not able to satisfy RAR or Flexible Capacity Requirements, as applicable. Specifically, no energy or ancillary services associated with any 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 Portfolio that is in excess of that 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 Designated RA Capacity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price for the Designated RA Capacity delivered to Buyer at the Delivery Point. 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 Scheduling.

Seller shall arrange and be responsible for scheduling of the Portfolio and, as applicable, each Unit and Replacement Unit. Buyer shall arrange and be responsible for any actions necessary for Buyer to receive the Product at the Delivery Point.

3.4 Delivery Point.

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

3.5 Adjustments to Contract Quantity.

(a) Planned Outages: Seller is obligated to meet the Tariff obligations with respect to securing Planned Outage approvals from CAISO. Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Portfolio is scheduled for a CAISO-approved Planned Outage during the applicable Showing Month; provided, that Seller notifies Buyer, no later than the Notification Deadline for that Showing Month, of the amount of Product from the Portfolio that Buyer is permitted to include in Buyer's RAR Showings, LAR Showings and/or FCR Showings applicable to that month as a result of such Planned Outage. If Seller is unable to provide the applicable Contract Quantity for a Showing Month, or any portion thereof, because of a Planned Outage, Seller has the right, but not the obligation, to provide Product for such Showing Month from Replacement Units; provided, that, Seller provides and identifies such Replacement Units in accordance with Section 3.6 hereof. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or Tariff in effect for the applicable Showing Month in which the Planned Outage occurs. For the avoidance of doubt, Planned Outages shall exclude forced outages or any other unexpected failure not otherwise the result of an event of Force Majeure.

(b) Reductions in Portfolio NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section B of the Cover Sheet, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Portfolio experiences a reduction in Portfolio NQC as determined by the CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the Showing Month in which such day occurs. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) that the Portfolio NQC was reduced since the Effective Date, divided by (c) Portfolio NQC as of the Effective Date. If the Portfolio experiences such a reduction in Portfolio NQC, then Seller has the right, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) a specific Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units; provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 3.6.

(i) The Parties understand that the CAISO is considering revising its Tariff provisions relating to RA requirements as part of its resource adequacy enhancements initiative, and that these revisions could include the adoption of an installed capacity (ICAP) and unforced capacity (UCAP) structure such that a resource's capacity could be reduced based on several factors. The Parties agree that if the CAISO amends its RA requirements through the resource adequacy enhancements initiative or any similar stakeholder process such that the available RA Capacity of the Portfolio is reduced based on the performance of the Portfolio, Seller shall exercise commercially reasonably efforts to maintain the Contract Quantity. If despite such efforts Seller is unable to maintain the

Contract Quantity as a result of such change in requirements, then either Party may provide notice to the other Party, once it is reasonably evident that the Contract Quantity cannot be maintained, specifying the altered amounts of Product (the "Change Notice"). Following the issuance of a Change Notice, Buyer shall confirm via notice to Seller the amended Contract Quantity and Payment Quantity based on such change and the date that Seller shall commence delivery of such amended amounts. Notwithstanding the foregoing, if the available RA Capacity of the Portfolio is reduced based on the performance of the Portfolio that is directly attributable to the negligence of Seller, then the Contract Quantity shall not be reduced.

(c) If Product is both Flexible RA Product and Contingent Firm RA Product, as specified in Section B of the Cover Sheet, then Seller's obligation to deliver the applicable Contract Quantity of Product for any Showing Month may also be reduced if the Portfolio experiences a reduction in Portfolio EFC as determined by the CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the Showing Month in which such day occurs. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) Portfolio EFC was reduced since Effective Date, divided by (c) Portfolio EFC as of the Effective Date. If the Portfolio experiences such a reduction in Portfolio EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) a specific Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 3.6.

(d) The Parties acknowledge that Contract Quantity as stated in the table in Section D of the Cover Sheet is based on an expected Effective Flexible Capacity for the Portfolio as defined in the Tariff on the Effective Date, and the intention herein is for Seller to sell to Buyer, and Buyer to buy from Seller the entire Effective Flexible Capacity of the Portfolio.

(e) To the extent the Effective Date of this Agreement occurs prior to the CAISO's setting of a Portfolio EFC for the Portfolio, the Portfolio EFC shall be as agreed to by the Parties and specified in Section D of the Cover Sheet and Seller represents that this Portfolio EFC is consistent with the CAISO's methodology for determining Portfolio EFC as of the Effective Date. The above notwithstanding, to the extent the CAISO decides to reduce the applicable Portfolio EFC, Seller shall not be liable for any costs or damages related to such reduction and the Portfolio EFC shall be reduced per Section 3.5 of this Agreement.

(f) If the CAISO adjusts the Net Qualifying Capacity of the Portfolio after the Effective Date, then for the period in which the adjustment is effective, the Portfolio NQC shall be deemed the lesser of (i) the Portfolio NQC as of the Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity for the Portfolio.

3.6 Alternate Capacity and Replacement Units.

(a) The "Notification Deadline" for a given Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding CPUC RAR

Showings, LAR Showings and/or FCR Showings, as applicable for that Showing Month, or (b) submission of the CAISO supply plan filings applicable to that Showing Month.

(b) If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 3.5, 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 Alternate Capacity 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 that in each case, Seller shall notify Buyer of the amount of Product that Seller will not be able to deliver from the Unit and the portion of the Contract Quantity for which Seller intends, as applicable (i) not to provide or (ii) to provide Alternate Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline; and provided further that Buyer's provision of such Alternate Capacity shall comply with the requirements of D.19-11-016. If Seller notifies Buyer in writing as to the particular Replacement Units in accordance with this Section 3.6(b) and such Replacement Units otherwise meet the requirements of a Unit under this Agreement, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

(c) With respect to a Contingent Firm RA Product, if Seller does not provide Alternate Capacity in an amount equal to the Contract Quantity for that Showing Month, then Buyer may, but shall not be required to, purchase replacement Product.

(d) In the event that Seller fails to provide the Contract Quantity to Buyer in connection with a Planned Outage and Seller has provided Buyer with timely notice pursuant to Section 3.5(a) of Seller's intent not to provide Alternate Capacity due to a Planned Outage in an amount equal to the portion of the Contract Quantity of that Showing Month that is unavailable due to such Planned Outage, Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 3.8 and 3.9 hereof if Seller has delivered written notice of such failure to Buyer by the Notification Deadline.

3.7 Delivery of Product.

Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month consistent with the following:

(a) No later than fifteen (15) Business Days prior to the applicable Showing Month deadline, Seller shall submit, or cause the Portfolio's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity provided to Buyer for each pertinent Showing Month so that the total amount of Designated RA Capacity identified and confirmed for such Showing Month equals the Designated RA Capacity, unless specifically requested not to do so by the Buyer.

(b) Consistent with the substitution rules, take all action, or cause the Portfolio's Scheduling Coordinator to take all action, to allow Buyer or a subsequent purchaser to utilize the Contract Quantity during each Showing Month under the substitution rules, including, but not limited to, ensuring that the applicable capacity being provided as expected Contract Quantity in

the pertinent Showing Month will qualify for substitution under the substitution rules and providing Buyer or subsequent purchaser with all information needed to utilize the substitution rules.

3.8 Damages for Failure to Provide Designated RA Capacity.

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month or the annual RA compliance filing during the Delivery Term, and such failure is not excused under the terms of this Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with D.19-11-016 compliant capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Designated RA Capacity not provided by Seller, provided, that, if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having RAR Attributes and no LAR Attributes, and no such RAR capacity is available (such capacity shall also include FCR Attributes if this is an Effective Flexible Capacity Product), then Buyer may replace such portion of the Designated RA Capacity with capacity having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible RA Product) ("Replacement Capacity"), in either case, by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer, so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer on the date payment would otherwise be due in respect of the Showing Month in 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 Replacement Capacity, plus (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 3.8(a), and (ii) the Designated RA Capacity not provided by Seller for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller pursuant to Article 6 of this Agreement.

3.9 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 Designated RA Capacity as filed in the CAISO Supply Plan for the respective Showing Month for the Delivery Term;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity consistent with Sections 3.6 and 3.7; or

(c) A Portfolio's Scheduling Coordinator's failure to submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder for the respective Showing Month 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. 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.

3.10 Monthly RA Capacity Payment.

Buyer shall make a Monthly RA Capacity Payment to Seller for each Portfolio, in arrears, after the applicable Showing Month. The Parties agree that all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month after the Showing Month, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day. Each Portfolio's "Monthly RA Capacity Payment" shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

3.11 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 the Portfolio for (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 storage capacity of the Portfolio 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 Designated RA Capacity of the Portfolio during the Delivery Term (including any capacity or availability revenues from RMR Agreements for the Portfolio, reliability compensation services Tariff, and residual unit commitment capacity payments, but excluding payments described in Section 3.11(a) (i)-(v) above).

(c) In accordance with Section 3.10 of this Agreement:

(i) all such Buyer revenues described in Section 3.11(b) received by Seller, or the Portfolio's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Portfolio'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 Portfolio'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 Portfolio's Scheduling Coordinator, owner, or operator revenues described in Section 3.11(a)(i)-(v), but received by Buyer shall be remitted to

Seller, and Buyer shall pay such revenues to Seller if the Portfolio'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 the Portfolio'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 Designated RA Capacity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

(e) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism capacity, then Seller will, or will cause the Portfolio's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Buyer and not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

(f) 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.

3.12 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE 4: CAISO OFFER REQUIREMENTS

During the Delivery Term, except to the extent any Unit is in 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 Portfolio's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Portfolio's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of the Portfolio's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Portfolio's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 5: EVENTS OF DEFAULT; REMEDIES

5.1 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;

(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 3.8 and 3.9) if such failure is not remedied within thirty (30) days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 14 hereof;

(f) 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, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

5.2 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 liquidate and 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. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transaction are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under Applicable Law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-

Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 14, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer the current amount of the Performance Security to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Agreement is not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance.

Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential 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 5.2 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 6: PAYMENT AND NETTING

6.1 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.

6.2 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 twentieth (20th) day of each month, or tenth (10th) 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.

6.3 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 6.3 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.

6.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other 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 any related damages calculated pursuant to Sections 3.8, 3.9, or

16.2(c), 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.

6.5 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, any related damage amounts calculated pursuant to Sections 3.8 or 3.9, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security.

Unless the Party benefiting from Performance Security notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article 5, all amounts netted pursuant to this Article 6 shall not take into account or include any Performance Security, subject to the terms of Section 16.1(a), which may be in effect to secure a Party's performance under this Agreement.

ARTICLE 7: LIMITATIONS

7.1 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 8: GOVERNMENTAL CHARGES

8.1 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.

8.2 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 6 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 9: SAFETY

9.1 Safety.

(a) Seller shall, and shall cause any Affiliates performing any design, construction, operation or maintenance, and decommissioning of the Portfolio and Contractors to, design, construct, operate, maintain, and decommission the Portfolio and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.

(b) Prior to 12/31/2020, Seller shall provide Buyer with a Project Safety Plan in a format reasonably acceptable to Buyer, demonstrating Seller's plans to comply with the Safety Requirements and detailing the safety risks that Seller anticipates in delivering the Product, as well as Seller actions taken or planned to mitigate said risks. Seller shall incorporate the Project Safety Plan's features into the design, operation, maintenance, and decommissioning of the Project. Upon Notice to Buyer, Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, maintaining or decommissioning the Project, if in Seller's judgment, the deviation is necessary to design, develop, construct, operate, maintain or decommission the Project safely or in accordance with the Safety Requirements.

(c) Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan.

Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates.

9.2 Reporting Serious Incidents.

Seller shall provide notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The notice of Serious Incident must include the time, date, and location of the incident, the Contractor involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance and cause each of its Contractors to cooperate and provide reasonable assistance, to Buyer with any investigations and inquiries by Governmental Bodies that arise as a result of the Serious Incident.

9.3 Remediation.

(a) Seller shall resolve any Remediation Event within the remediation period. Within ten (10) days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(b) Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide any report relating to a Remediation Event, in a form and level of detail that is acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as requested by Buyer.

ARTICLE 10: REPRESENTATIONS; WARRANTIES; COVENANTS

10.1 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;

(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 of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default or Potential 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.

10.2 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 12. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing the Portfolio'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 and Designated 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 Portfolio 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 this Agreement 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.

10.3 Seller Representations, Warranties and Covenants.

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

(a) Seller is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in the State of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller;

(b) Seller 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. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller (evidence of such due authorization Seller shall provide to Buyer if requested) and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller;

(c) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller 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;

(d) 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;

(e) 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 any reliability must-run agreement between the CAISO and either Seller or a Unit's owner or operator;

(f) 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;

(g) Each Unit is connected to the CAISO controlled grid, is within the CAISO Control Area, or is under the control of CAISO;

(h) 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;

(i) With respect to the RA Capacity provided under this Agreement, Seller shall comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(j) Seller has notified the Scheduling Coordinator of the Portfolio that Seller is obligated to cause the Portfolio's Scheduling Coordinator to provide to the Buyer, no later than fifteen (15) Business Days prior to the applicable Showing Month deadline, the Designated RA

Capacity of the Portfolio that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(k) Seller has notified the Portfolio's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 3.11 of this Agreement;

(l) As between Seller and Buyer, Seller shall be solely responsible for decommissioning of the Portfolio;

(m) As between Seller and Buyer, Seller shall be solely responsible for the presence and operation of a Unit on a Site and for managing the relationship with the owners and occupants of such Site;

(n) The Portfolio and Product, including and any Alternate Capacity, meets the requirements of CPUC D.19-11-016, for which the Parties' mutual understanding as of the Effective Date is described in Exhibit I, or has otherwise been approved by the CPUC through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval mutually agreed to by the Parties, making it eligible to provide resource adequacy as an incremental resource; and

(o) The Portfolio as constructed, operated, and maintained by Seller corresponds with the description of Portfolio provided in Exhibit D of this agreement.

10.4 Buyer's Representations and Warranties.

As of the Effective Date, 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 Law.

(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 Laws 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 warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

ARTICLE 11: CONFIDENTIALITY

11.1 Confidential Information.

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any Applicable Laws, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding the foregoing, the Parties agree that Buyer may disclose the Designated RA Capacity 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 the transfer of the Designated RA Capacity under this Agreement to the Scheduling Coordinator of the Portfolio in order for such Scheduling Coordinator to timely submit accurate Supply Plans; 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. In addition, in the event Buyer resells all or any portion of the Designated RA Capacity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information to the extent such disclosure is necessary to effect such resale transaction, provided that such other party agrees to keep such information confidential.

Seller acknowledges that Buyer is subject to the California Constitution Article 1, Section 3, and the California Public Records Act, Cal. Gov. Code § 6250 *et seq.* ("Public Records Act") in regard to the documents comprising this Agreement, which items may constitute public records subject to inspection and copying by the public under the authority of the California Constitution and the Public Records Act. Buyer shall, consistent with those laws, use reasonable efforts to provide Seller with notice of any third-party request to inspect and copy any of the documents that comprise this Agreement, which Seller might deem confidential and exempt from disclosure, in order that Seller may timely seek to protect those documents from disclosure to the third party. Seller acknowledges and agrees that Buyer shall not be liable to Seller if Buyer makes disclosure in accordance with the California Constitution and/or the Public Records Act before Seller has timely obtained an order to prevent Buyer from making the requested disclosure to the third party.

11.2 Other Confidential Information.

Seller shall comply with all applicable laws and regulations relating to the protection of customer-specific information and data, including California Public Utilities Code Section 8380, et seq. and Decision 12-08-045 "Decision Extending Privacy Protections to Customers of Gas Corporations and Community Choice Aggregators" adopted by the California Public Utilities Commission.

ARTICLE 12: BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Agreement. If Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement ("Resold Product"), Seller agrees, and agrees to cause the Portfolio's Scheduling Coordinator, to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees, and agrees to cause the Portfolio's Scheduling Coordinator, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Agreement, and Buyer shall be responsible for Seller's reasonable costs associated therewith, including reasonable attorneys' fees, all of which Seller shall issue to Buyer for reimbursement in accordance with Section 6.1. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Portfolio's Scheduling Coordinator to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Agreement if Buyer had not resold the Product, including without limitation, pursuant to Sections 3.8 and 3.9.

In the event there is any Resold Product, Buyer agrees to notify Seller that such a sale has occurred and agrees to provide Seller with the information specified below promptly following such sale (and any other information reasonably requested by Seller so that Seller may perform its obligations in this Article 12) and promptly notify Seller of any subsequent changes to such information with respect to any particular sale:

i. Benefitting load serving entity SC identification number (SCID),

ii. Volume (in MW) of Resold Product,

iii. Subsequent sale delivery period for Resold Product.

ARTICLE 13: [RESERVED]

ARTICLE 14: COLLATERAL REQUIREMENTS

14.1 Performance Security.

To secure its obligations under this Agreement, and subject to the terms of Section 16.1(a), Seller shall deliver Performance Security to Buyer within ten (10) business days of the Effective Date. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, termination payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security not allocated to invoiced but unpaid amounts and not otherwise returned as set forth under the terms of Section 16.1(a). Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace Performance Security or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

14.2 First Priority Security Interest in Cash or Cash Equivalent Collateral.

(a) To secure its obligations under this Agreement, and until released as provided herein and subject to the terms of Section 16.1(a), Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance Security, any other cash collateral and cash equivalent collateral posted under this Agreement, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

(b) Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Security, Buyer may do any one or more of the following:

(i) Exercise any of its rights and remedies with respect to the Performance Security, including any such rights and remedies under Applicable Law then in effect;

(ii) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and

(iii) Liquidate Performance Security then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 15: INSURANCE

15.1 Insurance.

Throughout the term of this Agreement, Seller shall procure and maintain the following insurance coverage and require and cause its Contractors to maintain the same levels of coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.1 constitute a material obligation of this Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) If it has employees, workers' compensation insurance indicating compliance with any applicable labor codes, acts, Applicable Laws or statutes, California state or federal, where Seller performs Work.

(ii) Employers' liability insurance will not be less than one million dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the one million dollar ($1,000,000) policy limit will apply to each employee.

(b) Commercial General Liability.

(i) Commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of two million dollars ($2,000,000) per occurrence, and an annual aggregate of not less than five million dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional named insured.

(ii) An umbrella insurance policy in a minimum limit of liability of ten million dollars ($10,000,000).

(iii) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

15.2 Evidence of Insurance

Within ten (10) days after the Effective Date and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing the coverage required under this Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior notice by Seller in the event of any material modification, reduction, cancellation or termination of coverage.

Such insurance shall be primary coverage without right of contribution from any insurance of Buyer.

ARTICLE 16: PORTFOLIO ASSEMBLY AND INITIAL DELIVERY DATE

16.1 Assembly of the Portfolio.

(a) Unit Recruiting. Seller shall use commercially reasonable efforts to recruit Units and have them committed to join the Portfolio. In support of the obligation specified in this Section 16.1(a), Seller shall achieve the following Unit recruitment milestones:

(i) Milestone 1: By no later than December 31, 2020, Seller shall have (i) identified and contracted with the Portfolio's Scheduling Coordinator, (ii) directed the Portfolio's Scheduling Coordinator to have completed its registration with the CAISO, and (iii) received confirmation from the Portfolio's Scheduling Coordinator of the completion of all applicable CAISO requirements. After the completion of this milestone, Buyer shall return to Seller [redacted] percent [redacted] of the Performance Security, the return of which shall not be unreasonably withheld or delayed .

(ii) Milestone 2: By no later than January 1, 2021, Seller shall have enrolled or otherwise have a binding commitment from customers sufficient to supply fifty percent (50%) of the Contract Quantity, the evidence of which shall be provided by Seller to Buyer substantially in the form of Exhibit J. After the completion of this milestone, Buyer shall return to Seller [redacted]percent [redacted] of the Performance Security, the return of which shall not be unreasonably withheld or delayed.

(iii) Milestone 3: By no later than March 31, 2021, Seller shall have enrolled or otherwise have a binding commitment from customers sufficient to supply seventy-five percent (75%) of the Contract Quantity, the evidence of which shall be provided by Seller to Buyer substantially in the form of Exhibit J. After the completion of this milestone, Buyer shall return to Seller [redacted] percent [redacted] of the Performance Security, such that Buyer is only holding [redacted] of the initial Performance Security, the return of which shall not be unreasonably withheld or delayed

(iv) Milestone 4: By no later than January 1, 2026, Seller shall have enrolled or otherwise have a binding commitment from customers sufficient to supply 100% of the Contract Quantity for delivery years 2026 – 2030, the evidence of which shall be provided by Seller to Buyer substantially in the form of Exhibit J. After the completion of this milestone, Buyer shall return to Seller [redacted] of the Performance Security such that Buyer is only holding [redacted] of the initial Performance Security, the return of which shall not be unreasonably withheld or delayed.

Buyer shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, electronic mail message or other document submitted by Seller to Buyer that confirms the completion of the various milestones submitted above.

(b) Failure to Meet Unit Recruitment Milestones. If Seller fails to meet any of the Unit recruitment milestones specified in Section 16.1(a), such failure shall not constitute an independent

Event of Default and Seller's sole obligation shall be to provide a proposed plan to achieve the subsequent milestone in the next occurring progress report provided to Buyer pursuant to Section 16.1(c).

(c) Progress Reports. The Parties agree time is of the essence in regard to the Agreement. No less frequently than once every three (3) months, starting at the Effective Date and increasing in frequency to once every month as of ninety (90) days prior to the Expected Initial Delivery Date, Seller shall provide to Buyer a progress report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's progress with the Portfolio, provided that after the Initial Delivery Date, Seller shall no longer be required to submit monthly progress reports. The form of the progress report is set forth in Exhibit F.

16.2 Initial Delivery Date.

(a) Extension of the Expected Initial Delivery Date. The Expected Initial Delivery Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances:

(i) Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Body required for Seller to own, construct, interconnect, operate or maintain the Portfolio, and to permit the Seller and Portfolio to make available and sell Product by the Expected Initial Delivery Date, despite the exercise of commercially reasonable efforts by Seller; or

(ii) An event of Force Majeure occurs.

(b) If Seller has not achieved the Initial Delivery Date by the Expected Initial Delivery Date, as may be extended pursuant to Section 16.2(a), then Seller shall pay Buyer, or the Performance Security shall be drawn upon to promptly pay Buyer, for an amount equal to the amount that Seller would owe to Buyer pursuant to Section 3.8 for such month if such month had occurred during the Delivery Term and Seller had failed to provide Buyer with the Designated RA Capacity of Product for such month.

(c) Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not extend the Expected Initial Delivery Date beyond the Initial Delivery Date Deadline for any reason, including an event of Force Majeure. No extension shall be given pursuant to Section 16.2(a) if the corresponding delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described in Section 16.2(a)(i)-(ii) did not result from Seller's failure to take such commercially reasonable actions.

(d) Termination for Failure to Achieve Initial Delivery Date. If the Portfolio has not achieved the Initial Delivery Date on or before the Initial Delivery Date Deadline, Buyer may terminate this Agreement upon written notice to Seller and collect as liquidated damages an

amount equal to the remaining Performance Security; provided, that payment of such amount shall constitute liquidated damages and Buyer's sole and exclusive remedy for such termination.

ARTICLE 17: MISCELLANEOUS

17.1 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 Designated RA Capacity 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.

17.2 Indemnity.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective 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 (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's operation and/or maintenance of the Portfolio, 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 Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. 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 failure to maintain any regulatory or CAISO compliance obligations required of Buyer in conjunction with Seller's delivery of the Product under this Agreement at or after the Delivery Point, excepting only such loss, claim, action or suit as may be caused by the willful misconduct or negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 17.2(a) and 17.2(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

17.3 Assignment.

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii)

transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, (iii) transfer or assign this Agreement to any Qualified Transferee, or (iv) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

17.4 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.

17.5 Notices.

All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

17.6 Workforce Development and Community Investment Obligations.

Seller shall conduct outreach with qualified local contractors, so that local firms have a fair opportunity to compete for Portfolio construction contracts. In addition, Seller shall require that construction Contractors utilize locally sourced and union labor to the extent practicable. Seller shall attempt to maximize the enrollment of the Portfolio of customers that are located within Buyer's service territory and purchase electricity from Buyer.

17.7 Recording.

Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

17.8 General.

This Agreement (including the exhibits, schedules and any written supplements hereto), if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

17.9 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 Quantity delivered at the Delivery Point. 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.

17.10 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

17.11 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 17.11) (a "Dispute"), any Party (the "Notifying Party") may deliver to the other Parties (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a brief summary of the Recipient Party's position on the Dispute and a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Sections 17.11(a) and (b) by the expiration of the thirty (30) day period set forth in Section 17.11(b), then a Party may pursue any legal remedy available to it in accordance with this Agreement.

17.12 Execution.

A signature received via facsimile or email shall have the same legal effect as an original.

17.13 Joint Powers Authority.

Seller acknowledges and agrees that Buyer is organized as a joint powers authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq*.) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Buyer's members in connection with this Agreement.

17.14 Seller's Portfolio.

The terms and conditions of the agreements governing the relationship between Seller or its Affiliate and a customer with respect to such customer's participation in Seller's Portfolio are independent of Buyer and Buyer shall have no responsibility with respect to such customers or Seller's Affiliate for purposes of Seller's Portfolio. Seller agrees to independently resolve, or shall cause its Affiliate to resolve, any disputes arising between Seller or its Affiliate and any customer.

17.15 Public Announcements and Marketing.

Seller shall make no public announcement regarding any aspect of this Agreement without the prior written consent of Buyer. For the avoidance of doubt, Seller and Buyer shall not engage in

any joint marketing campaign for the purposes of Unit recruitment without prior written consent of Buyer.

[*Remainder of Page Intentionally Left Blank*]

DRAFT

Acknowledged and agreed to as of the Effective Date.

Leapfrog Power, Inc., a Delaware corporation	**Valley Clean Energy Alliance, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address**]**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

[Buyer], a California joint powers authority

[Address]

Ladies and Gentlemen:

By the order of _____ ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of[Buyer], a California joint powers authority ("Beneficiary"), [Address], for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Agreement dated as of_____ and as amended (the "Agreement") between[Applicant] and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [XXXXXX] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt)with the originals to follow via courier. The drawing will be effective upon our receipt of the original documents at the above noted address.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by registered mail or overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to:[Buyer], Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

_____

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of[Buyer], a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [Buyer], a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to[Buyer], a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

[Buyer]

_____

Name and Title of Authorized Representative

Date_____

EXHIBIT B: [RESERVED]

EXHIBIT C: [RESERVED]

EXHIBIT D: PORTFOLIO

Exhibit D-1: Portfolio Overview

PORTFOLIO: The following describes the Portfolio:

Portfolio Specific Information	
Resource Name	**Leap DR**
CAISO Resource ID	Multiple
SCID of Resource	LEAP
Minimum Portfolio NQC by month	Jan: 7 Feb: 7 Mar: 7 Apr: 7 May: 7 Jun: 7 Jul: 7 Aug: 7 Sep: 7 Oct: 7 Nov: 7 Dec: 7
Portfolio EFC by month	Not Applicable
TAC Area	PG&E or CAISO System, as agreed by the Parties
Capacity Area	CAISO System
Resource Category as defined by the CPUC	DR

Exhibit D-2: Portfolio List of Shown Units:

Shown Unit Specific Information	
CAISO Resource ID	
Resource Type	

Physical Location	
Unit NQC by month (e.g., Jan =50, Feb =65)	

[Shown Unit information will be provided prior to the Delivery Date]

EXHIBIT E: [RESERVED]

EXHIBIT F: PROGRESS REPORTING FORM

Each progress report must include the following items:

1. Executive Summary.

2. Portfolio description.

3. Description of any material planned changes to the Portfolio.

4. Schedule showing progress on Portfolio recruitment and toward the Initial Delivery Date.

5. Summary of activities during the previous month, including any OSHA labor hour reports.

6. Forecast of activities scheduled for the current calendar quarter.

7. Written description about the progress relative to the Initial Delivery Date, including whether Seller is on schedule with respect to the same.

8. List of issues that are likely to potentially affect achievement of the Initial Delivery Date.

9. Progress and schedule of Governmental Approvals, technical studies, and financing arrangements.

10. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and interconnection progress.

11. Compliance with workforce and prevailing wage requirements.

12. Any other documentation reasonably requested by Buyer.

EXHIBIT G: [RESERVED]

EXHIBIT H: PLANNED OUTAGE SCHEDULE

Portfolio Name	CAISO Resource ID	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date
N/A	N/A	N/A	N/A	N/A

EXHIBIT I: INCREMENTALITY OF THE SHOWN UNITS

Pursuant to D.19-11-016, Seller and Buyer agree that the Commission has yet to determine a specific set of rules regarding incrementality of Demand Response Resources and continues to refer to D.16-12-036 "as a starting point for incrementality principles for demand-side resources."[1] The baseline resources list adopted in R.16-02-007 against which incrementality required by D.19-11-016 is measured, does not explicitly list Demand Response Resources and states that "LSEs need to demonstrate that the demand response being procured is incremental to the IOU demand response programs funded in the 2018-2022 funding cycle." From an initial inquiry on May 19, 2020, Buyer received no guidance from Energy Division as to how to demonstrate incrementality of DR Resources.

In developing their own guidelines for incrementality, pursuant to D.16-12-036 which allows for the creation of different methods to determine incrementality so that the Commission "can determine which one method provides the best outcomes,"[2] Seller and Buyer have reviewed incrementality models 2, 4, and 5 proposed during the August 2016 working group in R.14-10-003 as well as SCE's incrementality matrix published in 2019 and approved by the Commission in 2020 under R.16-02-007. Using these models as a guide, Seller and Buyer agree that the Shown Units in Seller's Portfolio are in line with the principles of incrementality and conform to the following criteria:

- Shown Units do not leverage any kind of technology-specific incentive program (*i.e.* SGIP) to join the Portfolio;
- Seller has not taken any technology incentives to build out the company or technology
- Seller's Portfolio will consist of new CAISO Resource IDs that have never been registered with CAISO;
- Although Seller does not have access to customers' IOU DR program enrollment information prior to 2019 due to customer privacy regulations and has not yet received guidance from Energy Division on how to ascertain this information, Seller ensures that customers in the Portfolio have not participated in any IOU DR programs funded in the years 2019-2022, and will not participate in any IOU DR programs throughout the term of the agreement;
- The capacity MWs recruited for this agreement are incremental to the capacity MWs used by the Seller in previous RA contracts from 2019 - 2020;
- As the Demand Response Auction Mechanism (DRAM) is a pilot program that solicits offers for only a one-year term and its continuation after 2022 remain uncertain, it is the mutual understanding of Seller and Buyer that DRAM resources should not be considered a permanent source of DR or incorporated into utility long-term forecasting. Thus, resources previously procured for DRAM are "not reasonably expected to be sourced

[1] R.16-02-007: "Administrative Law Judge's Ruling Finalizing Baseline for Purposes of Procurement Required by Decision 19-11-016." Filed Jan 3, 2020. Pp 8. https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M323/K767/323767159.PDF

[2] D.16-12-036: "Decision Addressing Competitive Solicitation Framework and Utility Regulatory Incentive Pilot." Issued Dec 22, 2016. Pp 21 - 22. https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M171/K555/171555623.PDF

through another utility procurement, program, or tariff"[3] and are considered wholly incremental under SCE's matrix.

[3] R.16-02-007: "Southern California Edison Company's (U 338-E) Comments on Commission Staff's Proposed Baseline List of Resources." Filed Dec 9, 2019. Appendix A 'SCE's Incrementality Matrix.''

EXHIBIT J: MILESTONE COMPLETION CONFIRMATION

Customer Type	Load Type	Per-Customer Capacity (kW)	Count of Customers	Aggregate Capacity (kW)

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING ENTERING INTO AN AGREEMENT FOR RESOURCE ADEQUACY WITH VESI 10 LLC AND AUTHORIZING INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE RESOURCE ADEQUACY AGREEMENT

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;

WHEREAS, in November 2019 the California Public Utilities Commission (CPUC) directed all load-serving entities (LSE's), including VCE, to procure additional "incremental" resource adequacy (RA);

WHEREAS, in April 2020, a request for offers (RFO) for long-term "incremental" RA was issued jointly with Redwood Coast Energy Authority (RCEA), a Community Choice Aggregator (CCA), similar to VCE in its size and needs; and,

WHEREAS, each CCA (VCE and RCEA) will contract separately for portions of resources scaled to their respective RA needs.

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

1. The Resource Adequacy Agreement by VCE for 2.5 MW share of the VESI 10 LLC stand-alone battery storage project under development by Viridity Energy Solutions attached hereto as Exhibit A, is hereby approved.

2. The Interim General Manager and/or his designee is authorized to execute and take all actions necessary to implement the agreement substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel is authorized to approve minor changes to the agreement so long as the term and price are not changed.

///
///
///

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Don Saylor, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment A: Resource Adequacy Agreement with VESI 10 LLC

Attachment A

Resource Adequacy Agreement with VESI 10 LLC

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE (VCE) APPROVING ENTERING INTO AN AGREEMENT FOR RESOURCE ADEQUACY WITH LEAPFROG POWER, INC. AND AUTHORIZING INTERIM GENERAL MANAGER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE RESOURCE ADEQUACY AGREEMENT

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;

WHEREAS, in November 2019 the California Public Utilities Commission (CPUC) directed all load-serving entities (LSE's), including VCE, to procure additional "incremental" resource adequacy (RA);

WHEREAS, in April 2020, a request for offers (RFO) for long-term "incremental" RA was issued jointly with Redwood Coast Energy Authority (RCEA), a Community Choice Aggregator (CCA) similar to VCE in its size and needs; and,

WHEREAS, each CCA (VCE and RCEA) will contract separately for portions of resources scaled to their respective RA needs.

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

1. The Resource Adequacy Agreement by VCE for aggregate demand response – residential and commercial / industrial load reduction from Leapfrog Power, Inc., attached hereto as Exhibit A, is hereby approved.

2. The Interim General Manager and/or his designee is authorized to execute and take all actions necessary to implement the agreement substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel is authorized to approve minor changes to the agreement so long as the term and price are not changed.

///
///
///

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2020, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Don Saylor, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment A: Resource Adequacy Agreement with Leapfrog Power, Inc.

Attachment A

Resource Adequacy Agreement with Leapfrog Power, Inc.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: VCEA Board of Directors

FROM: Mitch Sears, Interim General Manager
George Vaughn, Director of Finance & Internal Operations
Shawn Marshall, LEAN Energy

SUBJECT: Strategic Plan progress update and receive feedback

DATE: September 10, 2020

PURPOSE

The purpose of this staff report and its attachments are to: 1) brief the Board on summarized Three-Year Strategic Plan (Plan) feedback received via questionnaires, phone interviews and the recent CAC meeting, 2) provide the latest thinking on VCEA's three-year goals by operational category and to receive Board feedback on same; and, 3) to describe next steps toward Plan adoption by the Board in October.

BACKGROUND

In February 2020, the Board directed staff to move ahead with development of a VCEA strategic plan to guide its goals and activities over the next 3-5 years. Notwithstanding a subsequent COVID delay and modified planning approach, staff has moved ahead with the help of LEAN Energy US to receive detailed Plan input and feedback via questionnaire and phone interviews and to draft a Plan which is currently under review by the CAC and Board subcommittee. Attached you will find summary feedback results in the form of a memo from LEAN Energy US and detailed spreadsheets highlighting Board and CAC comments received over the last several weeks.

DISCUSSION AND ANALYSIS

Building on the feedback received, the CAC met on August 27th and discussed in detail the proposed Plan structure and goals. The valuable suggestions received during the CAC meeting (and the days thereafter) have been considered and incorporated into the draft "abridged" Plan, so called because it does not yet include detailed strategies to support each goal. We decided to first focus on refining context/vision statements and to ensure that the goal statements are the correct combination of aspirational, practical and achievable before adding detailed strategies and action steps to implement each goal. Those will come next in upcoming drafts.

NEXT STEPS

Once the goals have been refined/finalized, staff will add and update strategies to implement each goal within a three-year time horizon. A section on performance metrics will also be

added. The intention is to have the full Strategic Plan ready for adoption by the Board at its October meeting. Proposed steps between the September and October Board meetings are as follows:

- September 8: CAC Strategic Plan Task Group to provide feedback on Plan
- September 10: Board to review and provide comment on Plan structure and goals
- September 11-21: Staff and consultants integrate final feedback received from Board and CAC members, update and add strategies, and issue DRAFT Plan for review
- September 24: CAC to review/recommend adoption of VCEA's Strategic Plan for Board consideration on October 8, 2020
- October 8: Board consideration and adoption of VCEA Three-Year Strategic Plan

CONCLUSION

Please be advised that the Plan continues to be a work in progress, but we are getting closer to a finished product that represents the aspirational and operational views of the Board, the CAC and VCEA staff. We look forward to presenting the full Strategic Plan for potential Board adoption next month.

ATTACHMENTS

1. VCE Strategic Plan Findings Memo from LEAN Energy US
2. VCE CAC Questionnaire Results
3. VCE Board Questionnaire Results
4. Updated DRAFT/Abridged Strategic Plan with Updated Goal Statements

LEAN ENERGY U.S.
Local Energy Aggregation Network

Harnessing the Power of Communities

TO: Mitch Sears, General Manager, VCEA
George Vaughn, Director of Finance and Internal Operations

FROM: Shawn Marshall, Executive Director, LEAN Energy US

DATE: August 19, 2020

RE: VCEA Strategic Plan – Key Findings and Summary of Leadership Feedback

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Pursuant to our work with the VCEA team on its 2021-2024 Strategic Planning process, this memo will provide a summary of the main themes and findings from the Board of Director (Board) and Community Advisory Committee (CAC) feedback that was received via questionnaire and phone interviews over the past few months. VCEA received feedback from five Board members representing each member agency and from nine CAC members. A copy of the questionnaire is attached for reference as are the aggregated results presented in spreadsheet format for each group. Board and CAC members are encouraged to review the responses in the spreadsheets because they contain many specific ideas and details not captured in this summary memo.

KEY THEMES AND GENERAL FINDINGS

Board and CAC Alignment. Overall, we found a significant level of content alignment between responding Board and CAC members. This is good news for VCEA, as it indicates a general consensus regarding the key goals, challenges and opportunities faced by VCEA. There is also a high level of value placed on the CAC and a general sentiment from the Board that VCEA staff should continue to make good use of the CAC for feedback and vetting which will allow for the Board to spend their time focused on Agency policy, statewide issues, and Board-level decision making.

Fiscal and Rate Focus. Perhaps not surprisingly, the priority among respondents remains squarely on the Agency's fiscal health and the ability to offer competitive rates. All are aware of and want to pursue the agency's aggressive environmental goals through smart, policy-driven procurement and local community energy programs. However, almost to a person, there was an acknowledgement that these goals must be pursued within the context of VCEA's financial capabilities and ability to offer competitive customer rates.

The 'fiscal focus' carried over to a few other areas including Agency expansion and pursuit of resource intensive goals such as becoming a public utility or pursing a customer owned grid. No one disagreed that these are valuable efforts, but there was little consensus that these should

be given high priority in the next few years. More information on expansion is included in the Board section below.

Renewable/Carbon Free Targets. VCEA's stated procurement goal is 85% renewable and 100% GHG-free by 2025. While some members of the CAC would like to see a more aggressive target and effort placed on communities going to 100% renewable as the default option, the majority of respondents feel that the current clean power targets remain appropriate for the foreseeable future. Nearly all respondents support a prohibition on coal and nuclear power sources.

Public Engagement w/ Focus on Business and Ag. Customer engagement and retention was another area of shared importance. Many respondents are pleased with the marketing efforts to date, but acknowledge that there is still a long way to go to fully embed VCEA within its member communities. Many stressed the need to better engage VCEA's commercial and agriculture customers, perhaps through more consistent outreach and specialized rates, and to participate as sponsors or volunteer leaders on chamber boards, civic organizations and other influential community organizations. Social media monitoring and proactive responses to correct misinformation is noted as an area for needed improvement.

Topical Rankings. In terms of topical rankings, Board and CAC priorities overlap in a few key areas, noted in red below. These priorities correspond with two differences: 1) The Board places a higher priority on statewide issues and the CAC places higher priority on energy and procurement. Both groups rank fiscal health and customer/community in the top three. Respondents were asked to rank order the following 7 topics:

- Finance and Fiscal Health (Board #1, CAC #2)
- Customers and Community (Board #2, CAC #3)
- Statewide Issues (Board #3, CAC #6)
- Energy and Procurement (Board #4, CAC #1)
- Organization and Workplace (Both groups rank this 5th)
- Decarbonization/Grid Programs (Board #6, CAC #4)
- Information and Systems/Technology (both groups rank this 7th)

Decarbonization Program Rankings. When queried about decarbonization/grid program priorities, the results are more diffuse with some folks not responding due to a lack of adequate knowledge. It is notable that this topic area, as shown above, did not make the top 3-4 Agency priorities for either group, which is perhaps telling in itself. That said, community energy education, energy efficiency, microgrids/storage and community solar appear high on the radar as soon as financially feasible. Respondents were asked to rank order the following 7 program areas:

- Community Energy Education/Personal Dashboards (Board #1, CAC #2)
- Energy Efficiency (Board #2, CAC #3)
- Microgrids/Energy Storage (Board #3, CAC #5)
- Community Solar/Local Power Devt (Board #4, CAC #1)
- EV Incentives/Infrastructure (Board #5, CAC #6)
- Demand Response Programs (Board #6, CAC #4)
- Building Electrification (both groups rank this 7th)

SMUD, Staffing and Shared Services. Last but not least, SMUD remains a valued partner to VCEA. While there was some variance on the future ratio of VCEA/in-house vs. outsourced staffing, all acknowledge that SMUD has been an important operational partner, especially in the area of power planning and procurement. Both groups acknowledged VCEA's hardworking staff and are in general support of a continued partnership with SMUD. At the same time, there was clear interest in the potential for shared services with other CCAs as long as it makes financial sense and VCEA autonomy is retained. There is more to consider and analyze in terms of cost/benefits of these operational scenarios going forward.

BOARD FEEDBACK

The following are some additional findings from the Board feedback:

1) The Agency's financial health and fiscal future is number one priority, followed closely by competitive rates which are defined as "equal to or less than PG&E rates."
2) While the Board is satisfied with the current clean power targets and power mix, it is supportive of additional local/regional power opportunities as financials allow for it.
3) Expansion does not appear to be a priority at this time, unless there is interest within Yolo County. Some requested more defined criteria for expansion and clearer understanding of economic and mission alignment before engaging potential new members.
4) Board agendas and packets are long; consider supplemental packets and further use of the CAC to vet certain issues and keep Board decisions at a higher policy level.
5) Consider a study that examines the efficacy and economics of a shift to more in-house VCEA staff in core roles, fewer consultants, continued or reduced use of embedded SMUD staff/services, and the prospects for shared services with other CCAs.
6) Concerned about loss of large commercial and ag accounts, which are lucrative customers; consider ways to reengage them, potentially through simplified or special rates. Need to approach commercial customer engagement like the private sector.
7) VCEA is not yet well known in the community even though recent marketing efforts have been positive. Future focus on managing/engaging social media and deeper connections in the community through sponsorships and local leadership roles.
8) Acknowledged need to remain engaged with Cal-CCA and statewide issues – with focus on issues that have a direct operational and/or fiscal impact.
9) Continued pursuit of community-owned grid and/or transition to a public utility are not seen as financially realistic at this time.
10) An investment grade credit rating is worth pursuing only if there are tangible financial benefits (e.g. more favorable contract pricing) beyond major capital projects which are not contemplated in the next three years.

CAC FEEDBACK

The following are some additional findings from the CAC feedback:

1) CAC respondents acknowledge need for the Agency's fiscal health but lead with emphasis on higher percentage of renewables and local advanced energy projects/programs. Many detailed ideas were offered and worth discussion.

2) CAC is generally more favorable to a transition to VCEA/in-house staff, especially in core leadership roles, marketing and technical expertise in the areas of energy programs, decentralized power, community electrification and energy resilience.
3) Strong response to idea of shared/consolidated services as long as VCEA retains autonomy; may support the idea of a study to examine cost/benefits of various staffing and shared service delivery options.
4) Responses offer many ideas for community collaboration, local programs and funding sources. This is an area for follow up.
5) Mixed reaction to potential for VCEA to be "sole provider" and continuing with the pursuit of becoming a public utility.
6) CAC echoes the Board in calling out more customer engagement of large commercial and Ag customers.
7) Many CAC members are interested in continuing to encourage West Sacramento to join but do not see expansion outside Yolo County as a priority.
8) Climate education and outreach in underserved communities was called out by several respondents.

NEXT STEPS

As discussed on a recent planning call, the feedback and input from this exercise will be used to inform - and in many cases validate - the draft Strategic Plan that staff has been working on for several months. The CAC will discuss the aggregated results and provide any additional feedback at their next meeting on August 27th. This will be followed by review and comments on the draft Plan by the CAC's strategic plan task group. From there, staff anticipates finalizing the draft Plan for full CAC review and "recommendation to adopt" in September. The Plan will be previewed by the Board at its September Board meeting (if ready), and formally adopted at its October or November Board meeting. As noted, VCEA's Strategic Plan will cover the three-year period 2021-2024 with annual reviews and periodic amendments as may be needed.

Attachments: Strategic Plan Questionnaire, Board Questionnaire/Interview Results, CAC Questionnaire Results

Valley Clean Energy Alliance
2021-2024 Strategic Plan – CAC Questionnaire Results

Note: Summary of questionnaire responses from 9 CAC members.

CATEGORY	TOPICS/QUESTIONS	RESULTS/KEY THEMES
Big Picture	1. Top 2-3 priorities in next 3-5 years?	Grow customer base, keep rates equal to or lower than PG&E, continue to market VCE brand, deliver 100% renewable as only product by 2030 or sooner, promote community electrification, increase wind and solar, stabilize admin functions, generate enough reserves to begin supporting programs, convince West Sacramento to join, collaboration with other utility/infrastructure owners, microgrids, local ownership of energy projects, ag engagement.
	2. What needs to happen to get there?	Help from the PUC re: PG&E rates and legislative assistance to help level the playing field (2); More green power projects in Yolo region; Make green power trade-offs to retain price sensitive customers; Aggressive marketing and PR campaign to bring back opt-outs.
Topical Ranking	3. Please rank order (see next column)	Organization and Workplace 3 5 6 5 3 5 6 3 (36) Customers and Community 2 7 5 4 1 4 1 4 (28) Decarbonization/Grid Programs 7 2 3 2 6 2 4 7 (33) Finance and Fiscal Health 1 6 4 3 2 3 3 1 (23) Statewide Issues 6 4 2 5 7 7 5 5 (41) Energy and Procurement 5 1 1 1 3 1 2 2 (16) Information and Systems Tech 4 3 7 7 4 6 7 6 (44) Other 5 8 Educating community about climate crisis, 5-year vision, set of goals and guiding principles, infrastructure, local climate action plan and implementation
Organization and Workplace	4. Is VCEA expansion a key goal?	Yes (4), Expansion important, but not a key goal (3), No (2) Focus first on Yolo County then consider contiguous areas.
	5. In-house vs. consultant support? Reduce dependence on SMUD?	In-house yes (5), consultant yes (1), consultant only as needed (2). Reduce dependence on SMUD yes (3), not yet (3). Most agree that core leadership roles should be VCEA staffed.
	6. Shared services or functional consolidation with other CCAs?	Yes (7), No (0), Needs to be evaluated (2) Significant support for shared services as long as the business/economic case can be made and VCEA doesn't lose autonomy
	7. Do we have the right staffing mix?	Yes (3), No (5), Not sure (1) -- would like to see more energy program and marketing brought in house; key leadership roles should be in-house.
Customers/Community	8. What should we do more of/differently for our customers?	Follow-up with opt outs; More outreach on importance of addressing climate change; Offer programs for lower income, elderly, small business; Financing building improvements; Stop thinking NEM customers as a procurement problem; Customer opinion research, focus groups, webinars; Engage in Ag customers more

	9. Choose 1 customer-facing goal	Those eligible for bill assistance have the option; Establishing a contact system; Reduce rates (when possible); Make customer's self-generation part of energy mix; Help customers understand the value of VCE at the community (not just individual) level; More outreach and education, particularly for Ag customers
	10. Other community/customer priorities?	Target large business or Ag groups with high opt-out rates; Broad contact with everyone; Engage folks at Cool Davis and UCD; Collaboration with member jurisdictions with local services like waste collection; Energy education in schools; PV+Storage microgrids on schools; Research and development for appropriate outreach to Ag customers; Seniors, renters, small business
Decarbonization/Grid Programs	11. Please rank order (see next column)	EV Incentives/Infrastructure 7 3 6 7 4 6 4 3 Energy Efficiency 1 5 4 2 6 4 5 1 Microgrids/Energy Storage 5 4 1 3 5 2 3 2 7 Demand Response Programs 6 6 5 1 2 7 4 Community Solar/Local Power Devt 2 7 2 5 1 1 1 7 2 Building Electrification 4 2 7 4 7 5 6 5 Community Energy/Personal Dashboards 3 1b 3 6 3 2 3 6 **Other:** 1a 1 Other=1a: Community Climate Education – maybe fold into the one above – why I labeled them 1a and 1b – they go hand in hand 1- Ag related -- electrification incentives
	12. Ideas to leverage limited resources for more programs	Seek partnerships with local groups (3); Grants (2); Offer value and potential; Use website to publish case studies, start a blog, hire interns to provide energy audits; Volunteers; UCD expertise; PV+ Storage with funding help by state programs/SGIP; Community Solar
Finance/Fiscal Health	13. What do competitive rates mean to you?	Rates no higher than PG&E (4); rates that offer savings via TOU (2); Energy with a higher renewable % that IOU at the same or slightly lower price; Rates that won't be the reason we are not first choice; helping customers achieve better long-term energy costs and resilience results (2); Changing the popular conversation about competitive rates/create mindset and dialog about how to survive a more volatile and dangerous future.
	14. Move away from PGE rate structure to cost-based rates?	Yes (3); Not in short term (1); Should be explored (5); Other options should be explored (1)
	15. Prioritize investment grade rating?	Yes (3); Not sure how it would help achieve goals (1); Not sure what the benefits would be to build reserves at this point (4)
Energy/Procurement	16. Current target of 85% RPS/GHG free by '25?	Yes (1); Not sure in light of current economic disruption (2); No, I want 85% renewable by 2025 and 100% renewable by 2030 or sooner (1); Yes, it's a start (1); I don't agree with VCE's emphasis on GHG free (1); Target should be to increase local renewable supply (1); Move higher as aggressively as market conditions and organizational finances allow (1)
	17. Local vs regional vs out of state power	Prioritize local (2); Charge a small premium for local (1); Exclude out of state if possible (2); OK with balancing local and regional (3); Whatever is least cost and lowest carbon/fuel (1)
	18. Exclude any power sources?	Nuclear (5); Fossil Fuel (3); Biomass maybe (1); Not for now (3)
Statewide Issues	19. Ok to be sole provider status?	Yes (3); No (3)
	20. Pursue customer owned grid option?	Yes (2); Watch for and pursue opportunities to establish micro-grids (1); Should not be a priority right now (1); Worthy of further investigation (2)

	21. Pursue muni-utility status?	Yes (3); Maybe, consider economic consequences (1); No (4)
	22. How much time for Cal-CCA reg/leg? What matters most in this area?	Yes (5); Not sure (1); Legislation that impacts our goals (2); Legislation and regulation that would erode or pre-empt the responsibilities of CCAs or impose burdens that challenge CCA viability (1)
Extra Credit	23. What most proud of?	Having the starting base rate be 42% renewable – that is everyone is at least 42% RPS; Just being a part of this; That it was successfully launched and has established a reputation that has allowed it to keep opt-outs to a minimum (2). The outreach has been very impressive; I think team work. It's crucial to organizational success. Mitch and staff have consistently done a fine job facilitating team based discussion and action; VCE has aggressively pursued and achieved clean energy and GHG reduction goals and is building positive brand recognition in the communities we serve; I've really like the work the marketing team and Green Ideals has done with the website, advertising, flyers, etc.; That we are up and running, respected and do things in a transparent, open and thoughtful manner. Also, I am pretty proud of the bus and newspaper ads!!
	24. What keeps you up at night?	The thought of purchasing 100+ year old transmission infrastructure from PG&E; The Climate Crisis in General; VCEA stepping back on 42% or deciding to slow progress to more renewables; Learning all the details; Concerns about getting everything done and meeting my business and voluntary commitments, and thinking about where we're going to travel after the pandemic has subsided; Nothing, really, except maybe pondering the lessons the VCE experience is teaching; City making secret deals, highly favorable to developers, with no public engagement or involvement by resident experts, and hiding behind climate emergency or the CAAP to justify the deals. VCE should be concerned about whether a respondent to their RFO who's using city or county property in VCE's territory acquired the use of that property through a legitimate public process. If not, then the taxpayers in the jurisdiction that owns the property are subsidizing that bidder; The financial failure of VCE due to forces beyond our control, including IOU; It's frustrating that the financial uncertainties around PCIA and RA have kept VCE from being able to focus more on programs, community, developing new rates for the community, etc. (2)
	25. Wish you understood better?	Resource Adequacy; PCIA; Limitations; More about the inner workings and issues that VCE staff is dealing with, though I many not really want to know!; To what extent VCE experience mirrors or is typical of all CCAs; The long-term thinking of the CPUC; How to read and understand the nuances of the financials.
	26. Wish we could change about VCEA?	CAC be more representative of the community (3); Nothing yet; Misconceptions about VCE's intentions; More robust governance; Get rid of cumbersome website platform by CirclePoint.
	27. What else?	Member jurisdictions to opt up to 100%; If we are cautious and practical, why hold back?; Can VCE get more done along the lines of our early aspirations by understanding PG&E's programs and taking action to make them work better for its customers?; Where do we want to be in 5 years?; What do our customers need/want and how can we adjust to meet those needs?; Are there other ways to reach out and engage our customers to enhance our effectiveness?

Valley Clean Energy Alliance
2021-2024 Strategic Plan – Board Member Questionnaire Results

Note: Summary of responses from 5 VCEA Board members (4 questionnaires, 3 phone interviews). All member agencies are represented.

CATEGORY	TOPICS/QUESTIONS	RESULTS/KEY THEMES
Big Picture	1. Top 2-3 priorities in next 3-5 years?	Competitive rates at or below PG&E (2); Local PPAs as much as possible/secure additional clean power (3); Financial resilience plan/financial stability; "stay in business" (3); Consistent outreach to opt-out customers; Community energy programs and econ devt. activities once financial objectives are met (2); Acquire distribution assets from PG&E; Protect the right of open markets; Integrated Yolo County CCA.
	2. What needs to happen to get there?	Help from the PUC re: PG&E rates and legislative assistance to help level the playing field (2); Get past playing defense all the time; More green power projects in Yolo region; Make green power trade-offs to retain price sensitive customers; Aggressive marketing and PR campaign to bring back opt-outs.
Topical Ranking	3. Please rank order (top 3 indicated in red)	Organization and Workplace 3 6 5 6 (20) Customers and Community 1 4 3 3 (11) Decarbonization/Grid Programs 7 5 6 5 (23) Finance and Fiscal Health 2 1 1 1 (5) Statewide Issues 4 3 4 2 (13) Energy and Procurement 6 2 2 4 (14) Information and Systems Tech 5 7 7 7 (26)
Organization and Workplace	4. Is VCEA expansion a key goal?	Discuss with Board; prefer to keep it to Yolo County (3); expansion should be deliberate and based on certain criteria; interested in further analysis, but growth isn't high on the list. Need to maintain focus.
	5. In-house vs. consultant support? Reduce dependence on SMUD?	Further direction of in-house staff to build capacity (2); partnership with SMUD has been valuable; don't change (3); Set economic targets to trigger move away from consultants/SMUD (1).
	6. Shared services or functional consolidation with other CCAs?	Yes, for reg/leg and municipalization issues; support consolidation and shared services if makes economic sense; May not have a choice (referenced MCE). Consider a study that analyzes in-house staff expansion vs. outsourced vs. consolidation of services with other CCAs
	7. Do we have the right staffing mix?	Amazing staff; Leverage private sector to improve marketing and communications; Look for ways to reduce legal consultants. Need to make better use of CAC to vet issues and keep Board at higher level decisions (2).

Customers/Community	8. What should we do more of/differently for our customers? 9. Choose 1 customer-facing goal 10. Other community/customer priorities?	Some folks still don't know about us; need to focus on customer retention and bringing back profitable customers – need to act like a private sector company with our large business and ag customers (3); how to deal with viscious social media conspiracy theorists? Customer retention especially with commercial accounts (4); maintain rates at or below PG&E; PG&E bills are an awful portal through which to view VCEA – need to improve that. Let the data show us where its important to focus -- who are our most profitable customers and focus there; Social justice implications of green solutions -- focus on communities of color, underserved and those most impacted by climate change; get to as many public events as possible so public knows who we are; Incentives for solar and smaller facilities.
Decarbonization/Grid Programs	11. Please rank order (top 4 in red; pls. note incomplete rankings) 12. Ideas to leverage limited resources for more programs	EV Incentives/Infrastructure 5 1 5 1 (11) Energy Efficiency 2 3 3 (8) Microgrids/Energy Storage 4 6 2 (8) Demand Response Programs 7 4 (11) Community Solar/Local Power Devt 3 2 4 (9) Building Electrification 8 7 (15) Community Energy/Personal Dashboards 6 1 (7) **Other:** Econ Devt for Clean Tech 1 Reduce # of lawyers; Campaign to inform about EV incentives and how green solutions promote social equity; for any option, want to know how it fits into GHG reduction goals and financial biz strategy; go after/prepare for SACOG grants and State grants.
Finance/Fiscal Health	13. What do competitive rates mean to you? 14. Move away from PGE rate structure to cost-based rates? 15. Prioritize investment grade rating?	At or below any other provider in the area (3); exceeding PGE rates puts us at risk (2); equal to, less than or up to 3% above PG&E rates. Favor unique rates that include non-monetary benefits; Someday hope to stand on our own with rate-setting; move to our own if saves money and keeps costs down – especially important with Ag customers. Need to simplify. Yes, but not at the expense of competitive rates(3); need to consider recession; Need to know more – does it benefit procurement pricing? Absent that, having it for major capital projects is not on the near-term horizon.
Energy/Procurement	16. Current target of 85% RPS/GHG free by '25?	Yes its fine as is (4); yes, if we can get there within financial constraints.

	17. Local vs regional vs out of state power	Goal to be as local as possible but mindful of financial constraints and competition with other CCAs (3); go as local as possible without overpaying; interested in local power for econ devt reasons, but no problem with "outside" power if meets price and environmental goals.
	18. Exclude any power sources?	Coal/Nuclear should be last resort and/or excluded(3); interested in new clean technologies; gold standard is local renewables.
Statewide Issues	19. Ok to be sole provider status?	Yes (3) -- worried about Direct Access; Yes, as long as rates kept down (2).
	20. Pursue customer owned grid option?	Yes; but the option likely closing for now. Yes, but at what level of resource?
	21. Pursue muni-utility status?	Yes, if makes economic sense to control costs (3); Through lobbying or reg changes that make it possible without extraordinary cost/effort; direct takeover/condemnation doesn't make sense at this time.
	22. How much time for Cal-CCA reg/leg? What matters most in this area?	Any effort that helps us gain more control of costs and rates; PCIA relief. Focus on issues that provide more financial certainty and stability.
Extra Credit	23. What most proud of?	Efforts to create a fantastic organization focused on customers; Collaboration among jurisdictions; we've stayed in business for 2 years.
	24. What keeps you up at night?	Financial issues and rapid up/down shifts in financial fortunes; ruthlessness of PG&E and problems that are "higher" than VCEA.
	25. Wish you understood better?	Acronyms; Partnerships we could create to improve all aspects of our biz; economics of procurement.
	26. Wish we could change about VCEA?	Would like to have more control over our destiny; shorter Board agendas, less reading and legal speak; more engagement with customers/public.
	27. What else?	Looking for alignment of all priorities – the purpose of strategic planning.

Valley Clean Energy
Strategic Plan
ABRIDGED DRAFT v2 as of 9/4/20
2021-2024

VCEA MISSION

Deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emission reductions.

INTEGRATED VISION FOR VCEA:

Valley Clean Energy (VCE) is a public not-for-profit joint-powers authority that operates a state-authorized Community Choice Aggregation (CCA) program. Participating VCE communities include the City of Woodland, the City of Davis, the City of Winters, and the County of Yolo. Valley Clean Energy is one of 21 other operating CCAs in the state of California which have their origins in customer choice and the accelerated shift to affordable clean and carbon free power. A core value of California CCAs, including VCE, is the ability to respond to the climate crisis by cost effectlively decarbonizing the grid through local energy choice and decision making. CCAs across the board have exceeded aggressive State energy mandates and are enabling scalable climate solutions at the local level.

One of the key factors driving the formation of VCE was to address climate change and improve local health and safety by supporting the transition to clean energy and building local resilience. In many ways, VCE serves as the link between the State's goals in these areas and what happens at the local level. Valley Clean Energy enables its participating jurisdictions to determine the sources, modes of production, and costs of the electricity they procure for the residential, commercial, agricultural and industrial users in their areas. VCE customers continue to pay PG&E to deliver the electricity procured by VCE and perform billing, metering, and other electric distribution utility functions and services. A clean energy portfolio along with satisfied customers and a commitment to local energy innovation will always be guiding priorities for VCE.

NEAR-TERM VISION (Next 3 Years)

The near-term vision for VCE is to provide electricity users with greater choice over the sources and prices of the electricity they use, by:

- Offering basic electricity service with highest available renewable electricity content and lower carbon content, at a rate competitive with PG&E;
- Developing and offering additional carbon free and/or local generation options at modest price premiums;
- Establishing an energy planning framework for developing local energy programs and local energy resources and infrastructure;

- Evaluating and adopting best practices in the electricity service industry for planning and operational management; and,
- Accomplishing the goals enumerated below while accumulating reserve funds for future VCE energy programs and mitigation of future risks.

LONG-TERM VISION (4+ Years)
The future vision for VCE is to continuously improve the electricity choices available to VCE customers, while expanding local energy-related economic opportunities, by:

- Causing the deployment of new renewable and low carbon energy sources within VCE's service territory and surrounding region as much as possible;
- Substantially increasing the renewable electricity content of basic electricity service, with the ultimate goal of achieving zero carbon emission electricity by 2030;
- Developing and managing customized programs for energy electrification, on-site electricity production and storage;
- Accelerating deployment of local energy resources to increase local economic development, investment, employment, innovation and resilience;
- Working to achieve the climate action goals of participating jurisdictions to shape a sustainable energy future;
- Saving money for ratepayers on their energy bills; and
- Recruiting participation of additional jurisdictions in and near Yolo County within a set of established criteria and measurable benefits to the customers and communities served by VCE.

STRATEGIC PLAN:

This Strategic Plan focuses VCE on achieving better energy outcomes for its customers and communities by guiding the organization's actions over the next three years. The Plan maps a route to VCE's goals and allows for course correction as new information and learning occurs. The energy sector in California is in a transformational period and VCE allows local energy priorities and needs to be heard and ultimately acted upon. This plan helps VCE build a strong foundation from which to identify and guide strategic action over the next three years, being mindful of the longer-term aspirations of the Agency. It is anticipated that this Plan will be ready for implementation in 2021 and reviewed annually to ensure that the Agency remains on track and course corrects if necessary.

METHODOLOGY AND ORGANIZATION:

VCE's strategic plan is based on the experience of the Agency's first two years in operation as well as current energy market conditions, a strengths/weaknesses/opportunities/threats (SWOT) analysis which was completed in 2019, and detailed feedback from the Board of Directors, Community Advisory Committee (CAC) members and VCE staff. The Plan covers seven topical categories which are most relevant to VCE's operations. Within each category, the Plan specifies a set of aspirational goals and follows with strategies to achieve or make progress toward those goals over the next three years.

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KEY GOALS:

A) FINANCIAL STRENGTH

A successful CCA program requires disciplined fiscal strategies and financially sound policies. VCE is committed to managing its financial resources responsibly and setting a standard of transparency and accountability, ensuring efficiency and strong stewardship of the agency's financial resources. At VCE, our commitment to fiscal and operational excellence will ensure that all processes and operations are clearly defined and efficiently designed to align people, systems, and policies to maximize productivity and improve efficiency. Adhering to these policies and actively examining and assessing risk will help earn a high credit rating and a healthy position from which to deliver customer and community value.

Goal 1: Manage resources and maintain low overhead costs over next three fiscal years to achieve the Board's stated financial objectives.

Goal 2: Achieve an investment grade credit rating by end of 2024

B) PROCUREMENT AND POWER SUPPLY

Navigating the world of wholesale power markets and state-mandated power mix and reliability requirements while fulfilling our commitment to sourcing low/no carbon electricity requires a constant search for the right resources to meet sustainability and value proposition goals. The threat of losing load to Direct Access presents new challenges and opportunities to enhance product offerings to meet VCE's decarbonization goals and our customers' own environmental goals while considering financial and risk impacts. VCE is committed to providing carbon free electricity through a balanced approach which considers cost, risk, long-term value and best-fit in meeting community goals while exceeding California's RPS mandates.

Goal 3: Manage power supply resources and risks to meet near-term financial and rate objectives while working toward a power portfolio that is 100% carbon neutral by 2030.

Goal 4: Supply as high a percentage renewable, and carbon-free energy as is financially feasible while exceeding California's RPS mandates.

Goal 5: Continue to identify and pursue cost effective, local energy resources.

C) CUSTOMERS AND COMMUNITY

VCE is a customer and community focused organization. We will use all available channels and platforms to cultivate relationships with and bring customer value to all segments of the communities we serve – including those that have been historically underserved/under resourced. These channels include leveraging existing outlets established by our member agencies, partnering with commercial customers to enhance their community presence, and re-engaging with those who have opted out. Partnerships with commercial and agricultural customers are particularly important to building VCE's brand in a region rooted in food production and innovation. Communicating our competitive rates and product and service benefits in clear and accessible ways will strengthen customer loyalty and enhance our financial standing, enabling us to better serve our communities.

Goal 6: To better serve our customers, investigate new rate stuctures through which to achieve higher customer participation and engage new communities while maintaining competitive rates.

Goal 7: Effectively engage all segments of VCE's customer base, including disadvantaged and historically marginalized customers and communities.

Goal 8: Cultivate greater customer awareness particularly among VCE's business and agricultural customers.

Goal 9: Measure and increase customer satisfaction.

Goal 10: Increase participation in VCE's premium UltraGreen 100% renewable product.

Goal 11: Explore and evaluate options for new customer programs and launch at least three within the three-year Plan period.

D) DECARBONIZATION & GRID INNOVATION PROGRAMS

One of the key factors driving the formation of VCE was to address climate change and improve local resiliency. We will play a vital role in this decades-long endeavor, with the ongoing support of our community and our Board. In addition to providing carbon-free electricity, we are reinvesting in our region and expanding our toolset for furthering emissions reductions and energy resiliency by launching decarbonization and grid innovation programs. These programs represent the next stage in VCE's maturity and are the mechanism by which VCE will further engage our communities to achieve our mission. We will leverage partnerships, prioritize innovation and use data science to manage and influence carbon-free energy use. We will embody the entrepreneurial and innovative spirit of the community in which we live and work, the spirit of Yolo County, to bend the carbon curve downwards and improve the lives of our community members.

Goal 12: Develop and adopt a decarbonization and resiliency roadmap for VCE.

Goal 13: Investigate launching VCE programs to support member agencies' energy and transportation GHG emission reduction targets.

E) STATEWIDE ISSUES: REGULATORY & LEGISLATIVE AFFAIRS

The regulatory and legislative processes wield critical influence over VCE's ability to serve our customers and fulfill our core goals and mission. Working with CalCCA and other operating CCAs, VCE will actively engage with the regulatory and legislative communities in order manage operational risk, protect the interests of our customers, enhance our ability to mitigate greenhouse gas emissions, and help build a regulatory framework that supports innovation and customer choice in an equitable and cost-effective manner while preserving reliability and universal access.

Goal 14: Work with CalCCA and other partners to proactively engage State regulators and legislators in developing policy that furthers VCE's mission and facilitates our contributions to decarbonization, grid reliability, energy resilience, affordability, local programs and social equity.

Goal 15: Continue to work with partners to ensure VCE's procurement and rate-setting autonomy.

F) ORGANIZATION AND WORKPLACE

Human capital is a successful organization's greatest asset, and at VCE we've built a highly talented and dedicated team that will ensure the success and prosperity of our organization. Contracting with Saramento Municipal Utility District (SMUD) to deliver high quality services and personnel support during launch and early operations has allowed VCE to realize these objectives from the outset. Over the period of this strategic plan, VCE will explore transition from a contract dependent organization to one that balances the values and efficiencies of development and retention of high-quality in-house staff supported by high-quality outside services. Building, valuing, and nurturing this team's talent will require a start-up culture that supports creativity, open

communication, and the free flow of ideas to spur innovation. We will provide an infrastructure within VCE that supports and cultivates our employees through professional and personal development, recognizes and rewards their contributions to achieving our mission, and offers opportunities that position our people, as well as VCE, for success. In attracting and maintaining skilled employees, VCE will continue to provide a rewarding workplace experience.

Goal 16: Analyze and implement optimal long-term management & organizational structure at VCE.

Goal 17: Evaluate and pursue opportunities for shared services with other CCAs for certain functions.

Goal 18: Develop an evaluation framework to guide future expansion opportunities within Yolo County and surrounding areas.

G) INFORMATION SYSTEMS AND TECHNOLOGY

At VCE, we take customer information, privacy, and security seriously. Our systems and processes follow best practices and industry standards. Performance metrics are in place to ensure resiliency and high system availability on standard and mobile platforms. Periodic upgrades to IT resources will ensure continued adherence to these high standards. This strategic plan provides the approach that VCE is taking to address the challenges of delivering IT services in a dynamic environment with new regulations and continuous advancements in science and technology.

Goal 19: Ensure VCE's Information Technology infrastructure is secure, reliable, and disaster resilient to provide 24/7/365 online access.

Goal 20: Foster innovation and empower decision making through greater use of data.

PERFORMANCE METRICS

[To draft]

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