



**Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, April 13, 2023 at 5:30 p.m.
City of Davis Community Chambers
23 Russell Blvd., Davis, CA 95616**

This will be a *hybrid* meeting with Board Members attending in-person and public participation available via Zoom Webinar (video/teleconference). Valley Clean Energy (VCE) will, to the best of its ability, provide hybrid and remote options for VCE meeting participants and to the public; however, VCE cannot guarantee these options will be available due to technical limitations outside of our control. For assurance of public comment, VCE encourages in-person and written public comments to be submitted as described below when possible. VCE, to the best of its abilities, will provide participation via the Zoom platform.

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

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

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

Members of the public who wish to participate remotely in the Board of Director's meeting may do so with the video/teleconferencing call-in number and meeting ID code. Zoom Webinar (video/teleconference) information below to join meeting remotely:

**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/82070467892>

Meeting ID: 820 7046 7892

b. By phone

One tap mobile:

+1-669-444-9171,, 82070467892# US

+1-669-900-9128,, 82070467892# US

Dial:

+1-669-444-9171 US

+1-669-900-9128 US

Meeting ID: 820 7046 7892

Public comments may be submitted electronically or verbally 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: Tom Stallard (Chair, City of Woodland), Gary Sandy (Vice Chair, Yolo County), Jesse Loren (City of Winters), Will Arnold (City of Davis), Mayra Vega (City of Woodland), Lucas Frerichs (Yolo County), Richard Casavecchia (City of Winters), Bapu Vaitla (City of Davis) // Alternate Board Members: Angel Barajas (Yolo County), Tania Garcia-Cadena (Woodland), Albert Vallecillo (Winters)

5:30 p.m. Call to Order

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

CONSENT AGENDA

- 3. Approve February 9, 2023 Board meeting Minutes.**
- 4. Receive 2023 Long Range Calendar.**
- 5. Receive Legislative update provided by Pacific Policy Group.**
- 6. Receive April 5, 2023 Regulatory update provided by Keyes & Fox.**
- 7. Receive Community Advisory Committee February 23, 2023 meeting summary.**
- 8. Receive quarterly SACOG – Electrify Yolo Project update.**
- 9. Receive Enterprise Risk Management Report (Bi-Annual).**
- 10. Authorize VCE to request extension to comply with the California Energy Commission's Market Informed Demand Automation Server (MIDAS) rates upload. (Action)**
- 11. Approve amendments and task orders to the Sacramento Municipal Utilities District (SMUD) Master Service Agreement as follows:**
 - a. Amendment 1 to Master Services Agreement;**
 - b. Amendment 32 to Task Order 3 – reduce scope of Wholesale Energy Services (WES);**
 - c. Task Order 7 – Data Management and Customer Call Center Services;**
 - d. Task Order 8 - Consulting Services; and,**
 - e. Task Order 9 – Debt Collection Service. (Action)**

REGULAR AGENDA

12. **Discuss and approve the Amended and Restated Renewables Power Purchase Agreement with Gibson Renewables LLC. (Discussion/Action)**
13. **Receive and accept audited financial statements for Calendar Year 2022 presented by James Marta & Company. (Action)**
14. **Receive Treasury and Finance update. (Information)**
15. **Inflation Reduction Act (IRA): overview and items of interest to VCE Customers. (Information)**
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/Announcement:** The Board will adjourn to their next regular scheduled meeting of Thursday, May 11, 2023 at the City of Woodland Council Chambers located at 300 First Street, Woodland, CA 95695.

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

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

Verbal public participation during the meeting:

- 1) **If attending in person**, please complete a **Comment Card** and return it to the Board Clerk.
- 2) **If attending remotely via Zoom**, there are two (2) ways for the public to provide verbal comments:
 - A. 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". When called upon, you will be "unmuted" to allow to speak.
 - B. If you are attending by phone only, you will need to press *9 to raise your hand. When called upon, press *6 to unmute your microphone.

VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted

to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: <https://valleycleanenergy.org/board-meetings/>.

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

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 3

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from February 9, 2023 meeting
DATE: April 13, 2023

RECOMMENDATION

Receive, review and approve the attached February 9, 2023 meeting Minutes.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, FEBRUARY 9, 2023**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, February 9, 2023 at 5:30 p.m., to be held at City of Davis Community Chambers located at 23 Russell Blvd., Davis, California 95616. Chair Tom Stallard established that there was a quorum present and began the meeting at 5:30 p.m.

Board Members Present: Tom Stallard, Jesse Loren, Will Arnold (departed at 6:38 p.m.), Lucas Frerichs, Richard Casavecchia, Bapu Vaitla, Mayra Vega

Members Absent: Gary Sandy

Welcome and Board Clerk Administering the Oath of Office Chair Stallard welcomed the Board and new members. The Board Clerk administered the Oath of Office to the following: Richard Casavecchia.

Public Comment – General and Consent Chair Stallard opened the floor for public comment on general items and Consent agenda items. There were no written or verbal public comment.

Chair Stallard thanked Jesse Loren for her service on the VCE Board serving as Chair in 2022.

Approval of Consent Agenda (Resolutions 2023-001 through 004) Motion made by Director Frerichs to approve the consent agenda items, seconded by Director Vega. Motion passed with Director Sandy absent. The following items were:

4. authorized to continue remote public meetings as authorized by Assembly Bill 361;
5. approved January 19, 2023 special Board meeting Minutes;
6. received 2023 Long Range Calendar;
7. received financial updates December 31, 2022 (unaudited) financial statement;
8. received Legislative update provided by Pacific Policy Group;
9. received January 2023 Regulatory update dated February 1, 2023 provided by Keyes & Fox;
10. received Community Advisory Committee January 26, 2023 meeting summary;
11. received SACOG Grant – Electrify Yolo Project update;



12. received 2023 Power Charge Indifferent Adjustment (PCIA) and Rates update;
13. approved VCE Employee Handbook updates as Resolution 2023-001;
14. approved amendment to Polaris agreement regarding the AgFIT dynamic pricing pilot as Resolution 2023-002;
15. approved First Principles Advisory (FPA) agreement to provide portfolio modeling services to assess increased renewables as Resolution 2023-003; and,
16. approved VCE-Redwood Coast Energy Authority (RCEA) Resource Adequacy (RA) swap agreements to satisfy a portion of RCEA's mid-term reliability requirement as Resolution 2023-004.

Item 17: Receive Legislative and Regulatory updates. (Information)

Executive Officer Mitch Sears introduced Mark Fenstermaker of Pacific Policy Group, VCE's lobbyist consultant, and Sheridan Pauker of Keyes & Fox / EQ Research, VCE's regulatory consultant.

Mr. Fenstermaker reviewed important legislative dates and deadlines; outlined changes in the Senate Energy, Utilities & Communications and Assembly Utilities & Energy; budget woes including a \$22.5 billion deficit; proposed cuts to allocations for energy programs; reviewed funding opportunities to Clean Energy Reliability Investment Plans; and, reviewed budget optimism: strategic investments in the agricultural and water sectors that reduce both peak electricity consumption and water use.

Ms. Pauker reviewed: compliance requirements and dockets; VCE's proposed expansion of AgFIT; incremental capacity procurement proposal in the Integrated Resource Planning (IRP) proposed decision; PCIA and Energy Resource Recovery Account (ERRA) rates updates; RPS Voluntary Allocation and Market Officer (VAMC) process; PG&E asset transfer application (transfer all non-nuclear to private to raise capital); Provider of Last Resort (POLR) staff proposal; and PG&E's Diablo Canyon closure (new) proceeding.

The Board and Staff discussed why there are non-supporters of VCE's AgFIT program and the need for more education and conversations about the program and dynamic pricing.

There were no verbal or written public comments.



Item 18: Receive and discuss Wholesale Energy Risk Management Policy proposed modifications. (Information/Discussion)

Assistant General Manager and Director of Power Resources Gordon Samuel reviewed the Wholesale Energy Risk Management Program organizational structure and reminded those present that a large part of VCE's budget is used for purchasing energy. Mr. Samuel stated that Staff, with the assistance of The Energy Authority (TEA), are proposing to update VCE's enterprise risk management (ERM) policies (procurement plan, directives and delegations, wholesale energy risk management policy, including Amendment #1) into one comprehensive document. Mr. Samuel introduced Jaclyn Harr of TEA, VCE's procurement specialist. Ms. Harr reviewed: VCE's risk management program for energy procurement; factors that influence procurement decisions; value of energy procurement risk management; and, energy hedging schedule.

The Board and Staff discussed VCE's membership of the Enterprise Risk Oversight Committee (EROC) and energy transaction volume and capacity transaction value limits of "positions" (VCE Board and Executive Officer, EROC, and wholesale energy provider). There were no verbal or written public comments.

Item 19: Receive annual Strategic Plan update. (Information/Discussion)

Mr. Sears introduced this item and provided an overview of the 3-Year Strategic Plan and key accomplishments in 2022. Mr. Sears reminded those present that the Plan runs through the end of 2023. In addition, based on the Board's feedback on the approach for extending the Strategic Plan beyond the end of 2023, Staff developed an action plan to adopt one-year "rolling" extensions each year. Mr. Sears reviewed the development process and timeline, which includes asking the Community Advisory Committee (CAC) to form a Task Group to provide feedback related to the development of a rolling Strategic Plan. Staff plans on returning to the CAC and the Board to present a final draft for Board adoption consideration by quarter 4 of 2023.

Will Arnold departed at 6:38 p.m.

There were no verbal or written public comments. The Board confirmed that they would like a rolling strategic plan developed.

Item 20: Board Member and Staff Announcements

Director Frerichs mentioned that it was that time of year to perform evaluations on VCE's Executive Director and Legal Counsel. He volunteered to serve on that committee.



Mr. Sears informed those present that he would be participating in CalCCA's Lobby Day on Wednesday, March 8th and invited Members to attend the Almond Festival held in Esparto scheduled for Sunday, February 26th. He announced that the Yolo County Planning Commission reviewed the Gibson project and that VCE's Electric Vehicle (EV) Rebate program monies have been distributed to several applicants.

Announcement
and Adjournment

Chair Stallard announced that the Board has scheduled their next regular meeting for Thursday, March 9, 2023.

Chair Stallard adjourned the regular Board meeting at 6:46 p.m.

Alisa M. Lembke
VCE Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 4

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

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

DATE: April 13, 2023

Recommendation

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

VALLEY CLEAN ENERGY
2023 Meeting Dates and *Proposed* Topics
Board and Community Advisory Committee (CAC)
(Note: Meeting locations are subject to change)

MEETING DATE		TOPICS	ACTION
January 12, 2023 Special Meeting scheduled for January 19, 2023 (3rd Thursday) (REMOTE)	Board	<ul style="list-style-type: none"> • Oaths of Office for Board Members (Annual - new Members only) • Election of Officers for 2023 (Annual) • Brown Act / AB 2449 – New Legislation on Teleconferencing Meetings • 2022 Year End Review: Customer Care and Marketing • Support Legislation to extend sunset (BioMAT program) • Long-term Power Portfolio Update • Quarterly Customer Participation Update 	<ul style="list-style-type: none"> • Action • Nominations • Discussion/Action • Information • Action • Information • Information
January 26, 2023 (REMOTE)	Advisory Committee	<ul style="list-style-type: none"> • Legislative Summary/Update (Pacific Policy Group) • 2023 Customer Rate update • Forecasting Customer Ag Energy using hydrological conditions (research results) presentation • Task Group Formation • Quarterly Customer Participation Update 	<ul style="list-style-type: none"> • Information • Information • Information • Discussion/Action • Information
February 9, 2023 (IN PERSON)	Board (Davis)	<ul style="list-style-type: none"> • Legislative & Regulatory Updates • Update on 2023 PCIA and Rates • Update on SACOG Grant – Electrify Yolo • Strategic Plan Update (Annual) • Enterprise Risk Oversight Committee (EROC) proposed modifications 	<ul style="list-style-type: none"> • Information • Information • Information • Information • Discussion/Action
February 23, 2023 (Remote)	Advisory Committee	<ul style="list-style-type: none"> • Strategic Plan update (Annual) • Update on 2023 PCIA and Rates 	<ul style="list-style-type: none"> • Information/Discussion • Information
March 9, 2023 (IN PERSON)	Board (Woodland)	<ul style="list-style-type: none"> • Meeting cancelled due to lack of agenda items. 	

March 23, 2023 (IN PERSON)	Advisory Committee (Woodland)	<ul style="list-style-type: none"> Meeting cancelled due to lack of agenda items. 	
April 13, 2023	Board (Davis)	<ul style="list-style-type: none"> Update on SACOG Grant – Electrify Yolo Calendar Year 2023 Audited Financial Statements (James Marta & Co.) Receive Enterprise Risk Management Report (Bi-Annual) SMUD: Amendment(s) to update Agreement 	<ul style="list-style-type: none"> Information Action Information Discussion/Action
April 27, 2023	Advisory Committee (Davis)	<ul style="list-style-type: none"> Power Procurement / Renewable Portfolio Standard Update Update on Customer Dividend and Programs Allocation 	<ul style="list-style-type: none"> Information Information
May 11, 2023	Board (Woodland)	<ul style="list-style-type: none"> Update on Customer Dividend and Programs Allocation 	<ul style="list-style-type: none"> Information
May 25, 2023	Advisory Committee (Woodland)	<ul style="list-style-type: none"> 	<ul style="list-style-type: none">
June 8, 2023	Board (Davis)	<ul style="list-style-type: none"> Opt-Out Fees Customer programs development 	<ul style="list-style-type: none"> Information Discussion/Action
June 22, 2023	Advisory Committee (Davis)	<ul style="list-style-type: none"> Update 3-Year Programs Plan Review CAC Charge (Annual) Power Portfolio Renewable Content (<i>placeholder</i>) 	<ul style="list-style-type: none"> Information/Discussion Discussion Information/Discussion
July 13, 2023	Board (Woodland)	<ul style="list-style-type: none"> Re/Appointment of Members to Community Advisory Committee (Annual) Status of SACOG Grant – Electrify Yolo Quarterly Customer Participation Update Power Portfolio Renewable Content (<i>placeholder</i>) 	<ul style="list-style-type: none"> Action Discussion/Action Information Information/Discussion
July 27, 2023	Advisory Committee (Woodland)		
August 10, 2023	Board (Davis)		
August 24, 2023	Advisory Committee (Davis)	<ul style="list-style-type: none"> Power Procurement / Renewable Portfolio Standard update Mid-year 2023 rates update Quarterly Customer Participation Update 	<ul style="list-style-type: none"> Information Information

			<ul style="list-style-type: none"> Information
September 14, 2023	Board (Woodland)	<ul style="list-style-type: none"> Certification of Standard and UltraGreen Products / 2022 Power Content Label (Annual) Enterprise Risk Management Report (Bi-Annual) Mid-year 2023 Customer rates review 	<ul style="list-style-type: none"> Action Information Information/Discussion
September 28, 2023	Advisory Committee (Woodland)	<ul style="list-style-type: none"> Legislative End of Session update Update on Programs Plan and 2024 program concepts 	<ul style="list-style-type: none"> Information Information/Discussion
October 12, 2023	Board (Davis)	<ul style="list-style-type: none"> Update on SACOG Grant – Electrify Yolo Update on 2024 draft Operating Budget Quarterly Customer Participation Update Strategic Plan update Update on Programs Plan and 2024 program concepts Status of SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> Information Information Information Information/Discussion Discussion/Action Information/Discussion
October 26, 2023	Advisory Committee (Davis)	<ul style="list-style-type: none"> Update on Power Content Label Customer Mailer Quarterly Customer Participation Update Review CAC Task Group Year-end Reports Draft 2024 Legislative Platform 	<ul style="list-style-type: none"> Information Information Discussion Discussion/Action
November 9, 2023	Board (Woodland)	<ul style="list-style-type: none"> 2024 Operating Budget Update 2024 Legislative Platform 	<ul style="list-style-type: none"> Information/Discussion Discussion/Action
November 23, 2023 November 16, 2023 (rescheduled to November 16 th due to the Thanksgiving holiday on Nov. 23 rd .)	Advisory Committee (Woodland)	<ul style="list-style-type: none"> GHG Free Attributes 	<ul style="list-style-type: none"> Information
December 14, 2023	Board (Davis)	<ul style="list-style-type: none"> Approve 2024 Operating Budget (Annual) and 2024 Customer Rates GHG Free Attributes Receive CAC Year-end Task Group Reports Election of Officers for 2024 (Annual) 	<ul style="list-style-type: none"> Discussion/Action Action Discussion Nominations

December 28, 2023 (reschedule?)	Advisory Committee (Davis)	<ul style="list-style-type: none"> • 2024 CAC Task Group(s) formation (Annual) • Power Procurement / Renewable Portfolio Standard Update • Strategic Plan update • Election of Officers for 2024 (Annual) 	<ul style="list-style-type: none"> • Discussion/Action • Information • Information/Discussion • Nominations
January 11, 2024	Board (Woodland)	<ul style="list-style-type: none"> • Oaths of Office for Board Members (Annual - new Members only) • Election of Officers for 2024 (Annual) • Strategic Plan update (Annual) • 2023 Year End Review: Customer Care and Marketing 	<ul style="list-style-type: none"> • Action • Nominations • Information • Information
January 25, 2024	Advisory Committee (Woodland)	<ul style="list-style-type: none"> • Legislative Summary/Update (Pacific Policy Group) • 2024 Customer Rate update 	<ul style="list-style-type: none"> • Information • Information

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

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

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 5**

To: Board of Directors

From: Mark Fenstermaker, Pacific Policy Group

Subject: Legislative Update – Pacific Policy Group

Date: April 13, 2023

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

Inundation and chaos, that is the best way to describe legislative activity for the months of March and April as the policy committees work to process and hear nearly 2700 bills. The various policy committees will meet weekly, many at the same time, in an effort to meet the policy committee deadline of April 28 for those bills that have a fiscal component, which is nearly all bills. There is no shortage of bills that propose to impact CCAs, from improving interconnection delays to authorizing local government boards to meet virtually in the same manner they did under the COVID pandemic, the LRTG, staff, and PPG are evaluating more than 30 pieces of legislation. While many of these legislative proposals merit examination, no issue is of greater importance to CCAs than the proposed budget trailer bill put forth by the Governor. It would authorize the Department of Water Resources (DWR) to act as a central procurement entity (CPE), enable the California Public Utilities Commission (CPUC) to enforce Integrated Resource Plans, and authorize the CPUC to assess greater penalties on load-serving entities that do not comply with resource adequacy procurement targets.

The Governor's proposal has been put forth as a budget trailer bill that is tied to and supported by a budget change proposal (BCP) that would provide funding to DWR to staff up to take on the CPE role and also the problematic provisions of the trailer bill. This same BCP also includes proposed funding for near-term reliability measures and a reference to AgFIT and has been the target source of funding for expanded AgFIT operations. Staff and PPG engaged in a number of conversations with CalCCA staff and lobbyists about advocacy strategies for expanded AgFIT funding and how to engage with the BCP but have ultimately decided to forego such advocacy as the need to oppose the problematic elements of the BCP are a higher priority. There is a possibility that the trailer bill actually transfers to a policy bill authored by a legislator, which would move it out of the budget process, which is the first priority of CalCCA as the budget process is much more opaque than the policy bill process. Staff and PPG continue to strategize on ways to advocate for expanded AgFIT funding and are currently considering lobbying for

AgFIT to be included in proposed climate bonds currently being pursued in both the Assembly, as AB 1567 (Garcia), and in the Senate, as SB 867 (Allen).

VCE staff, the LRTG and PPG are currently examining the following bills.

Interconnection Bills:

There 11 individual bill proposals seeking to address and/or resolve the problem of IOU interconnection delays, with some focused on delays of interconnecting homes or businesses and others focused on interconnection delays of developments or energy projects. Of the 11 bills, VCE is most closely looking at the following bills currently supported by CalCCA, although VCE will follow the other bills as well as they are amended and CalCCA becomes engaged.

SB 410 (Becker) – This bill, the Powering Up Californians Act, would require the PUC to establish a working group on or before March 1, 2024, to propose processes that would improve the ability of IOUs to be informed well in advance of needed increases in distribution system capacity for future housing developments, building electrification, electric vehicle charging infrastructure, and other activities that require increased distribution system capacity. The bill would require the PUC to establish, on or before September 30, 2024, reasonable average and maximum target interconnection time periods

AB 643 (Berman) - This bill would require the PUC, on or before June 1 of each year, to submit a report to the Legislature on timelines for the interconnection of customer-sited energy generation and storage resources. The bill would require the commission to consider the negligent exceedance, of an interconnection timeline by an IOU to be a failure to comply with a rule of the commission and subject to a penalty.

Brown Act Bills:

There are currently five distinct bills focused on allowing local government bodies to meet virtually without disclosing the location of board members and without making the virtual location available to the public. VCE is focusing on one of the bills proposed and sponsored by Peninsula Clean Energy a fellow CCA.

SB 537 (Becker) – This bill would define multijurisdictional bodies as those with appointed board members with representatives from more than one county, city, city and county, special district, or a joint powers entity.

Other Bills

Staff, the LRTG, and PPG are also considering multiple bills related to clean energy procurement, biomass facilities, and regionalization of the grid. Those bills include the following.

AB 538 (Holden) - This bill proposes to dissolve the CAISO board in an effort to allow the CAISO to explore creating a new western region independent system operator that would include the CAISO. This was attempted in 2016 and 2017 but failed due to opposition from the labor unions, TURN, and environmental groups opposed to allowing states such as Utah and Wyoming to join the CAISO.

AB 998 (Connolly) – This bill proposes to require the Energy Commission, on or before December 31, 2024, to issue a report on the utility-scale biomass combustion facilities still in operation as of January 1, 2024, and options to maximize the environmental benefits of these facilities.

AB 1538 (Muratsuchi) – This bill is sponsored by Clean Power Alliance and aims to create a program to incentivize, through payments load-serving entities to procure clean energy beyond their required RA targets.

SB 233 (Skinner) -This bill is sponsored by the Climate Center and proposes to task the Energy Commission, in consultation with the State Air Resources Board, to establish state goals to accelerate the use of vehicle-to-home, vehicle-to-building, and vehicle-to-grid uses in order to support emergency backup, electrical grid reliability, and electric vehicle grid integration.

SB 688 (Padilla) – This bill proposes to task the Energy Commission create a program that would award grants to UCs, CSUs, and community colleges to research and develop agrivoltaic systems and study the impacts of agrivoltaic systems on farms and on electricity generated from solar panels. The bill would also require the Energy Commission, in consultation with the Department of Food and Agriculture, to develop guidelines defining agrivoltaic systems.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

To: Board of Directors

From: Keyes & Fox, Regulatory Consultant

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: April 13, 2023

Please find attached Keyes & Fox's March 2023 Regulatory Memorandum dated April 5, 2023 an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

Attachment: Keyes & Fox Regulatory Memorandum dated April 5, 2023.

Valley Clean Energy Alliance

Regulatory Monitoring Report

To: Valley Clean Energy Alliance (VCE) Board of Directors

From: Sheridan Pauker, Partner, Keyes & Fox LLP
Tim Lindl, Partner, Keyes & Fox LLP
Jason Hoyle, Principal Analyst, EQ Research, LLC

Subject: Monthly Regulatory Update

Date: April 5, 2023

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

IRP Rulemaking

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

Recent Developments: On March 8, the CPUC sent an email notice advising stakeholders that it will restart the IRP inputs and assumptions (I&A) stakeholder process, including the release of a draft I&A document and informal stakeholder engagement, in Q2 of 2023. On March 9, PG&E submitted [AL 6879-E](#) Amendment to Mid-Term Reliability Contract approved in [AL 6477-E](#). PG&E describes the contract amendment as necessary for it to continue to make progress to meet the June 1, 2024 incremental September Net Qualifying Capacity (NQC) procurement requirements mandated in [D.21-06-035](#). On March 22, the CPUC issued Draft Comment Resolutions [E-5262](#) and [E-5263](#) on PG&E's [AL 6825-E](#) and [AL 6861-E](#) request for approval of mid-term reliability procurement. On March 27, the CPUC issued [Draft Resolution E-5258](#) which would set January 1, 2025 as the earliest possible date for the expansion of Central Coast Community Energy and East Bay Community Energy CCAs.

Analysis: The upcoming IRP stakeholder process will provide the foundation for establishing the statewide and LSE-specific goals and targets for GHG and other emission reductions, resource procurement requirements, and other planning metrics for use in the 2024 IRP filings.

Next Steps: The IRP stakeholder process will re-start in Q2 2023.

Additional Information: [Draft Resolution E-5258](#) (Mar. 27, 2023); Draft Comment Resolutions [E-5262](#) and [E-5263](#) (Mar. 22, 2023); PG&E's [AL 6879-E](#) (Mar. 9, 2023); [D.23-02-040](#) on Procurement (Feb. 28, 2023); ALJ [Ruling](#) & [Reliable and Clean Power Procurement Program: Staff Options Paper](#) (Sep. 8, 2022); Docket No. [R.20-05-003](#).

Demand Flexibility

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

Recent Developments: On March 1, the ALJ issued a [Proposed Decision](#) on consultant funding that would authorize up to \$425,000 for third-party consultant services to the Commission's Energy Division relating to income-graduated fixed charge proposals in Track A of Phase 1 of this proceeding. On March 13, the CPUC provided notice that a revised version of the [Fixed Charge Tool](#) and that Energy Division Staff and E3 are available to support parties as they use the Fixed Charge Tool to prepare opening testimony. On March 17, in Track B of this proceeding, the ALJ issued a [Proposed Decision](#) that would adopt updated electric rate design principles for use in assessing the rate design proposals of PG&E, SDG&E, and SCE; and would also adopt demand flexibility design principles to guide the development of demand flexibility tariffs, systems, processes, and customer experiences of PG&E, SDG&E, and SCE. On March 23, the ALJ issued a [Ruling](#) providing additional guidance on Track A opening testimony fixed-charge proposals.

Analysis: The design of fixed charges on customer bills will impact the efficacy of dynamic rates' influence on the timing of energy use by customers, peak load levels, and the cost of procured power. The amount of fixed charges on

customer bills also has implications for utility recovery of fixed costs, presents equity considerations for lower income customers, and can negatively impact the value of behind-the-meter renewable energy systems.

Next Steps: The Proposed Decision on consultant funding is scheduled to be heard at the **April 6** Commission meeting. The Proposed Decision on electric rate design principles may be heard as soon as the **April 27** Commission meeting. Concurrent opening testimony on Track A fixed-charge proposals is due **April 7** and reply testimony is due June 2. A workshop on expanding existing pilots, including AgFIT, and an opportunity for the filing of post-workshop comments is expected to be scheduled in 2023.

Additional Information: ALJ [Ruling](#) on opening testimony guidance (Mar. 23, 2023); [Proposed Decision](#) on electric rate design principles (Mar. 17, 2023); [Proposed Decision](#) on consultant funding (Mar. 1, 2023); CalCCA [Reply Comments on Scoping Memo](#) (Jan. 4, 2023); [Phase 1 Scoping Memo and Ruling](#) (Nov. 2, 2022); [VCE and Polaris Ex Parte Notice](#) (Oct. 10, 2022); [OIR](#) (Jul. 22, 2022); Docket No. [R.22-07-005](#).

Provider of Last Resort Rulemaking

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

Recent Developments: On March 17, the ALJ issued an [email Ruling](#) granting the IOUs' request to re-schedule the Example Financial Security Requirement (FSR) Calculations Workshop and a two-week extension for filing opening comments and reply comments. The additional time was necessary to allow CalCCA to coordinate with the IOUs on development of FSR calculator proposals.

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

Next Steps: Opening comments on the Staff Proposal and example FSR calculations are now due **April 18**, and reply comments are due **May 5**. A proposed decision is expected in Q3-Q4 2023.

Additional Information: ALJ [email Ruling](#) (Mar. 17, 2023); [ALJ Ruling](#) and [Staff Proposal](#) (Jan. 6, 2023); PG&E [Advice Letter 6758-E](#) (Nov. 10, 2022); PG&E [Advice Letter 6589-E-B](#) and Disposition Letter (Jul. 7, 2022); [Scoping Memo and Ruling](#) (Sep. 16, 2021); [OIR](#) (Mar. 25, 2021); Docket No. [R.21-03-011](#).

RPS Rulemaking

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

Recent Developments: On March 3, VCE submitted its [Final 2017-2020 RPS Compliance Report](#) and [e-Tag Summary](#). On March 7, PG&E issued its [2023 PCIA RPS Long-Term Market Offer](#) solicitation for sales of RPS-eligible energy and/or Renewable Energy Credits from facilities with power purchase agreements with delivery terms of greater than 10 years. On March 9, PG&E submitted [AL 6880-E](#) Correction to PG&E's Renewable Market Adjusting Tariff Program tariff to comply with Resolution E-5209. On March 24, PG&E submitted [AL 6894-E](#) requesting approval of two agreements for the sale of RPS-eligible products from PG&E's PCIA portfolio.

Analysis: [D.22-11-021](#) makes resources made available through the now-open Market Offer solicitation process (i.e., those resources remaining after the Voluntary Allocation process). Recent changes make the Market Offer somewhat more favorable to LSEs by increasing access to long-term contracts and removing the requirement for 10% incremental slices, but still requires procurement of slices of the available IOU portfolio.

Next Steps: Bids in response to PG&E's 2023 PCIA RPS Long-Term Market Offer solicitation are due **April 11**. A Decision approving Final 2022 RPS Procurement Plans and a Ruling on 2023 RPS Procurement plans is expected in the next month or two.

Additional Information: PG&E's [AL 6894-E](#) (Mar. 24, 2023); PG&E [AL 6880-E](#) (Mar. 9, 2023); VCE's [Final 2017-2020 RPS Compliance Report](#) and [e-Tag Summary](#) (Mar. 3, 2023); VCE's [Final 2022 RPS Procurement Plan](#) (Jan. 18, 2023); [D.22-11-021](#) (Nov. 18, 2022); [Ruling](#) identifying RPS Plan requirements (Apr. 11, 2022); Docket No. [R.18-07-003](#).

RA Rulemaking (2023-2024)

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

Recent Developments: On March 10, PG&E submitted a [Notice of Availability](#) for its Draft Local and Statewide Load Impact Reports for Program Year 2022 Pursuant to Load Impact Protocols. On March 22, PG&E acting as the Central Procurement Entity issued its 2023 Central Procurement Entity Local Resource Adequacy [Request for Offers](#) & Commitments seeking to procure local resource adequacy or obtain self-shown commitments for Local RA. In 2023 PG&E as CPE is required to procure or obtain self-shown commitments for 100% of the CPUC's 2024 Local RA requirements, 100% of the CPUC's 2025 Local RA requirements, and 50% of the CPUC's 2026 Local RA requirements. On April 4, the ALJs issued [Revisions](#) to the [Proposed Decision](#) (issued March 3) on Phase 2 of the RA Reform Track that would adopt implementation details for the 24-hour slice-of-day framework, including compliance tools, resource counting rules for various resource types, and a methodology to translate the Planning Reserve Margin to the slice-of-day framework.

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

Next Steps: The Proposed Decision on Reform Track Phase 2 is scheduled to be heard at the **April 6** Commission meeting. LSEs' non-compensated self-shown RA commitments are due **April 18**, and competitive RA offers are due **April 26**. The CAISO draft 2024 Local Capacity Requirements report is expected in **April 2023**. A proposed decision on Implementation Track Phase 3 is expected in May.

Additional Information: [Revision 1 Redline Proposed Decision](#) on Phase 2 of the RA Reform Track (Apr. 4, 2023); ALJ [Ruling](#) (Feb. 24, 2023); ALJ [Ruling](#) (Feb. 15, 2023); [Final Report](#) of the Qualifying Capacity of Supply-Side Demand Response Working Group (corrected on Feb. 24, 2023) (Jan. 31, 2023); ALJ [Ruling](#) (Jan. 20, 2023); [D.22-12-028](#) (Dec. 19, 2022); PG&E [AL 6501-E](#) and [substitute sheets](#) (Dec. 15, 2022); [Notice of Availability](#) for final Report on RA Reform Workshop Proposals (Nov. 15, 2022); PG&E [Advice Letter 6706-E-A \(disposition letter\)](#) (Nov. 4, 2022); [Amended Scoping Memo and Ruling](#) (Sep. 2, 2022); Docket No. [R.21-10-002](#).

PG&E 2023 Phase 1 GRC

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

Recent Developments: [Draft Comment Resolution E-5252](#) on the Transmission Project Review Process effective January 1, 2024 was held over from the March 16 Commission meeting. On March 1, the CPUC issued [Draft Comment Resolution E-5254](#) that would adopt procedural mechanisms for review and approval of IOU cost recovery requests under the Infrastructure Investment and Jobs Act and other federal grant programs.

Analysis: The Resolution on the Transmission Project Review (TPR) Process would establish a uniform review process for the IOUs' capital transmission projects. The TPR Process would allow the CCAs to receive more robust data on the IOUs' transmission projects and to inquire about, and provide feedback on, the IOUs' historical, current, and forecast transmission projects.

Next Steps: Both [Draft Comment Resolution E-5252](#) and [Draft Comment Resolution E-5254](#) are scheduled to be heard at the **April 6** Commission meeting. In Track 1, a proposed decision is expected in Q2 2023. The Track 2 schedule is currently held in abeyance per an email ruling issued December 13.

Additional Information: [Draft Comment Resolution E-5254](#) (Mar. 1, 2023); [D.23-01-005 \(Appendix 1 - Settlement Agreement\)](#) (Jan. 17, 2023); [Draft Comment Resolution E-5252](#) and [data template](#) (Dec. 13, 2022); PG&E's [Amended Application](#) (Mar. 10, 2022); PG&E [Affordability Metrics Report](#) (Feb. 23, 2022); [PG&E Application](#) (Jun. 30, 2021); Docket No. [A.21-06-021](#).

PG&E 2019 ERRAs Compliance

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

Recent Developments: The [Proposed Decision](#) (issued December 19) that would prohibit the Joint Utilities from adjusting future rates to collect any revenue shortfalls, recorded as undercollections in their respective balancing accounts, caused by PSPS events in 2019 – requiring utility shareholders to fund lost revenues from PSPS events was held over from the March 16 Commission meeting. The Proposed Decision would also adopt a methodology to calculate the estimated unrealized revenues the Joint Utilities incurred in 2019 or will incur during future PSPS events. On March 21, the CPUC issued [D.23-03-017](#) extending the statutory deadline in this proceeding to June 1, 2023 to allow adequate time for the Commission to analyze and deliberate on the complex issues raised in comments to the Proposed Decision.

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

Next Steps: The Proposed Decision was held over at the March 16 Commission meeting and is now scheduled to be heard at the **April 6** Commission meeting.

Additional Information: [D.23-03-017](#) extending statutory deadline (Mar. 21, 2023); [Proposed Decision](#) (Dec. 19, 2022); [D.22-07-009](#) extending statutory deadline (Jul. 18, 2022); [Ruling](#) amending schedule (Apr. 6, 2022); [Joint Case Management Statement](#) (Feb. 25, 2022); [D.21-07-013](#) resolving Phase 1 (Jul. 16, 2021); PG&E's [Application](#) and [Testimony](#) (Feb. 28, 2020); Docket No. [A.20-02-009](#).

PG&E 2020 ERRA Compliance

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

Recent Developments: No recent developments in the past month.

Analysis: N/A

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

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

PG&E 2021 ERRA Compliance

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

Recent Developments: Opening testimony on unrealized PSPS sales and revenue in 2021 was filed on April 3.

Analysis: N/A

Next Steps: The target date for a Proposed Decision is Q3 2023. The parties will file reply testimony regarding unrealized PSPS sales and revenue in 2021 on **May 3**.

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

NEW PG&E 2022 ERRA Compliance

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

Recent Developments: On February 28, PG&E filed its 2022 ERRA Compliance [Application](#).

Analysis: N/A

Next Steps: A procedural schedule has not yet been issued for this proceeding.

Additional Information: PG&E 2022 ERRA Compliance [Application](#) and [Notice of Availability](#) (Feb. 28, 2023); Docket No. [A.23-02-018](#).

Microgrids

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

Recent Developments: On March 9, the CPUC issued a Disposition Letter accepting PG&E's [AL 6623-E](#) Remote Grids as Sole Standard Service Offering, effective as of January 12, 2023. On March 16, PG&E submitted Supplemental [AL 6364-E-B](#) on proposed modifications suspending the capacity reservation component for eligible microgrid technologies. On March 23, PG&E submitted [AL 6892-E](#) providing updates to its remote grid initiative tariff deviation customers. On March 28, the CPUC issued [Draft Comment Resolution E-5261](#) (PG&E [AL 6808-E](#)) that would approve PG&E's plan to develop a Clean Substation Microgrid Pilot Project to mitigate transmission-level Public Safety Power Shutoffs at the Calistoga substation. On March 29, PG&E submitted [AL 6898-E](#) providing after-meeting reports on its semi-annual resiliency workshops. On April 4, the ALJ issued a [Revised Proposed Decision](#) that would adopt implementation rules for the Microgrid Incentive Program, authorize a total program budget of \$200 million, require the IOUs to submit a final Microgrid Incentive Program Handbook within 90 days of a Final Decision, and require the joint IOUs to open their first application window within nine months of publishing the MIP Handbook. The initial [Proposed Decision](#) from February 9 was held over from the March 16 Commission meeting.

Analysis: The Microgrid Incentive Program will fund community microgrid projects, up to \$3 million per project, for [critical facilities](#) (e.g., emergency services, healthcare, transportation, water, and wastewater facilities, among others) or facilities that provide important community resiliency services to support increased resilience to natural disasters, including earthquakes and wildfires, and other grid disruptions. As proposed, the program will also fund development and technical assistance for communities accepted into the program.

Next Steps: The Revised Proposed Decision is scheduled to be heard at the **April 6** Commission meeting. Comments on the [Draft Comment Resolution E-5261](#) are due **April 17**, and the Resolution is scheduled to be heard at the April 27 Commission meeting. In Track 4, an ALJ Ruling providing an Energy Division Staff Proposal for a Microgrid Multi-Property Tariff was expected in October 2022 but has been delayed. In Track 5, a staff proposal on Definitions, Metrics, Tools, and Methods and Informing Grid Planning is expected in Q1 2023. An ALJ Ruling establishing 2023 scheduling & activities is expected in Q1 2023.

Additional Information: [Revised Proposed Decision](#) (Apr. 4, 2023); PG&E [AL 6898-E](#) (Mar. 29, 2023); [Draft Comment Resolution E-5261](#) (Mar. 28, 2023); PG&E's [AL 6892-E](#) (Mar. 23, 2023); PG&E's [AL 6364-E-B](#) (Mar. 16, 2023); PG&E's [AL 6623-E](#) Disposition Letter (Mar. 9, 2023); [Proposed Decision](#) (Feb. 9, 2023); [Suspension Notice](#) of PG&E [AL 6808-E](#) (Feb. 8, 2023); ALJ [Ruling Requesting Comments](#) on attached Staff Proposal for Microgrid Incentive Program (Jul. 6, 2022); [Scoping Memo](#) (Dec. 17, 2021); Docket No. [R.19-09-009](#).

PCIA Rulemaking

Background: The Power Charge Indifference Adjustment (PCIA) is a nonbypassable charge levied on electric bills of customers who have departed from IOU service, such as CCA customers, to compensate IOUs for resources procured on behalf of former customers prior to their departure. The new Voluntary Allocation/Market Offer process was authorized in [D.21-05-030](#). Phase 2 issues related to PCIA data access and voluntary allocations in market-price benchmark (MPB) calculations were resolved in [D.22-07-008](#). Currently, the proceeding is evaluating the calculation of the MPB charges.

Recent Developments: On March 3, the ALJ issued a [Ruling](#) requesting comments on the Supplemental GHG-Free Transactions Proposal that builds on the [GHG-Free Staff Proposal](#) from September 2022 and would allow IOUs to choose either GHG-Free allocations or MPB treatment for non-RPS-eligible, large hydropower resources in each year, and would modify certain aspects of the original GHG-Free Staff Proposal for clarity.

Analysis: N/A

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

Additional Information: ALJ [Ruling](#) (Mar. 3, 2023); [D.22-01-023](#) on Phase 2 (Jan. 27, 2021); [D.18-09-013](#) Track 1 Decision approving PG&E Settlement Agreement (Sep. 20, 2018); Docket No. [R.17-06-026](#).

Demand Response Programs (2023-2027)

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

Recent Developments: On March 2, the ALJ issued a [Ruling](#) providing Emergency Load Reduction Program (ELRP) compensation and load reduction data for the 2022 summer season. The data for PG&E territory show a total of 177 hours of voluntary load reduction under the ELRP during which a total of 10,793 MWh were delivered from

participants during ELRP events on 11 days. On March 3, the ALJ issued a [Ruling](#) requesting comments on Demand Response Auction Mechanism (DRAM) questions and providing an updated public version of the [DRAM Evaluation Report](#) (Updated Nexant Report).

Analysis: The ELRP and DRAM programs are both tools that provide an opportunity to reduce load during critical times of grid stress. The increased flexibility these programs provide offers the potential to engage customers directly in grid management, increasing resiliency and potentially reducing the need for additional peak power procurement.

Next Steps: Reply comments on Questions 1A and 1B of the DRAM Ruling are due **April 14**, and all other comments and opening testimony on the Demand Response Auction Mechanism are due **May 31**, opening briefs are due September 30, and a proposed decision is expected in January 2024. In Phase 2, supplemental and intervenor testimony is due between February 3 and May 5, opening briefs on Phase 2 are now due June 30, and a proposed decision is expected in October 2023 for the 2024-2027 DR Program.

Additional Information: ALJ [Ruling](#) on DRAM (Mar. 3, 2023); ALJ [Ruling](#) on ELRP (Mar. 2, 2023); [Assigned Commissioner's Ruling](#) (Jan. 27, 2023); [D.23-01-006](#) (Jan. 13, 2023); [Scoping Memo and Ruling](#) (Dec. 19, 2022); [Proposed Decision](#) (Dec. 9, 2022); [D.22-12-009](#) (Dec. 6, 2022); [Ruling](#) (Sep. 22, 2022); Assigned Commissioner's [Scoping Memo and Ruling](#) and DRAM Evaluation report (Jul. 5, 2022); [Ruling](#) consolidating Applications (May 25, 2022); PG&E [Application](#) (May 2, 2022); Docket No. [A.22-05-002](#).

Transportation Electrification

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

Recent Developments: On March 15, VCE filed its [Annual Vehicle-Grid Integration Report](#). On March 16, PG&E submitted [AL 6883-E](#) providing its near-term priority proposal for its Transportation Electrification Advisory Services. On April 3, PG&E submitted [AL 6906-E](#) providing its annual report on the performance of its commercial electric vehicle rate.

Analysis: N/A

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

Additional Information: PG&E [AL 6906-E](#) (Apr. 3, 2023); PG&E [AL 6883-E](#) (Mar. 16, 2023); VCE's [Annual Vehicle-Grid Integration Report](#) (Mar. 15, 2023); [D.22-11-040](#) (Nov. 21, 2022); [Ruling](#) entering [Staff Proposal](#) on Transportation Electrification Framework to record (Feb. 25, 2022); Docket No. [R.18-12-006](#).

Commercial EV Real-Time Pricing Pilot

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

Recent Developments: No recent developments this past month.

Analysis: N/A

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

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

PG&E Asset Transfer

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

Recent Developments: On March 17, PG&E served Amended and Restated Testimony Chapter 4 to provide further detail regarding the anticipated intercompany agreements between PG&E and Pacific Generation. On March 30, an [ALJ Ruling](#) modified the procedural schedule granting a one-month extension for intervenors to serve direct testimony and extending other upcoming deadlines by one month.

Analysis: N/A

Next Steps: Intervenor direct testimony is due **June 16** and rebuttal testimony is due July 7. Evidentiary hearings are scheduled August 21-22, 24-25, and 28, and opening briefs are due September 18.

Additional Information: ALJ [Ruling](#) (Mar. 30, 2023); [Scoping Memo and Ruling](#) (Jan. 20, 2023); ALJ [Ruling](#) on prehearing conference (Nov. 15, 2022); PG&E [Application](#) (Sep. 28, 2022); Docket No. [A.22-09-018](#).

Building Decarbonization

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

Recent Developments: No recent developments in the past month.

Analysis: N/A

Next Steps: There is no current procedural schedule for this proceeding.

Additional Information: [D.23-02-005](#) (Feb. 3, 2023); [D.22-09-026](#) (Sep. 20, 2022); [Scoping Memo](#) (Mar. 22, 2022); [D.21-11-002](#) ([Appendices A-E](#)) Decision on Building Decarb Phase II (Nov. 9, 2021); [D.20-03-027](#) Establishing Building Decarbonization Pilot Programs (Apr. 6, 2020); [OIR](#) (Feb. 8, 2019); Docket No. [R.19-01-011](#).

Utility Safety Culture Assessments

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

Recent Developments: No recent developments this past month.

Analysis: N/A

Next Steps: A proposed decision on the Staff Proposal (Safety Culture Concept Paper attached to the September 13, 2022 [Ruling](#)) is expected in early 2023.

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

Other Dockets

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

Docket	Name	Status
I.15-08-019	Investigation into PG&E Organization, Culture, and Governance	This proceeding was opened as part of an investigation into whether PG&E's organizational culture and governance prioritize safety, and currently serves to monitor the progress of PG&E in improving its safety culture. The Final Report from consultant NorthStar will be considered in a future decision.
A.20-06-011	PG&E Regionalization Plan	D.22-06-028 closed the proceeding. PG&E will continue to convene quarterly "town hall" meetings in each region and conduct broader meetings with the Regionalization Stakeholder Group. Town Hall Report Q4 (Feb. 10, 2023)
R.21-03-001	Wildfire Fund NBC (2022-2023) Rulemaking	On December 6, the CPUC issued D.22-12-007 adopting a 2023 Wildfire NBC of \$5.30/MWh (\$0.00530/kWh) effective as of January 1, 2023. The 2023 Wildfire NBC is \$1.22/MWh, or 18.7%, less than the current 2022 Wildfire NBC of \$6.52/MWh. This reduction is mostly due to the fund having completed recovery of all prior period under-collections.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee February 23, 2023 Meeting Summary

DATE: April 13, 2023

This report summarizes the Community Advisory Committee’s meeting held via Zoom webinar on Thursday, February 23, 2023. The CAC had no meeting in March 2023.

- A. Received Strategic Plan update and formed Strategic Plan Task Group.** VCE Staff Edward Burnham provided a summary of VCE’s accomplishments and asked for the CAC’s assistance to provide feedback related to the development of a rolling strategic plan. Several items were discussed: PCIA and forecasting; status of VCE’s credit rating; the effects of VCE adopting several new policies on credit rating; and, whether or not a consultant would be assisting VCE develop a rolling strategic plan. The CAC formed a Strategic Plan Task Group (SPTG) to review, modify and expand core Strategic Plan goals and objectives. Staff were asked to notify all CAC Members that this task group was formed and to solicit others to participate. Staff asked the SPTG to prepare a draft Charge for the CAC to review at their next meeting.
- B. Reviewed draft 2023 CAC Customer Experience Task Group Charge.** CAC Member David Springer announced that the Task Group name has changed from Customer Experience to *Programs and Outreach Task Group* (POTG). In addition, he informed those present that CAC Member Keith Taylor will serve as chair and he would serve as co-chair. The CAC reviewed the draft Charge and made several suggested clarification revisions. The Charge was approved as amended (9-0-0).
- C. Received Inflation Reduction Act (IRA) overview and items of interest to VCE Customers.** VCE Staff Yvonne Hunter presented an overview of the Inflation Reduction Act (IRA) and provided highlights of the act that may be of interest to VCE Customers. Several items were discussed, such as: rebates for battery installations with solar; whether this information will be presented to the Board; commercial Electric Vehicle (EV) rebates and whether it applies to agricultural equipment; utilization of resources to “stack” rebates; the effects on resource adequacy (RA) should there be an increase in battery (solar) installations; and, other state rebate programs.
- D. Received and discussed 2023 Power Charge Indifference Adjustment (PCIA) and Rates update.** Staff and CAC members discussed impacts of PCIA (power charge indifference adjustment) on VCE’s rates; building VCE reserves; rate options for Customers; Rate Adjustment policy; and, schedule of rate review by the Board.

VALLEY CLEAN ENERGY ALLIANCE**Staff Report - Item 8**

TO: Board of Directors

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

SUBJECT: SACOG Grant - Electrify Yolo Update

DATE: April 13, 2023

RECOMMENDATION

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

BACKGROUND

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

The project goals include:

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

UPDATES

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

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

COVID-19 Pandemic Impacts:

Each jurisdiction experienced impacts related to the COVID-19 pandemic and the shelter-in-place order on Yolo County. Work was delayed as resources were shifted to emergency response and other high priority projects. With the movement of the State to rescind emergency orders and the re-opening of most of the jurisdictions, the project partners are once again moving forward with consultant, siting, procurement and installation efforts. However, due to significant delays with several of the projects, not all jurisdictions may complete their projects by December 31, 2023, and the group is considering asking SACOG for an extension of one year. An update will be provided in the next quarterly report.

Fund Expenditures:

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

Partner UpdatesCity of Davis:

During the Fall of 2020, staff issued an RFP to solicit proposals for the City's EV Charging Station project. As a result of that competitive effort, and a thorough review of the proposals, staff recommended Frontier Energy, Inc. as the selected consultant to perform the analysis and design the City's portion of the EV Charging project. On June 1st, 2021, the City Council approved the Professional Services Agreement (PSA) with Frontier Energy, Inc. and also solidified funding within the City's budget to fund this effort. Five sites have been selected, and the City continues to work with PG&E to make improvements on the sites. Since the last report in January 2023, the City of Davis has not spent any additional funds but will be writing a Purchase Order shortly for the Pair Tree solar mobile charging stations for \$132,400. Plans and bid documents are in progress for the 5 public charging sites, as well as additional chargers at two City facilities to charge fleet vehicles. Staff has also identified a potential fleet EV van to purchase as part of the grant requirement.

City of Winters:

The City of Winters is finished with one of two selected sites. Chargers at the Community Center were installed, are operational, and have permanent signage with the logos of the grant partners. The second site is in progress, and the site has power. City Staff posted this project on the city website for proposals, contacted four different contractors through email and phone and had just one response which was Ample Electric, with which it is currently working. The City has spent \$79,500 of funds toward the project. All four Blink chargers have been received. The project consists of two separate locations for the charging stations: the Winters Community Center parking lot located at 201 Railroad Ave. has two Level 2 double chargers replacing existing chargers. The second location is the City parking lot at the corner of First St. and Abbey St. This location is a new parking lot that will have one level 2 double charger and one 50kw level 1 fast charger. The transformer for this project has been received. When dry weather allows, it will be installed with the chargers, completing the project.

City of Woodland:

The City of Woodland was apportioned \$150,000 to install at minimum two Level 2 EV charging stations in Woodland that are accessible to the public. Site selection and feasibility studies are complete, with the site being City of Woodland public parking lot near 430-434 College St, Woodland CA 95695. PG&E has approved plans and is waiting on installment. Switch gear will arrive in August 2023. Chargers have been chosen and are awaiting orders. The City is currently on schedule unless the orders for the switch gear or chargers are delayed.

County of Yolo:

- 137 N. Cottonwood St. (Bauer Building) Woodland – 2-Dual Chargers. Construction/Installation completed in mid -February 2023. Chargers are activated and being utilized. This project is complete.
- 600 A St. Davis – 1-Dual Charger – Permitting complete. Construction/Installation scheduled for May 8-11 2023.
- 315 E. 14th St. Davis - 1-Dual Charger – this charger is in the permitting process with the City of Davis. The paving subcontractor identified a possible ADA issue in the parking lot. The County was presented with a pre-construction change order that will require County Board of Supervisor approval. Plan to take to Board in early May, then continue permitting with City of Davis.
- 25 N. Cottonwood St. (Gonzalez Building) – 2-Dual Chargers. Project on hold. A large Change Order will require additional approval. This project is on hold until other projects are complete or showing significant progress.
- New Project: the County is considering installing charging stations at the Knights Landing Community Park. Park construction is planned to be completed December 2023 and will include the charger installation.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

TO: Board of Directors

FROM: Mitch Sears, Executive Officer
Edward Burnham, Director of Finance & Internal Operations

SUBJECT: Bi-annual Enterprise Risk Management Report

DATE: April 13, 2023

RECOMMENDATION

Accept the Bi-annual Enterprise Risk Management Report – March 2023.

BACKGROUND & DISCUSSION

In 2018, the Board approved VCE's Enterprise Risk Management (ERM) Policy. The policy is centered on risk management best practices and policies for the energy sector. In summary, the VCE ERM policy contains the following sections:

- **Introduction:** This section introduces the value of ERM as a structured approach to managing risk and uncertainty. It lays out the objectives of VCEA's ERM function, providing the framework for evaluating and managing risk in the organization's decision-making process.
- **ERM Roles and Responsibilities:** The ERM roles are consistent with the Board-approved Wholesale Power Procurement & Risk Management Policy. The Enterprise Risk Oversight Committee (EROC) has primary responsibility for the implementation of ERM. The policy lays out the scope of the EROC's risk management authority.
- **Business Practices:** This section identifies the steps of risk management and the basic process associated with each step. The intent is to provide a high-level framework. Specific tools and techniques for implementing enterprise risk management will be recommended by the portfolio manager following approval of the policy.
- **Management Reporting and Metrics:** The policy defines an enterprise risk report that will be provided bi-annually to the Board.

Staff has used the consistent framework described in the ERM policy to identify various risks and related mitigations, and to ensure effective mitigation and communication across all levels of the organization. The attached ERM bi-annual report describes the activities that have taken place since March 2022 and the actions VCE is and will be taking to manage the top risks that have been identified.

Prior to this report, staff most recently presented the bi-annual update to the Board in September 2022 , describing progress on the ERM plan since inception. Bi-annual updates are provided in March and September of each year.

Note: staff will be completing a best practices review in Q2 2023 based on a framework developed by CalCCA (CCA trade association). This framework is intended demonstrate to state regulators that CCA's that belong to CalCCA adhere to energy industry best practices.

ATTACHMENT

1. Bi-annual Enterprise Risk Management Report – March 2023

Valley Clean Energy

Enterprise Risk Management Report

March 2023

Executive Summary

Introduction and Background

In 2018, the Valley Clean Energy (VCE) Board adopted an Enterprise Risk Management (ERM) framework. The objective was to provide the Board with insight into risks that could impact the ability to execute VCE's mission and build credibility and sustain confidence in VCE's governance. In addition, the framework and reports are designed to enhance the understanding of significant risks to VCE, develop the capacity for continuous monitoring, provide for periodic reporting of risks, and establish a platform for responding to changing risk circumstances. This report is the 1st of VCE's biannual risk reports for 2023; the prior ERM biannual Report was issued in September 2022.

ERM is a strategic approach to risk management that supports the achievement of organizational objectives through the management of integrated impacts of risks as an interrelated risk portfolio. ERM is a coordinated effort by management to treat all risks effectively, thereby reducing the overall cost of risk to the organization. The Executive Officer has charged functional leaders to oversee the treatment of known major risk categories and provide a risk overview to the Enterprise Risk Oversight Committee (EROC).

ERM Philosophy

VCE's ERM philosophy includes the following principles:

1. Identify, assess, prudently manage, monitor, and report on a variety of business-critical risks;
2. Provide enterprise risk context and linkage to existing core business processes to improve the allocation of limited resources;

ERM Approach

Staff has applied a multi-perspective approach to evaluate and estimate the trade-off between risk and cost of mitigation across VCE business functions. This approach addresses the following issues:

- Roles and responsibilities

- Definitions and language
- Risk heat map and risk exposure inventory
- Risk exposure monitoring, updating, and reporting
- Integration of ERM with key business processes
- Integration of risk awareness within corporate culture
- This framework supports the Board in exercising its overall responsibility to:
 - Regulate opportunities and risks for VCE;
 - Develop a better understanding of appropriate opportunities and risks for VCE;
 - Promote active management of risk exposure down to acceptable levels; and
 - Assist VCE in its achievement of business plan objectives and operational performance.

Summary of Activities through March of 2023

From an implementation perspective, progress continues on multiple fronts. Significant effort has been invested in creating an enterprise risk register. Risks to VCE have been identified, categorized, and rated. Existing risk controls and risk treatment measures implemented/proposed have also been identified. The risk register provides VCE's management with a consolidated view of risks being faced by VCE, the potential impact of those risks, mitigation actions, and assessment of short-term risk trends (i.e., higher/lower/steady).

Staff is using a consistent framework to identify various risks and related mitigations, and to ensure effective communication across all levels of the organization. In doing so, staff has completed the following developmental tasks:

1. Established the Executive Officer as Chief Risk Officer and Director of Finance & Internal Operations as risk process owner, focusing on day-to-day monitoring and coordination.
2. Developed ERM framework and tools
3. Conducted a risk survey
4. Developed VCE's top risk portfolio
5. Surveyed staff and management for ongoing risk input
6. Held monthly EROC meetings

Key Steps Taken Since the Last Biannual Update

Some actionable steps that VCE has taken since the last Board update in September 2022 include:

1. Have actively engaged from a regulatory and legislative standpoint, supporting regulatory statewide proceedings and settlements, meeting with key CPUC staff, and continuing progress on the annual VCE legislative platform.
2. Executed the three year Wholesale Energy Services (WES) agreement between VCE and The Energy Authority (TEA) in support of a stable and professionally managed portfolio.
3. Adopted a rate adjustment policy and launched VCE's additional customer rate option "Base Green", and adopted customer rates for 2023 to further stabilize VCE's financial standing and support establishing a credit rating.
4. Repaid the short-term \$5M line of credit with the County of Yolo and retained the 2-year line of credit for \$11M with River City Bank to help manage 2022-2023 cash flow requirements.
5. Successfully launched the AgFIT pilot program that provides growers with hourly dynamic rates and incentives for irrigation automation to better manage their energy costs and shift a small portion of VCE's peak load.

Key Risks

Key risks are those risks that, given VCE's current position, could negatively impact VCE's business model, future performance or prospects, solvency, liquidity, reputation, or prevent it from delivering on its local control commitment. These key risks are updated on an ongoing basis and look forward over a 5-year horizon to identify the:

- Nature and extent of risks facing VCE
- Likelihood and velocity of the risks and potential impacts
- VCE's ability to reduce or control such risks

Key Priorities for Risk Management in 2023:

1. Maintain the operational risk management process
2. Provide regular updates to the Board
3. Continue to take specific actions to mitigate risks as outlined in this document
4. Begin to develop contingency plans for unexpected and emergent events







Risk Portfolio



















Top 5 Risks for VCE:





1. Commodity procurement
2. Regulatory & Policy risk
3. Capital availability/cash flow
4. Resource Adequacy
5. Rate Structure

The following tables outline current risks (Table 1) and summarize VCE's response plan for it's top identified risks (Table 2).

Table 1: Risk Description/Level

Risk	Description	Current Residual Risk	Target Residual Risk
PCIA	The PCIA rate for 2023 decreased by 84%. The continued high energy prices and forwards for 2023 and 2024 have normalized current forecasted impacts on bundled rates and PCIA for the near term.		
Resource Adequacy	The supply of RA in the western US is tightening, and the regulatory framework is evolving. A combination of these two elements has resulted in an increased cost of RA and in some cases no available supply. Due to IOU interconnection delays, the Resurgence PV+S project will be partially delayed thus causing VCE to be short RA for Aug '23.		
Commodity Procurement	The 2023 market is experiencing fluctuations associated with commodity prices, including energy prices, resource adequacy, and other components of the energy portfolio.		

Risk	Description	Current Residual Risk	Target Residual Risk
Regulatory & Policy risk	Risk of additional regulatory requirements increasing complexity and cost of operations.		
Capital availability/cashflow	Capital / Cashflow Risk has been slightly reduced through the adoption of the new cost recovery rate policy, PCIA decreases, auto rate adjustment policy, and liquidity lines of credit with River City Bank.		
Economic Uncertainty	The risk from the ongoing geopolitical climate increases the chances of impacting gas prices, the economy, and associated cost forecasts.		
Rate structure	The risk of rate design for cost of service has been reduced with an updated rate policy and additional implementation of the "Base Green" rate option. VCE will continue to develop rate-setting options to minimize risks further.		
Cyber security & data privacy	Risk of a data breach as a result of a cyber breach or physical attack.		
Financial Markets Volatility	Swings in global energy markets, financial markets, and currencies due to current geopolitical events (e.g. Russian invasion of Ukraine) have created challenges that impact VCE's power costs.		
Changing customer expectations	Risk that customer's changing expectations as a result of innovation may result in reduced customer revenue and loyalty		
Opt-out rate	The risk of higher than expected opt-out has normalized despite PG&E's increases in both electricity transmission and distribution and gas rates. VCE will implement the "Base Green" product option to minimize opt-out activity and perform outreach as necessary.		
Business model	Ability to quickly identify and respond to business risks that have the potential to impact the ability to achieve VCE goals.		

Risk	Description	Current Residual Risk	Target Residual Risk
Media & Community	Risk of unfavorable public communications or events; spillover customer dissatisfaction related to PG&E's PSPS.		
Unknown risks	Business and utilities attempt to identify and adapt to known risks but some potential events outside of VCE's control could have a debilitating impact on utilities in general and VCE in particular.		











	High Risk
	High/Moderate Risk
	Low/Moderate Risk
	Low Risk

Table 2: Summary of VCE top risk response plan


Risk Event	Response	Trend ¹	Plan	Trigger/Control	Owner
PCIA	Monitor risk & actively engage and respond		<p>1) Continue direct involvement with CalCCA task groups to seek favorable rulings and settlements in the PCIA, ERRA, and other filings.</p> <p>2) Work towards the potential long-term goal of attaining an option for a PCIA buy-out and sunset date.</p>	<p>The 2024 PG&E PCIA forecast is expected to stabilize with current energy market prices and forward market prices.</p> <p>VCE will continue to monitor Energy Resource Recovery Account (ERRA) proceedings.</p>	Director of Finance

¹ Current trend of risk for VCE- increasing  , no change  or decreasing

Risk Event	Response	Trend ¹	Plan	Trigger/Control	Owner
Commodity Procurement	Reduce & manage risk		<p>1) Continue to pursue long-term power purchase agreements to reduce the average cost of power in future years</p> <p>2) Pursue regulatory and legislative avenues in addressing the extreme swings in pricing.</p> <p>3) Take an active role in regulatory proceedings at the CPUC, including appeals, on various regulations that impact the cost of electricity, along with support from the CalCCA Regulatory Committee</p> <p>4) Amending VCE's Wholesale Energy Risk Manual to extend the hedging horizon to multiple years in an effort to smooth market fluctuations.</p>	<p>Execution of PPA contracts</p> <p>Regulatory rulings that affect commodity procurement cost</p>	Director of Power Procurement
Regulatory & Policy risk	Monitor risk & actively engage and respond		<p>1) Take an active role in legislative sessions (contract with lobbyist and engage Board members for support / opposition on bills) along with support from CalCCA legislative committee</p>	<p>Weekly CalCCA Regulatory and Legislative Committee meetings</p> <p>Regulatory rulings</p> <p>Legislative actions</p>	Executive Officer

Risk Event	Response	Trend ¹	Plan	Trigger/Control	Owner
			<p>2) Follow and continue to update the annual VCE Legislative Platform</p> <p>3) Take an active role in regulatory proceedings at the CPUC, including appeals, on various regulations that impact VCE and CC's that increase cost or bureaucracy without any significant safety or cost benefits to VCE and its customers along with support from CalCCA Regulatory Committee</p>		
<p>Capital Availability / Cash Flow</p>	<p>Monitor risk & actively engage and respond</p>		<p>1) Continue towards conserving cash, reducing debt, and lowering cash requirements.</p> <p>2) Evaluate reserve policy changes.</p> <p>3) Work towards the 2024 goal of securing an investment-grade credit rating.</p>	<p>VCE Line of credit agreements & renewals has been extended to 2024.</p> <p>VCE is working with Financial Advisor (PFM) to establish VCE's initial investment grade credit rating.</p> <p>Implement VCE Rate adjustment and Collections Policy</p>	<p>Director of Finance</p>

Risk Event	Response	Trend ¹	Plan	Trigger/Control	Owner
Resource Adequacy	Reduce & manage risk		<ol style="list-style-type: none"> 1) Take an active role in regulatory proceedings at the CPUC, including appeals, on various regulations that impact the cost of electricity along with support from the CalCCA Regulatory Committee. 2) Monitor and participate in CalCCA activities related to regional developments in RA. 3) Continue to develop portfolio of resources that satisfy various future RA program scenarios. 	<p>Execution of PPA contracts</p> <p>Regulatory rulings that affect RA cost, including non-compliance penalty structure</p>	Director of Power Procurement

Risk Event	Response	Trend ¹	Plan	Trigger/Control	Owner
Rate Structure	Reduce & manage risk		<ol style="list-style-type: none"> 1) Monitor and update Board based on analyst forecasts for ERRA proceeding. 2) Identify and mitigate risks outside of VCE control to limit impacts and frequency of rate changes. 3) Review and update rates for rate adjustment policy. 	<p>Economic outlook and Rate forecasts</p> <p>Monitor Regulatory proceedings that impact PCIA, RA, and ERRA.</p> <p>Monitor cash short-term and long-term impacts to reserve funds, credit lines, commercial negotiations, and PPA covenants.</p>	Director of Finance

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

To: Valley Clean Energy Board of Directors

From: Mitch Sears, Executive Officer
Rebecca Boyles, Director of Customer Care and Marketing
Sierra Huffman, Program and Community Engagement Analyst

Subject: MIDAS Upload Extension Request

Date: April 6, 2023

RECOMMENDATION

Authorize Valley Clean Energy to request extension to comply with the California Energy Commission's Market Informed Demand Automation Server (MIDAS) rates upload.

BACKGROUND & ANALYSIS

In 2020, California Energy Commission (CEC) worked with the California Public Utilities Commission (CPUC), the California Independent System Operator (CAISO), investor-owned utilities, publicly owned utilities, community choice aggregators, and other stakeholders to identify the steps needed to increase statewide adoption of demand flexibility based rate options. The goal for demand flexibility is reducing peak load, as well as shifting load into periods of high renewable generation. This is a similar design VCE is piloting in its AgFIT program.

In August 2021, the CEC published the pilot Market Informed Demand Automation Server (MIDAS), a statewide database of time-dependent electricity rates, CAISO Flex Alerts, and marginal greenhouse gas emissions data. MIDAS was designed to be the principal tool supporting the CEC's load management standards or goal of increased demand flexibility. MIDAS, with the help of automation technology, will provide signals to shift or reduce load to electrical end uses in real-time. The CEC has required that the state's largest utilities and all large community choice aggregators (which includes VCE) populate the MIDAS database with time-dependent rates by July 1, 2023.

VCE, mirroring PG&E's preliminary analysis, has 36 time-dependent rates, including residential, non-residential, and agricultural. Factoring in rate modifiers which adjust the price of energy, the number of time-dependent rates jumps to between 1620 to 16200. If each rate is required to be uploaded on a daily basis on a 24-hour interval, VCE will need to upload somewhere between 38,880 to 380,000 price intervals into MIDAS every day going forward. To meet the minimum requirements, load serving entities like VCE would have to have advanced

programming skills and in-house software to effectively populate and maintain rate information stored within the database. While supportive of the concept of dynamic rates and providing information to make them readily available, many questions about the current MIDAS approach remain regarding implementation feasibility and financial impacts to customers.

The MIDAS system is currently accessible and querying access is available to all users but it has not been populated with dynamic rate information.

Extension Request

Due to the unknowns described above, all three investor-owned utilities and all large community choice aggregators have agreed to file a joint extension request for the MIDAS rate upload. All parties agree that uploading existing time-dependent rates to the MIDAS database by July 1, 2023, as required by the regulation, would cause significant hardship and is neither technologically feasible nor cost-effective. Requirements for the MIDAS upload are still being developed by regulators and continue to change, factors are becoming more complex, demanding significant time and resources. VCE, as well as all parties involved need the requirements to be in a stable place with documentation before we can begin building systems and processes needed for uploading rates at the scale envisioned. The joint parties are asking to extend the deadline of July 1, 2023, to 12 months after finalization of a consensus-developed set of requirements.

RECOMMENDATION

Staff is recommending that the Board authorize Valley Clean Energy to request extension to comply with the California Energy Commission's Market Informed Demand Automation Server (MIDAS) rates upload. This may include participating in a joint request for an extension even as VCE continues to explore the application of flexible dynamic pricing through its AgFIT pilot program.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

To: Board of Directors

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

Subject: Extension of the VCE/Sacramento Municipal Utilities District (SMUD) Master Services Agreement.

Date: April 13, 2023

RECOMMENDATION

Authorize via Resolution the Executive Officer to execute the amendments, task orders, and any necessary documents related to a 5-year extension of VCE’s Master Services Agreement with the Sacramento Municipal Utilities District (SMUD) through December 31, 2028.

Overview

The purpose of this staff report is to (1) authorize an extension of VCE’s existing Master Services Agreement with SMUD for Call Center, Billing, Data, etc. services through December 31, 2028; (2) reduce Wholesale Energy Services (WES) to levels necessary for transition of these services to TEA; and (3) expand SMUD service to include collections.

BACKGROUND & 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 and operational services. Soon thereafter, a series of additional Task Orders were implemented to the Agreement, including Task Order 3 to provide Wholesale Energy Services (WES); Task Order 4 to provide Operational Staff Services to VCE; and Task Orders 5 (Long Term Renewable Procurement Services) and 6 (Expansion of VCE Service to Winters, CA).

In early 2022 SMUD informed VCE that it would not continue to offer WES services to its CCA clients but was interested in continuing other support services it provided to VCE and other CCA clients. At the September 8, 2022 Board meeting, staff informed the Board of the activities that would be occurring in the fourth quarter of 2022 related to the selection of a new WES provider for VCE. At its December 8, 2022 meeting, the Board approved the WES agreement with The Energy Authority (TEA), outlined in Board [Item 18](#). VCE and SMUD are currently following the WES transition plan in order to have a seamless hand-off from SMUD to TEA for the WES portion of the SMUD contract. VCE and SMUD have agreed to maintain other essential services to VCE under the overall Agreement.

At its March 10, 2022 meeting, the Board approved the VCE Collections Policy ([Item 14](#)), that governs the customer engagement and collection of accounts receivable that are significantly overdue (3 months +). VCE staff are recommending Task order 9 to allow SMUD to provide debt collection services as required and outlined in VCE's collections policy for a smooth and coherent approach to our accounts receivables and customer support management. Based on staff research, these services are offered at market competitive rates due primarily to the fact that SMUD conducts these types of activities for its own customer base.

Master Service/Task Order Amendments

The recommended revisions/reductions/additions in the attached task orders and amendments are summarized below:

Master Services Agreement (MSA) - Amendment

- 5 Year extension of the MSA (December 31, 2023 to December 31, 2028), inclusive of the Task Orders for the below.

Task Order 3 Amendment 32 – Reduced Wholesale Energy Services

- Updated two sections for reduced support:
 - 1.5 Scheduling Coordinator Services
 - 1.8 Power Portfolio Purchase Service
- Updated pricing for the above two services to be at an hourly rate.
- Drawdown and close SMUD reserve account and lockbox requirements
- Removed several sections (note: replaced by new contract with TEA):
 - Load Forecast Models Development
 - Wholesale Power Procurement and Risk Policy and Reporting
 - Resource Portfolio Modeling and Power Supply Budget
 - Resource-Related Launch Filings/Registration/Agreements
 - Load and Resource Portfolio Operation Service
 - Wholesale Load and Resource Settlements and Verification
 - Market Risk Instruments Management
 - Update Portfolio Model and Report Power Supply Risk Metrics
 - CAISO Market Monitoring
 - Resource Portfolio Compliance Reporting
 - Enterprise Risk Management Program Support

Task Order 7 – Data Management and Customer Call Center Services (Replaces Task order 2)

- Updated deliverables and timeline for normalized operations.
- Updated contact center hours to reflect recent changes.
- Updated and consolidated the contact center section.
- Updated reporting table to include the list of current report provided.
- Removed/updated language for non-applicable sections and launch activity.
- Updated per meter and hourly rate pricing.

Task Order 8 - Consulting Services (Replaces Task order 4)

- Consolidated scope to focus on professional consulting services.
- Updated hourly rate pricing.

- Removed several sections (note: no longer needed due to transition to “in-house” staffing – SMUD consulting services still available as needed):
 - Dedicated Operational Staff
 - Professional Services
 - Non-Solicitation
 - Approval Process/Acceptance
 - Oversight of Dedicated Operational Staff
 - Employment-Related Obligations to Dedicated Operational Staff
 - Leave

Task Order 9 - Debt Collection Services (NEW)

- Accounts Receivable Data Analytics and Web Portal
- Customer Outreach
 - “Here to Help” initial contact letter
 - Customer Care Calls and Tracing
 - Validation Notices and Written Notifications
- Customer Segmentation
 - Up to 40 segments to deploy unique strategies for each segment.

Master Services Extension

Staff is recommending that the Master Services Agreement be extended for a term of five (5) years 2023-2028. This would provide certainty and stability for continued success with our customer support and billing activities. The costs associated with the recommended extension of the Master Services Agreement are within those currently budgeted and forecasted for provision of these services.

CONCLUSION

The support services provided by SMUD, including customer support and billing services, are extremely important for VCE’s operations, customer retention and receivables management. If approved by the Board, the recommended collections services will be delivered by SMUD, a trusted, experienced provider of these types of services. The partnership VCE has established with SMUD during the initial term of the Master Services Agreement has been instrumental in VCE’s current and future success. Staff is recommending Board approval of the attached amendments and task orders between VCE and SMUD.

Attachments:

1. Amendment 1 to Master Services Agreement
2. Amendment 32 to Task Order 3 - Wholesale Energy Services
3. Task Order 7 - Data Management and Customer Call Center Services
4. Task Order 8 - Consulting Services
5. Task Order 9 - Debt Collections Services
6. Resolution 2023-XXX

AMENDMENT 1 to the Master Services Agreement

This Amendment 1 to the Master Services Agreement is made by and between the Sacramento Municipal Utility District (SMUD) and Valley Clean Energy (VCE), on the date of last signature below (“Amendment 1”). SMUD and VCE are Parties to that certain Master Services Agreement, dated October 25, 2017 (“MSA”).

Recitals

WHEREAS, the Parties entered into the MSA to facilitate implementation and operation of a Community Choice Aggregation (CCA) program for VCE pursuant to Public Utilities Code Section 366.2 et seq.;

WHEREAS, the original MSA expires on June 1, 2023 (5 years from the Launch Date), and pursuant to Section 4.2 of the MSA, VCE and SMUD have agreed to extend the term until December 31, 2028;

WHEREAS, under the original MSA, SMUD supported the launch and on-going operations of VCE’s CCA program and VCE desires to continue with certain services from SMUD as provided in the Task Order(s).

NOW THEREFORE, the Parties agree to the terms of this Amendment 1 set forth below.

Section 4.2 TERM, is amended as follows:

Section 4.2 Term is struck in its entirety and replaced with the following:

“4.2.1 This MSA shall remain in effect through December 31, 2028, unless terminated in accordance with Section 4.3 (Termination) or as otherwise agreed in writing by the Parties. This MSA may be extended by mutual agreement of the Parties, for a maximum term of fifteen (15) years. Either Party may notify the other Party at least six (6) months prior to expiration indicating its desire to extend the term of the MSA, and the Parties shall meet and discuss whether an extension is mutually acceptable. At that time SMUD shall evaluate its fees and rates for potential changes in the compensation structure of the Task Order(s).

Additionally, each Task Order will have its own term, not to exceed the term of the MSA, which may be extended by mutual agreement of the Parties.

4.2.2 The Launch Date is June 1, 2018.”

SIGNATURES

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

Valley Clean Energy

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

Sacramento Municipal Utility District

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

AMENDMENT 32 TO EXHIBIT A: SCOPE OF SERVICES Task Order 3 – Wholesale Energy Services

Wholesale Energy Services Extension

The Sacramento Municipal Utility District (SMUD) and Valley Clean Energy (VCE) agree to the following services, terms, and conditions described in this Amendment 32 to Task Order 3 the provisions of which are subject to the terms and conditions of the Master Professional Services Agreement (Agreement) between the Parties. If any specific provisions of this Amendment 32 to Task Order 3 conflict with any general provisions in the Agreement, Task Order 3, or any preceding Amendments to Task Order 3, the provisions of this Amendment 32 to Task Order 3 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 previous Amendment thereof.

The Effective Date of this Amendment 32 is June 1, 2023.

Section 1, SCOPE OF WORK,

VCE has hired a new Wholesale Energy Services vendor and SMUD will work to transition services to the new vendor. SMUD will continue to perform limited services from June 1, 2023 until December 31, 2023.

Subsections 1.1. Load Forecast Models Development, 1.2. Wholesale Power Procurement and Risk Policy and Reporting, 1.3. Resource Portfolio Modeling and Power Supply Budget, 1.4. Resource-Related Launch Filings/Registration/Agreements, 1.5. Scheduling Coordinator Services, 1.6. Load and Resource Portfolio Operation Service, 1.7. Wholesale Load and Resource Settlements and Verification, 1.8. Power Portfolio Purchase Service, 1.9. Market Risk Instruments Management, 1.10. Update Portfolio Model and Report Power Supply Risk Metrics, 1.11. CAISO Market Monitoring, 1.12. Resource Portfolio Compliance Reporting and 1.14. Enterprise Risk Management Program Support are replaced in their entirety with the following:

1.1. Wholesale Load and Resource Settlement Verification

SMUD will perform all wholesale settlement activities for VCE's Resource Adequacy (RA) contracts in SMUD's name. SMUD will dispute materially inaccurate settlements and work directly with the counterparty as necessary to resolve any invoice related discrepancy. Term energy hedge contracts, day-ahead contracts, PPAs, load, or other products are not included.

1.2. Power Portfolio Purchase Services

SMUD shall provide power portfolio purchase services to and on behalf of VCE, limited to RA transactions. Many of the transactions will be executed using existing "enabling" agreements that SMUD has with other parties trading energy in the western United

States.

- 1.2.1. SMUD will use its status and credit as an active market participant in western energy markets and the CAISO managed market, to execute specific transactions for the VCE power portfolio in SMUD's name. It is likely that transactions using SMUD's name may yield more and lower cost power proposals from suppliers than if the transactions are directly in VCE's name, because of SMUD's established history and credit position with western energy market trading partners. However, SMUD makes no warranty or guarantee that it will enter into lower cost transactions.
- 1.2.2. VCE will have full transparency and approval authority over, in accordance with the Policy, procurement efforts including the counterparties from whom SMUD receives bids on behalf of VCE and the ultimate prices paid by SMUD for the various components of VCE's power supply.
- 1.2.3. SMUD will coordinate with its counterparties to determine the units that should be shown in VCE's monthly RA showings for these contracts. The unit information will be provided to VCE's Scheduling Coordinator who will submit VCE's comprehensive showing. SMUD will expect VCE's Scheduling Coordinator to provide verification of proper showing to SMUD.

Add the following to section 1.13.3 Reserve Account:

- 1.13.3.4 SMUD will release \$875,000 per month from the reserve account on September 20, October 20, and November 20, 2023, or when payment is received for the prior month. VCE will be able to withdraw \$875,000 per month on September 20, October 20, and November 20, 2023, or when payment is received for the prior month. SMUD will release the remaining account balance and VCE will be able to withdraw the remaining account balance on December 20, 2023. VCE will be able to close the reserve account on December 20, 2023

SMUD will support all compliance activities and regulatory filings performed by VCE's vendor that cover time periods where SMUD made the power purchases.

Section 3, TERM AND TERMINATION, is replaced in its entirety with the following:

3.1. Term of Task Order 3

Task Order 3 is effective on the Effective Date of this Amendment 32 and shall remain in effect until December 31st, 2023.

Section 4, COMPENSATION FOR SERVICES, 4.1. Wholesale Energy Services is replaced in its entirety with the following:

4.1. Services provided under 1.1. Wholesale Load and Resource Settlement Verification and 1.2. Power Portfolio Purchase Services will be billed at SMUD's Hourly Rates described in Section 4.3.

[Signature Page follows]

SIGNATURES

The Parties have executed this Amendment 32 to Task Order 3 on the dates indicated below.

Valley Clean Energy

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

Sacramento Municipal Utility District

By: _____

Name: Brandy Bolden

Title: Chief Customer Officer

Date: _____

**Approved as
to Form:** _____

Task Order 7 -Data Management and Customer Call Center Services

SMUD and VCE agree to the following services, terms and conditions described in this Task Order. This Task Order 7 is for Data Management and Customer Call Center Services ("Task Order 7"), the provisions of which are subject to the terms and conditions of the Agreement between the Parties. If any provisions of this Task Order 7 conflict with any provisions in the Agreement, the provisions of this Task Order 7 shall take precedence.

The Effective Date of this Task Order 7 is June 1, 2023. Upon the Effective Date, this Task Order 7 replaces Task Order 2 in its entirety, and Task Order 2 is eliminated.

1. SCOPE OF WORK

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

1.1. Electronic Data Exchange Services

- 1.1.1. Coordinate with PG&E to maintain VCE's Community Choice Aggregation Program ("Program") within PG&E's territory including meetings and calls as needed to ensure timely set up, data transfer, and billing services.
- 1.1.2. Maintain electronic interfaces and communication protocols with PG&E to exchange a full set of EDI files (including 810, 814, 820, 867, and 997) and interval and load data files (Items 16 and 17). Unless otherwise determined, data from PG&E will be received by SMUD which will process and apply VCE rates and then generate EDI transaction files to be sent back to PG&E for billing and enrollment services.
- 1.1.3. Process CCASRs from/to PG&E which specify the changes to a customer's choice of service for customer enrollment, or customer initiated returns to bundled utility service (814 Electronic Data Interchange Files). Changes will be reflected in the CRM.
- 1.1.4. Obtain customer usage data from PG&E's Enterprise Secure File Transfer server to timely bill each customer according to PG&E requirements (867 Electronic Data Interchange Files). SMUD will work with PG&E to maintain protocols required to transfer said customer usage data.
- 1.1.5. Maintain and communicate the amount to be billed by PG&E for services provided by VCE (810 Electronic Data Interchange Files). SMUD will maintain a rate table of VCE rates and apply applicable rate tariffs to calculate the amount to be billed by PG&E for services provided by VCE. SMUD will work with PG&E to maintain the transactions required to transfer the billing amounts to PG&E via the 810 EDI files and requirements specified by PG&E.
- 1.1.6. Receive and maintain data related to payment transactions toward Program charges from PG&E after payment is received by PG&E from VCE customers (820 Electronic Data Interchange Files, and/or daily payment files). SMUD will work with PG&E to maintain the transactions required to transfer the payment transactions toward CCE charges from PG&E after payment is received from customers. SMUD will store this payment data as required by VCE.
- 1.1.7. Conduct integration testing and data validation with PG&E.

1.2. Customer Information System

- 1.2.1. SMUD will provide and operate scalable and robust software systems to manage customer data via Customer Relationship Management (CRM) software, that will enable VCE and its customers to manage program enrollment options online through the Interactive Voice Response (IVR). SMUD will also ensure that the CRM is compatible with the billing engine and data repository for customers' electric usage data. Configure and maintain a cloud-based CRM solution that will store accurate information on all eligible accounts located in the Program service area. This data is to include each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history related to billed amount, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer Program services as mutually agreed to by the Parties from time to time. The software solution and system integration services will be provided by subcontractors to this Agreement.
- 1.2.2. Maintain VCE's on-line database so that in addition to SMUD, VCE has functional access to the online customer database. Administer role-based access to allow VCE, SMUD Call Center Representatives, and SMUD's team to view customer interactions, edit account notes and view other information fields as necessary.
- 1.2.3. Store customer email correspondence and make available to VCE staff upon request. Maintain an archive of such customer email correspondence for a minimum period of 24 months.
- 1.2.4. Obtain from PG&E and store historical usage data for all customers from the start of VCE's Program for a period of no less than five years. SMUD will store the historical usage data in a cloud-based database. Data stored will be in line with the data provided by PG&E via EDI standards. Obtain from PG&E and store historical PG&E bills for all customers from the start of VCE's Program for a period of no less than five years. Viewing access will be available to appropriate VCE staff and an archive of billing records shall be maintained to support intuitive parsing and labeling as may be needed.
- 1.2.5. Maintain a record of customers' enrollments status. This includes customers who have been offered Program service but have elected to opt out, either before or after starting service. SMUD will provide status reports to VCE staff on a weekly basis or other frequency as may be requested by VCE. Call center representatives will have access to this information as needed to support customer service calls.
- 1.2.6. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
- 1.2.7. When requested by VCE, perform quarterly program reviews to assess appropriate customer charge level, as identified by DA Xref. SMUD will ensure that program charges can be applied to the relevant customer account based on DA Xref.
- 1.2.8. Maintain all customer data according to VCE's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process. SMUD will collect only the minimum Confidential information (CI) that is directly relevant and necessary to accomplish specific authorized purpose(s) and will retain CI for only as long as is necessary to fulfill the authorized purpose(s). CI that is no longer needed will be destroyed in accordance with the terms of the Agreement.
- 1.2.9. Maintain and adhere to a Data Management Security Breach Policy for VCE that is based on SMUD's existing policy and procedures related to data breaches.

1.3. Customer Call Center

- 1.3.1. SMUD will provide professional and dedicated staffing for a VCE customer call center, including the option for customers to access self-service through an interactive voice response system. The call center will provide services in both English and Spanish, and regular metrics will be provided to VCE in order to maintain and track high levels of customer service.
- 1.3.2. Maintain a professional Interactive Voice Response (IVR) tool for the Program customer call center based on best practices from other CCE programs and from SMUD. The software solution and system integration services will be provided by subcontractors to this Agreement. Create and maintain professional IVR recordings (based on scripts received from VCE) for the Program customer call center; VCE may update recordings as business needs dictate. The IVR tool will include custom prompts and recordings to align with the VCE customer base and needs.
- 1.3.3. Track how many customers start and complete IVR self-service options without agent assistance and provide regular reports to show the success rate of completed transactions through the IVR platform, as well as other reports related to customer usage of the IVR platform.
- 1.3.4. Provide sufficient Customer Call Center staff during the Program Statutory Enrollment Period to process Program service enrollment and answer questions related to Program services, generation-related billing and other Program-related inquiries via phone or email.
- 1.3.5. Call Center staff will be available between the hours of 9:00AM to 5:00PM Pacific Standard Time, Monday through Friday, excluding VCE and PG&E holidays.
- 1.3.6. Provide sufficient Customer Call Center staff during enrollment and non-enrollment periods to process Program service enrollment and answer questions related to Program services, generation-related billing and other Program-related inquiries via phone or email.
 - Parties may mutually agree to modify call center staffing hours based on an assessment of hourly call volumes.
- 1.3.7. Provide 60 second average speed of answer with an abandon rate of 3%.
- 1.3.8. Make available data manager experts to manage escalated calls between the hours of 9:00AM to 5:00PM Pacific Standard Time, Monday through Friday, excluding VCE and PG&E holidays.
- 1.3.9. Make available bi-lingual staff to help Spanish-speaking customers. SMUD will provide staff, and a third-party contractor (a subcontractor to this Agreement), to support translation services on an as-needed basis. The translation services will include Spanish, as well as many other different languages, and will be available during SMUD business hours of 9:00 A.M to 5:00 P.M., Monday through Friday (excluding holidays).
- 1.3.10. Answer 100% of voicemail messages within one (1) business day.
- 1.3.11. Provide an automated response to 100% of emails. 95% of emails receive a customized response within one (1) business day. 100% of emails receive a customized response within three (3) business days.
- 1.3.12. Provide callers with the estimated hold time, if applicable.
- 1.3.13. Record all inbound calls and make recordings available to VCE staff upon request. Maintain an archive of such recorded calls on a WFO Platform provided by SMUD for a minimum period of 24 months. The software solution and any system integration services required will be provided by subcontractors to this Agreement. Track Call Center contact quality with criteria including:
 - Use of appropriate greetings and other call center scripts
 - Courtesy and professionalism

- Capturing key customer data
 - Providing customers with correct and relevant information
 - First-contact resolution
 - Accuracy in data entry and call coding
 - Grammar and spelling in email communications
- 1.3.14. Provide dedicated Customer Service Representatives (CSRs) who will respond to 100% of VCE customer inquiries. SMUD will forward calls to VCE staff as may be required to serve customer needs. Receive calls from Program customers referred to VCE by PG&E and receive calls from Program customers choosing to contact VCE directly without referral from PG&E. SMUD will "warm transfer" the customer to PG&E or VCE as needed to serve the customer's needs.
- 1.3.15. Provide a toll-free number that will be placed on VCE's website and PG&E invoices allowing VCE customers to contact the call center.
- 1.3.16. Request and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound calls.
- 1.3.17. Request permission (via live calls email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
- 1.3.18. Respond to phone inquiries from Program customers using a script developed and updated as often as quarterly by VCE. For questions not addressed within the script, refer inquiries back to PG&E or VCE.
- 1.3.19. Unless otherwise specified by VCE, SMUD will provide call center status reports during the first week of each month; weekly during the customer enrollment periods.
- 1.3.20. 1.3.1S. As requested by VCE, host quarterly meetings with call center management and representatives to review call center metrics, deal with recurring customer concerns, and address any other issues that may arise.

1.4. Customer Enrollment Forms

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

1.5. Billing Administration - PG&E "Bill Ready Option"

- 1.5.1. Deliver billing services to VCE by building efficient and automated processes that focus on data validation accuracy with quality assurance measures. However, the billing services are dependent on the accuracy of PG&E's data, and therefore, SMUD's quality assurance and data accuracy are subject to PG&E's data accuracy.
- 1.5.2. Maintain a table of Program rate schedules provided by VCE to ensure that all data are accurate and consistent in all VCE systems provided by SMUD.
- 1.5.3. Send Program service charges as a separate line item to PG&E for placement on monthly bill. This could include but is not limited to: non-electrical charges, special programs, collective billing, energy assistance programs, and net energy metering.
- 1.5.4. Apply PG&E account usage for each VCE customer against applicable rates to allow for customer billing. This includes but is not limited to line-item charges ranging from non-electric charges, special programs and contracts, collective billing, energy assistance programs and net energy metering.
- 1.5.5. Perform periodic review of application of Program service rates to PG&E accounts to ensure that the proper rates are applied to the accounts. This includes use of SMUD's

quality assurance process and audits to ensure accuracy of data and rates.

- 1.5.6. Timely submit billing information for each customer to PG&E to meet PG&E's standard billing window.
- 1.5.7. Use commercially reasonable efforts along with SMUD's billing quality assurance measures to remedy billing errors for any customer(s) in a timely manner (no more than two billing cycles from date of discovery).
- 1.5.8. Assist with annual settlement processes for Net Energy Metering (or successor program) customers by identifying eligible customers, providing accrued charges and credits, and providing a corresponding mailing list to VCE's designated printer. SMUD will work with VCE to provide a monthly settlement option, if VCE so chooses for an additional fee to be mutually agreed.
- 1.5.9. Provide customer mailing list to VCE's designated printer for new move-in customer notices and opt out confirmation letters routinely within 30 days of enrollment or opt out.
- 1.5.10. As per VCE's Collections Policy, send a VCE-provided letter to customers with delinquent accounts stating that failure to pay will result in customer being returned to PG&E. If no payment is received from the customer after a certain amount of time, SMUD will issue a CCASR to return customer to PG&E. VCE shall identify the length of delinquency that triggers such notice, as well as the time period allowed to bring the account current.

1.6. Settlement Quality Meter Data (SQMD) Services

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

1.7. Reporting

- 1.7.1. Assist VCE as needed in compiling various customer sales and usage statistics that may be necessary to facilitate VCE's completion of requisite external reporting activities. Such statistics will likely include annual retail sales for VCE customers, including year-end customer counts and retail electricity sales for each retail service option offered by VCE.
- 1.7.2. Subject to change by mutual agreement of the Parties, provide the following reports to VCE via the listed frequency and delivery method.

Reports	Frequency
Billing Operations & Data Management Report (enrollment activity move-in/move-out tracking, billing transactions)	Bi-Weekly
Contact Center Report (customer interactions through IVR, Web, CSR, Chat)	Weekly, Monthly
Customer Relationship Management (CRM) Reports (including custom reports and the ability to add email functionality) and Dashboard	Available 24/7
Net Energy Metering (NEM) True-up, Cash-out Report	Bi-Weekly
Accounting Reports (Daily Payment, Invoice Details, Rates Details, Aging, ERC Exempt)	Daily, Weekly, Monthly, Quarterly

- 1.7.3. Ensure monthly status reports are provided during the first week of each month
- 1.7.4. Ensure weekly status reports are provided during all enrollment periods.

2. APPROVAL PROCESS I ACCEPTANCE

Both Parties agree to perform tasks, reviews, and approvals in a timely manner.

3. TERM AND TERMINATION

3.1. Term of Task Order 7

Task Order 7 is effective on the Effective Date of this Task Order and shall remain in effect until December 31, 2028.

3.2. Termination

This Task Order 7 may be terminated pursuant to Section 4 ("Term and Termination") of the Agreement. In the event that VCE chooses to terminate this Task Order 7 prior to the end of the five (5) year term, VCE shall pay SMUD a Termination Fee equal to fifty percent (50%) of the fee for services for the remaining portion of the five (5) year term, based on the SMUD rates then in effect as of the termination effective date. Such Termination Fee shall be due and payable thirty (30) calendar days after the date of invoice by SMUD to VCE.

3.3. Transition

VCE retains sole ownership of account, communication notes and letters, usage and billing information for customers of the Program. In the event of termination of the Agreement or this Task Order 7, subject to the terms of the Agreement, SMUD shall provide to VCE all such information and data requested by VCE as reasonably agreed to by the Parties at a transition fee not to exceed \$200,000. SMUD will send requested data to VCE within 30 days after the Termination Date. SMUD will work with VCE to coordinate transfer to VCE, or a VCE contractor, the designated Call Center phone number. SMUD will coordinate with VCE or VCE contractor on how to seamlessly transition customers to web forms provided by another vendor. All other services will terminate upon the Termination Date.

4. COMPENSATION FOR SERVICES

5.1. Data Management and Call Center Services

Data Management and Call Center Services will be charged a fixed monthly fee per customer meter enrolled in Program service of \$1.17. Monthly service fees are fixed through December 31, 2023 and are thereafter annually subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, "Consumer Price Index-All Urban Consumers less food and energy" Series ID: CUUROOOOSAOLIE for the immediately prior 12-month period.

5.2. Hourly Rates

This Task Order 7 can be amended to include additional deliverables at the SMUD hourly billing rates in the schedule below. Hourly billing rates are fixed through December 31, 2023 and are thereafter annually subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, "Consumer Price Index-All Urban Consumers less food and energy" Series ID: CUUROOOOSAOLIE for the immediately prior 12-month period.

Resource	Hourly Rate
SMUD CXO	\$350.00
Director	\$190.00
Manager/Analyst	\$170.00
Administration	\$150.00

6. PAYMENT TERMS

Fees incurred under this Task Order 7 will be invoiced monthly. For services under this Task Order 7, VCE shall pay all undisputed invoices within thirty (30) calendar days of date of the invoice.

7. TASK AMENDMENT

This Task Order 7 may only be amended or otherwise modified with the written agreement of the Parties and approved by each Party's governing body where required by law or policy. Any changes to the scope defined in Task Order 7 will be addressed through a task amendment process. Material changes that require a formal task amendment, are those which will specifically impact defined scope, schedule, budget, or resources.

SIGNATURES

The Parties have executed this Task Order 7 on the dates indicated below.

Valley Clean Energy

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

Sacramento Municipal Utility District

By: _____

Name: **Brandy Bolden**

Title: **Chief Customer Officer**

Date: _____

**Approved as
to Form:** _____

Task Order 8 - Consulting Services

SMUD and VCE agree to the following services, terms and conditions described in this Task Order. This Task Order 8 is for Consulting Services ("Task Order 8"), the provisions of which are subject to the terms and conditions of the Agreement between the Parties. If any provisions of this Task Order 8 conflict with any provisions in the Agreement, the provisions of this Task Order 8 shall take precedence.

The Effective Date of this Task Order 8 is June 1, 2023. Upon the Effective Date, this Task Order 8 replaces Task Order 4 in its entirety, and Task Order 4 is eliminated.

1. SCOPE OF WORK

SMUD will provide professional consulting services as required by VCE during the term of this Task Order 8.

2. APPROVAL PROCESS ACCEPTANCE

Both Parties agree to perform tasks, reviews, and approvals in a timely manner.

3. TERM AND TERMINATION

3.1. Term of Task Order 8

Task Order 8 is effective on the Effective Date of this Task Order and shall remain in effect until December 31, 2028.

3.2. Termination

This Task Order 8 may be terminated pursuant to Section 4 ("Term and Termination") of the Agreement. In the event that VCE chooses to terminate this Task Order 8 prior to December 31, 2023, VCE will pay SMUD for fees incurred to date. Such fees shall be due and payable (30) calendar days after the date of the invoice by SMUD to VCE.

4. COMPENSATION FOR SERVICES

4.1. Hourly Rates

Services performed under this Task Order 8 are based on a "time and material" compensation structure. SMUD shall receive compensation at Hourly Rate. Hourly Rates are fixed through December 31, 2023 and are thereafter annually subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, "Consumer Price Index-All Urban Consumers less food and energy" Series ID: CUUROOOOSAOLIE for the immediately prior 12-month period.

Resource	Hourly Rate
SMUD CXO	\$350.00
Director	\$190.00
Manager/Analyst	\$170.00
Administration	\$150.00

5. PAYMENT TERMS

Fees incurred under this Task Order 8 will be invoiced monthly. For services under this Task Order 8, VCE shall pay all undisputed invoices within thirty (30) calendar days of date of the invoice.

6. TASK AMENDMENT

This Task Order 8 may only be amended or otherwise modified with the written agreement of the Parties and approved by each Party's governing body where required by law or policy. Any changes to the scope defined in Task Order 8 will be addressed through a task amendment process. Material changes that require a formal task amendment, are those which will specifically impact defined scope, schedule, budget, or resources.

SIGNATURES

The Parties have executed this Task Order 8 on the dates indicated below.

Valley Clean Energy

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

Sacramento Municipal Utility District

By: _____

Name: **Brandy Bolden**

Title: **Chief Customer Officer**

Date: _____

**Approved as
to Form:** _____

Task Order 9 – Debt Collections Services

SMUD and VCE agree to the following services, terms and conditions described in this Task Order. This Task Order 9 is for Debt Collection Services ("Task Order 9"), the provisions of which are subject to the terms and conditions of the Agreement between the Parties. If any provisions of this Task Order 9 conflict with any provisions in the Agreement, the provisions of this Task Order 9 shall take precedence.

The Effective Date of this Task Order 9 is the date of last signature.

1. SCOPE OF WORK

SMUD will provide debt collection services as required by VCE during the term of this Task Order 9.

- Data Analytics
 - Profile customers based on customer type, past due amount, engagement history, available contact information, and more. If available, use program participation, assessor's data, rate history and other factors to understand debt drivers
 - Construct pre-collection profiles of likely-to-default customers, specifically identifying income-qualified customers eligible for income assistance, to aid in proactive communications
 - Gather or compile data files , for example, assessor's data or psychographic data, to help to build out customer database
- Here to Help Letter
 - Reach out to each customer to let them know that we are available to help
 - Encourage a call with one of our Energy Advisors who can educate about programs available to them to help lower their bills, from energy efficiency opportunities to low-income programs
 - Provide information about payment channels and programs to remove perceived barriers to payment
- Customer Care Calls
 - Encourage a conversation with our Energy Advisors who are adept at "save" techniques to significantly reduce opt-out rates, and explain energy bills, determine high bill root cause, and educate on energy usage management
 - Support 150 different languages through the call center
 - Record and monitor all calls for quality assurance and adherence to customer care protocols
 - Store and make all calls available for two years
 - Keep call center hours of 9am – 5pm Pacific Time
- Validation Notice
 - When initial attempts at communication have been unsuccessful in encouraging customers to pay, initiate a formal collections process
 - Send accounts a validation notice which informs customers of their balance, instructs them how to pay and clearly advises them of their rights as outlined by federal and state laws
- Segmentation
 - Group customers using over 40 data points
 - Employ a unique strategy for each customer segment
 - Re-segment after periodic evaluation

- Written Notifications
 - Distribute additional request letters and emails, with frequency based on segmentation and new available information and.
 - Assess communication strategies and modify as needed
 - Translate content into multiple languages
 - Verify phone number, hours of operations, addresses, formatting of client information and placement of Fair Debt Collection Practices Act (FDCPA) required verbiage
 - Include a settlement letter if authorized
 - As requested, send additional information such as receipt letter, debt validation letter, payment arrangement letter, pre-authorization payment reminder letter, etc.
 - Store letters in customer's account record
- Phone Calls
 - Where a valid phone number is available, initiate collection calls
 - In compliance with Regulation F, limit call attempts and dynamically determine best call times
 - Clearly communicate agent's name and agency
 - Ensure account authorization to speak with customer
 - Request identifying information such as address or birthdate to validate
 - Read a statement of rights to the customer
 - Communicate debt information and instruct customer on ways to exit the collections process
 - Request full payment, discusses potential financial resources and negotiate a payment plan if needed
 - Offer payment options via the IVR, online or through the mail
 - Initiate disputed debt process if applicable
 - Monitor calls for quality assurance
 - Store calls for five years
 - Note customer's account record with call data, follow up date, promise to pay, canceled payment, non sufficient funds, or other activity
 - Assign account manager for high value accounts
- Customer Tracing
 - Access several data providers to identify the best possible mailing address and phone number
 - Check online resources to locate quality customer contact information
 - Standardize addresses to meet USPS guidelines to improve mail delivery
 - Check that an account isn't part of a bankruptcy proceeding
 - Verify that the responsible party isn't deceased through an automated scrub
 - Monitor credit reports looking for changes that may indicate a renewed ability to pay
- Final Steps
 - Provide payment remittance through preferred channel
- Web Portal
 - Provide access to client portal with updated customer data, notes, and provide access to custom reports as well as standard reports such as Statement Report, Close and Return Report, Collection Effectiveness Report, Special Activity Report, and Client Payment and Reversals Report

2. APPROVAL PROCESS ACCEPTANCE

Both Parties agree to perform tasks, reviews, and approvals in a timely manner.

3. TERM AND TERMINATION

3.1. Term of Task Order 9

Task Order 9 is effective on the Effective Date of this Task Order and shall remain in effect until December 31, 2028.

3.2. Termination

This Task Order 9 may be terminated pursuant to Section 4 ("Term and Termination") of the Agreement. In the event that VCE chooses to terminate this Task Order 9 prior to December 31, 2023, VCE will pay SMUD for fees incurred to date. Such fees shall be due and payable (30) calendar days after the date of the invoice by SMUD to VCE.

4. COMPENSATION FOR SERVICES

4.1. Hourly Rates

Services performed under this Task Order 9 are based on a "time and material" compensation structure.

SMUD shall receive compensation at Hourly Rate. Hourly Rates are fixed through December 31, 2023 and are thereafter annually subject to escalation at U.S. Department of Commerce, Bureau of Labor Statistics, "Consumer Price Index-All Urban Consumers less food and energy" Series ID: CUUROOOOSAOLIE for the immediately prior 12-month period.

Resource	Hourly Rate
SMUD CXO	\$350.00
Director	\$190.00
Manager/Analyst	\$170.00
Administration	\$150.00

Costs for marketing and outreach such as postage and vendor fees shall be pass through. Debt collection fees shall be 10% of all payments realized.

5. PAYMENT TERMS

Fees incurred under this Task Order 9 will be invoiced monthly. For services under this Task Order 9, VCE shall pay all undisputed invoices within thirty (30) calendar days of date of the invoice.

6. TASK AMENDMENT

This Task Order 9 may only be amended or otherwise modified with the written agreement of the Parties and approved by each Party's governing body where required by law or policy. Any changes to the scope defined in Task Order 9 will be addressed through a task amendment process. Material changes that require a formal task amendment, are those which will specifically impact defined scope, schedule, budget, or resources.

SIGNATURES

The Parties have executed this Task Order 9 on the dates indicated below.

Valley Clean Energy

By: _____

Name: _____

Title: _____

Date: _____

**Approved as
to Form:** _____

Sacramento Municipal Utility District

By: _____

Name: **Brandy Bolden**

Title: **Chief Customer Officer**

Date: _____

**Approved as
to Form:** _____

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2023 - ____

A RESOLUTION OF VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT 1 TO MASTER SERVICES AGREEMENT, AMENDMENT 32 TO TASK ORDER 3 – WHOLESALE ENERGY SERVICES, TASK ORDER 7 – DATA MANAGEMENT AND CUSTOMER CALL CENTER SERVICES, TASK ORDER 8 – CONSULTING SERVICES, AND TASK ORDER 9 – DEBT COLLECTION SERVICES, OF THE SACRAMENTO MUNICIPAL UTILITIES DISTRICT PROFESSIONAL SERVICES AGREEMENT AND AUTHORIZING THE EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE NECESSARY AMENDMENTS AND TASK ORDERS

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

WHEREAS, on August 31, 2017, the VCE Board considered a proposal by the Sacramento Municipal Utilities District (“SMUD”) to provide program launch and operational services and subsequently directed VCE 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 (CCA) support services; and,

WHEREAS, on October 12, 2017, the VCE Board approved the Master Professional Services Agreement and Task Order 1 (Technical and Analytical services) and Task Order 2 (Data Management and Call Center Services) to provide program launch and operational services consistent with the SMUD proposal and VCE Board direction, thereafter amendments have been made to Task Orders 1 and 2; and,

WHEREAS, in November 2017, the VCE Board approved Task Order 3 for Wholesale Energy services, thereafter several amendments have been made; and,

WHEREAS, in December 2017, the VCE Board approved Task Order 4 for Implementation and Operational Services, thereafter several amendments have been made; and,

WHEREAS, in May 2018, the VCE Board approved Task Order 5 for Long Term Procurement Services; and,

WHEREAS, in June 2019, the VCE Board approved Task Order 6 for Expansion to the City of Winters; and,

WHEREAS, the original Master Services Agreement (MSA) will expire June 1, 2023; and,

WHEREAS, Task Orders 1 (Technical and Analytical services), 5 (Long Term Procurement Services), and 6 (Expansion to the City of Winters) have expired; and,

WHEREAS, Task Order 2 (Data Management and Customer Call Center Services) and 4 (Implementation and Operational Services) will terminate on May 31, 2023; and,

WHEREAS, Task Order 3 (Wholesale Energy Services) is set to terminate on December 31, 2023; and,

WHEREAS, VCE has the need to continue selected services with SMUD and amend the MSA to extend the master services agreement to December 31, 2028; and,

WHEREAS, in anticipation of Task Order 3 (Wholesale Energy Services) expiring at the end of 2023, the VCE Board approved an agreement with The Energy Authority, Inc. (TEA) in December 2022 to provide portfolio management, scheduling coordinator, load forecasting, and credit support services, as a result, Task Order 3 needs to be amended to reflect a reduction in services being provided by SMUD while services are transitioned from SMUD to TEA; and,

WHEREAS, Task Order 7 – Data Management and Customer Call Center Services will replace Task Order 2 with an updated scope of work and to align with VCE’s fiscal calendar year ending December 31st; and,

WHEREAS, Task Order 8 – Consulting Services will replace Task Order 4 with an updated scope of work and to align with VCE’s fiscal calendar year ending December 31st; and,

WHEREAS, to assist VCE Staff in identifying past due accounts and income-qualified customers eligible for assistance; increasing communication to customers of available programs; and, implementing a collections process, Task Order 9 – Debt Collection Services outlines the scope of work.

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

1. Approving the following:
 - A. Amendment 1 to the Master Services Agreement (MSA) continuing selected services and extending term of MSA through December 31, 2028;
 - B. Amendment 32 to Task Order 3 (Wholesale Energy Services) reducing scope of work;
 - C. Task Order 7 (Data Management and Customer Call Center Services) outlining a new scope of work with an expiration date of December 31, 2028; and,

D. Task Order 8 (Consulting Services) outlining a new scope of work with an expiration date of December 31, 2028.

2. Authorize the Executive Officer in consultation with legal counsel to finalize and execute amendments and task orders.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

Tom Stallard, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachments:

1. Amendment 1 to Master Service Agreement
2. Amendment 32 to Task Order 3 - Wholesale Energy Services
3. Task Order 7 - Data Management and Customer Call Center Services
4. Task Order 8 - Consulting Services
5. Task Order 9 - Debt Collections Services

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Board of Directors

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

SUBJECT: Amended and Restated Renewable Power Purchase Agreement with Gibson Renewables LLC

DATE: April 13, 2023

RECOMMENDATION

1. Approve resolution authorizing the Executive Officer to execute an amended power purchase agreement (PPA) and any necessary ancillary documents for the Gibson renewable photovoltaic (PV) plus battery storage (BESS) project.

BACKGROUND

Local RFO

In April 2020, VCE, launched a local renewable Request for Offers (RFO) to solicit renewable projects that were cost-effective, provide local benefits, located in environmentally suitable locations, and minimized impacts on species, habitats, and landscapes. The RFO was to identify up to 25 MW of cost effective long-term local renewable production that could be added to VCE's portfolio. The Local RFO was consistent with general Board direction and VCE's Vision statement to pursue procurement of cost effective local renewable energy. The basic parameters of the VCE solicitation specified that proposals needed to be Renewable Portfolio Standard (RPS) eligible generation or generation + storage projects in the 2 to 25 MWac range.

On May 26, 2020 staff received thirty-one (31) proposals from a dozen entities. Staff recommended two projects move forward in the selection process. Ultimately, in November 2020, the Board approved two PPAs resulting from the local RFO: 1) Putah Creek Energy Farm (went into commercial operation in October 2022), and 2) Gibson Renewables, LLC (Gibson) - the Gibson Solar project.

The Gibson team provided verbal updates to VCE throughout the earlier portion of the PPA development term, and in March 2022 began to provide written progress reports in accordance with the PPA.

Upon receiving and reviewing the interconnection System Impact Study (SIS), Gibson notified VCE that the project would need to be downsized to achieve a cost and utility construction timeline that would be viable within the then PPA milestone schedule. On May 19, 2022, Gibson provided a Notice of Development Cure Period delays to the Guaranteed Construction Start Date (GCSD) and the Guaranteed Commercial Operation Date (GCOD) and began working with VCE to downsize the project.

Additionally, Gibson engaged VCE staff to discuss the adjustment of timing to accommodate for continued delays on finalizing the interconnection to the grid and achieving the land use permit from Yolo County. In November 2022, Gibson provided an updated project proposal based on the new configuration to VCE. Based on this information, VCE and Gibson executed a Letter Agreement in December 2022 to suspend certain terms of the PPA, while attempting to renegotiate the PPA.

These negotiations resulted in the recommended amended and restated PPA.

ANALYSIS

Revised Project - Siting

In response to the April 2020 RFO for local renewable projects, Gibson began searching for a suitable site in Yolo County. A suitable site for the development of PV electricity generating facilities (with or without energy storage), generally have the following characteristics.

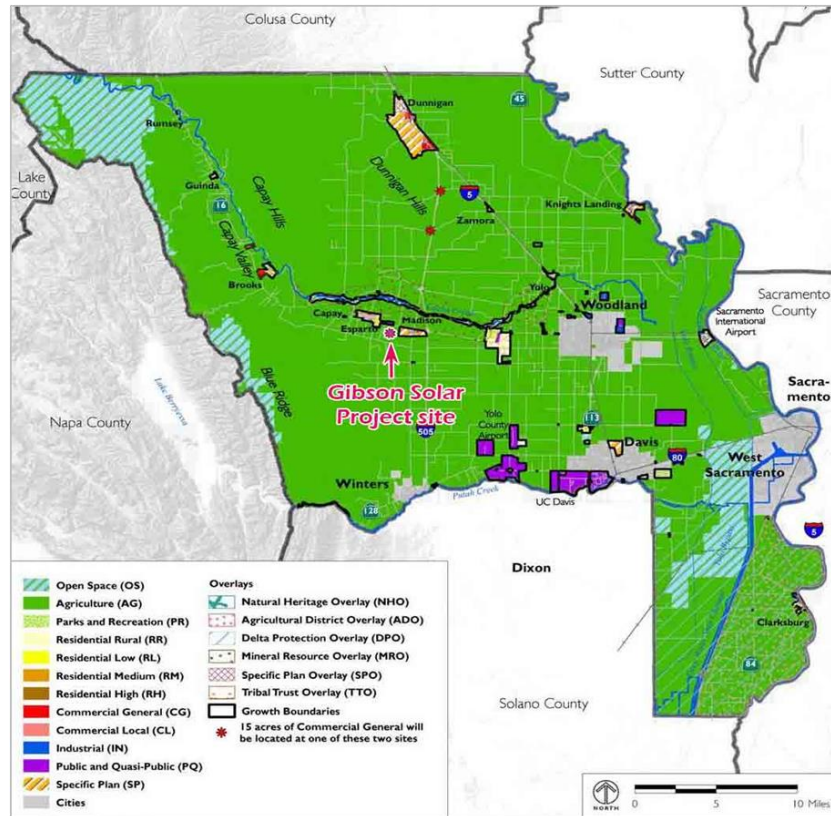
- Location: Outside cities and towns, and within the unincorporated areas of a County, and
- Site Condition: Flat terrain or relatively level surface within a region of greater relief, such as hills or mountains, and
- Interconnection: Located within proximity of existing grid infrastructure to avoid potential impacts during construction phase, such as power outage and road closures when conducting new distribution/transmission line, and
- Zoning: Permit or conditionally permit utility-scale solar development, and
- Others: Avoid land with active Williamson Act Contracts.

The Williamson Act, also known as the California Land Conservation Act of 1965¹, enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon land uses associated with farming and open space as opposed to full market value.

During the site selection process Gibson worked closely with Yolo County to ensure the selection would meet the requirements of the Applicant and that of the County. However, during this time period, the Project site was subject to a recent right of way dedication along State Route 16 and was in the process of receiving a new Assessor Parcel Number; therefore, Yolo County's Geographical Information System (GIS)² did not reflect the parcel as having an active Williamson Act contract and was only recently updated to reflect otherwise.

¹ <https://www.conservation.ca.gov/dlrp/wa/Pages/Index.aspx>

² <https://yolo.maps.arcgis.com/apps/webappviewer/index.html?id=07aafdb9df8b40fea378723de601c69b&extent=-13651962.5683%2C4642419.391%2C-13505203.474%2C4708996.0427%2C102100>



Revised Project - Interconnection

The Gibson Solar project was originally proposed as a 20-megawatt (MW) solar PV project with 6.5MW/26-megawatt hour (MWh) (4-hour) BESS. Gibson applied for interconnection with Pacific Gas and Electric (PG&E) on 8/17/2020 and executed the System Impact Study agreement on 12/7/2020 with reasonable expectations that the process to study the project and execute an interconnection agreement would be complete by 9/30/2021, per standard PG&E Wholesale Distribution Tariff³ (WDT) guidance.

Due to the previously unprecedented number of interconnection applications for the California Independent System Operator (CAISO) Transmission Cluster 14⁴ in 2021, CAISO established an approximately one (1) year delay⁵ in the Cluster 14 study process, which caused resource constraints that have spilled over into PG&E's wholesale distribution study, ultimately causing significant delays for all distribution level projects including the Gibson Solar project. The impact of these delays were felt throughout the CAISO balancing area (most of California), prompting a written request from the California Public Utilities Commission (CPUC) to each of the investor owned utilities (IOUs), including

³ https://www.pge.com/en_US/about-pge/company-information/regulation/contracts-and-tariffs/contracts-and-tariffs.page

⁴ <http://www.caiso.com/planning/Pages/GeneratorInterconnection/InterconnectionStudy/Default.aspx>

⁵ http://www.caiso.com/Documents/Decision-Cluster-14-Interconnection-Procedures_Memo-July-2021.pdf

PG&E⁶. The System Impact Study results were delivered to Gibson Renewables on 4/15/2022 (after approximately 17 months). Unfortunately, the construction timing and cost estimates for the original project iteration at 20MWac PV with 6.5MW DC coupled BESS were going to be prohibitive to both the project budget and meeting the milestone dates currently established in the PPA. After an internal review and reverse engineering to “right size” the project to reduce the costs and schedule to a degree more aligned with the PPA timing, it was submitted into Facilities Study (FAS) with PG&E at a reduced overall size of 13MWac PV with 13MW DC coupled BESS with an up to five (5) hour duration – 65MWh.

It should be noted that with any interconnection to the utility grid, the limiting factor for energy deliveries is the maximum net to grid energy delivered at the Point of Interconnection (POI), or in the case of the Gibson project, 13MWac. When the resulting Facilities Study was delivered to Gibson on 9/21/2022; all network upgrade costs were removed and the remaining revised estimated costs for distribution upgrades and interconnection facilities were more aligned with the original project budget estimate, and the estimated construction schedule was also reduced from 24-36 months to 12-18 months. At a results call held with PG&E on 10/11/2022, the project team was able to further reduce costs by getting PG&E to agree to a slight adjustment in the interconnection location resulting in the removal of a proposed 2400ft line extension and associated costs.

Permitting – CEQA Overview

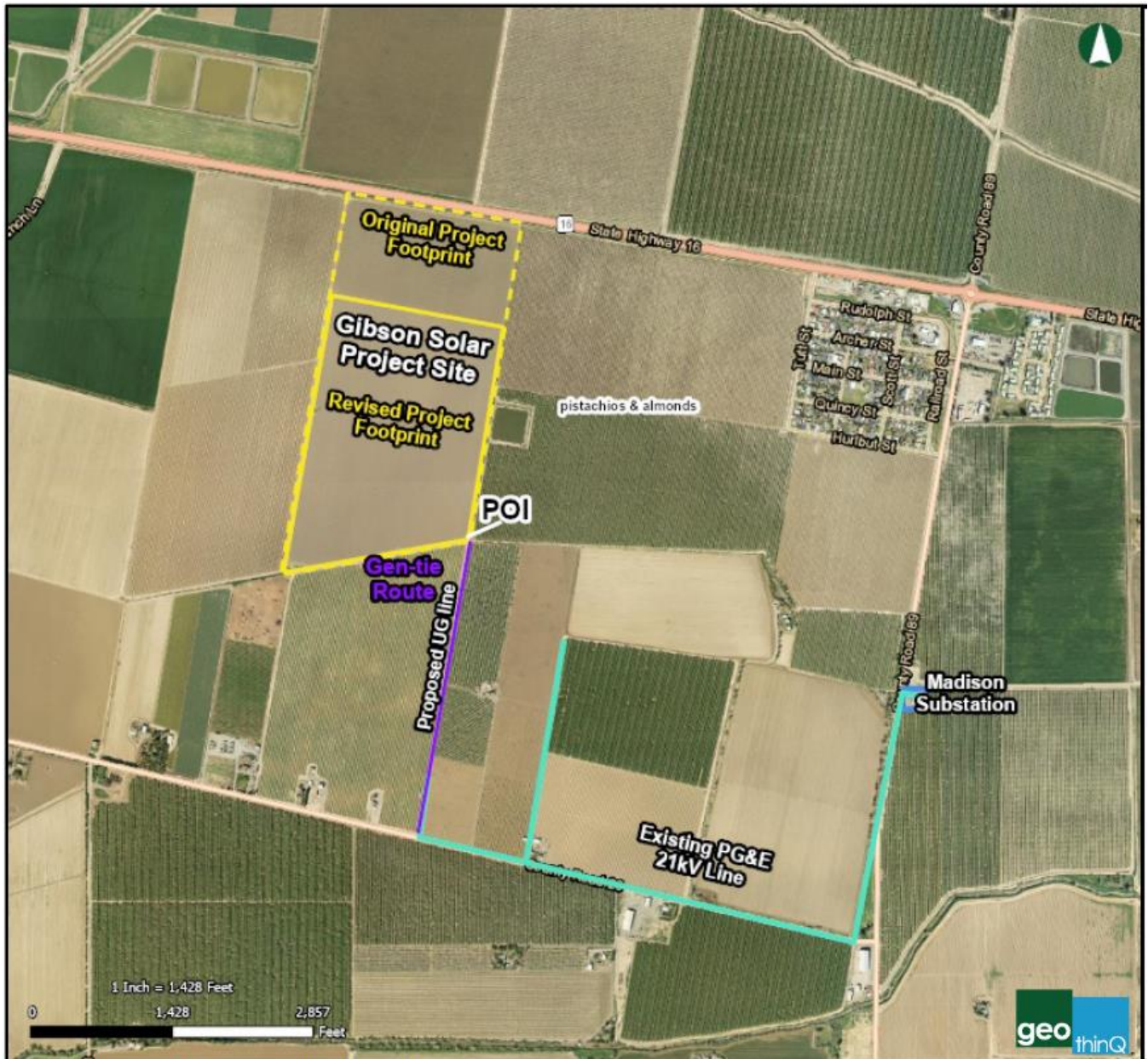
The Gibson project applied for a Major Use permit with Yolo County (County) in December 2020. The initial study was completed and a Notice of Preparation to conveying Yolo County’s intent to prepare a Focused Environmental Impact Report (EIR) was circulated on October 13, 2021. The Focused EIR⁷ was prepared and publicly circulated from January 13, 2023 to February 27, 2023. All technical studies in support of the EIR were completed by the County’s consultant in 2021. In addition, the consultant requested Gibson complete an investigation into the feasibility of incorporating a more intensive “agrivoltaics” component to the project, which Gibson completed in collaboration with the University of California, Davis (UCD).

It is also important to note that County staff has made it clear that this would be the largest PV project ever entitled in Yolo County, and as such, the removal of over 100+ acres of land from active agricultural production would be a significant hurdle to overcome. Upon finalizing the reduced project configuration to “right size” that was submitted to PG&E for Facilities Study, the Seller concurrently proposed including the reduced configuration as an Alternative to be analyzed within the Focused EIR. In addition to reducing the overall project cost and utility construction schedule on the interconnection side, the reduced configuration also allowed Gibson to shrink the project footprint from the full 147 acres of the subject parcel to just under 100 acres, resulting in over 30% reduction in overall project footprint and impact to agricultural land. This was viewed as a positive step by County staff due to the reduced impact on farmland. While the addition of the Reduced Configuration Project Alternative did

⁶ <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/summer-2021-reliability/tracking-energy-development/2022-03-11-cpuc-interconnection-letter-to-pge.pdf>

⁷ Gibson Solar Farm Project (ZF #2020-0043), <https://www.yolocounty.org/government/general-government-departments/community-services/planning-division/current-projects>

have an impact on the overall entitlement schedule, Gibson determined that on balance this project configuration achieved key project objectives while reducing impacts.



This map was created using geothinQ | www.geothinQ.com | Mapping Smart Land Decisions

The current anticipated schedule is to go before the Esparto Citizen’s Advisory Committee (CAC) in 2Q 2023, the Yolo County Planning Commission (PC), and the Yolo County Board of Supervisors (BoS) in 3Q 2023 for consideration of the project.

Multi-Use Plan

Gibson has worked to address the issues of the proposed solar and energy storage project with the current agricultural use through the development of a multi-use plan (MUP). This plan includes features such as native vegetation substrate that will also serve as pollinator habitat, apiaries, and vegetation control through sheep grazing instead of chemical or mechanical means. Further, the

substrate will also result in a significantly reduced ongoing water demand once it has been successfully established and will assist with soil stabilization and potential groundwater recharge. Many of these features will also play a role in the UC Davis research partnership outlined in more detail below.

The vegetation improvements (seeding of native plants compatible with the site) will serve as a pollinator habitat supporting the Gibson Solar Farm apiary and the local pollinator population, helping provide an environmental service to support local and regional agricultural production. The Gibson Project effectively combines multiple land uses to meet several objectives: solar power production, agricultural production (apiary and livestock grazing), native plant restoration, pollinator promotion, and reduced water usage.

In addition, the activities outlined in the MUP, specifically the apiaries and vegetation seeding, will serve to increase pollinator habitat and therefore result in additional insects, small mammals, and ultimately more prey for raptors, thus supporting raptor foraging habitat, and specifically Swainson's Hawk (SWA) foraging habitat. This conclusion was documented in a letter⁸ supplied to Yolo County Planning staff by the project biologist, and this opinion received concurrence by the County's SWA specialist.

UCD Research

Gibson has partnered with UCD to conduct research on how co-locating solar PV and apiary can positively impact crop farming and almond orchards in Yolo County. In addition, curation of one or more seed mixes from UCD that will flower at varying times is designed to provide an ample, stable foraging habitat for bees. While the final research plan is still being developed in collaboration with UCD, Gibson has already executed a Memorandum of Understanding and Gift Agreement with UCD and committed to moving forward with this research initiative if the project is approved by Yolo County.

Farmland

The project soils are classified as Prime Farmland, Land Capability Class I and II, if irrigated⁹. However, due to historical and ongoing drought conditions, it has been challenging for the landowner to fully realize the agricultural production potential of the site. Despite being surrounded by orchards, the subject parcel has a long history of row crops and dry farming due to a lack of the water required to support orchards.

The project site was not irrigated during the 2021 and 2022 season because deliveries of irrigation water from the Yolo County Conservation and Flood Control District (YCC&FCD) to the project site were curtailed due to drought conditions. Though deliveries of water by YCC&FCD may be restored in 2023, future precipitation amounts and consistent supply of surface water to the site continue to be uncertain.

⁸ Attachment, Gibson Solar SWHA No Mitigation Letter_JUN-2021_Redacted

⁹ <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>

The project parcel does not currently have access to other sources of irrigation water. To continue to meet the “if irrigated” condition noted above, the landowners would be forced to either drill one or more groundwater wells, purchase water from neighboring farms, or truck water to the site, all of which are economically infeasible for continuing farm operations on the parcel. In addition to the high cost, as determined by the landowner from data developed by drilling test wells drilled in 2004, drilling one or more new wells on the parcel could also have an adverse effect on existing groundwater pumping by neighboring property owners in the local basin. Because the cost of either alternative for continuing to irrigate and farm the parcel is economically infeasible, farming options appear to be constrained. Based on the information available to staff, it appears that the property owners would effectively be unable to realize the farming potential of the parcel if drought conditions continue.

Union PLA

According to information provided by the project developer, Gibson recognizes the value of labor agreements; high quality work on projects done on time and on budget, and good job and training opportunities that strengthen the local communities the projects serve are stated priorities of the developer. To that end, Gibson has executed a project labor agreement (PLA) with the Operating Engineers Local 3, Northern California Carpenters Regional Council on behalf of itself its affiliated local unions, Northern California District Council of Laborers and its affiliated local unions, IBEW Local 340, and Ironworkers Local 118.

COUNTERPARTY

Company History

In November 2020, ReneSola Power Holdings, LLC successfully acquired selected assets via ET Cap CA Holdings LLC, which included the Gibson Renewables, LLC (GR/GR, LLC) project company. In October 2022, ReneSola announced the acquisition of Emeren Limited, a United Kingdom-based utility-scale solar power and battery projects developer in Europe, and in January 2023, ReneSola Power announced that it had changed its corporate name to Emeren Group Ltd ("Emeren"), along with a new branding identity, effective immediately.

About Emeren

Emeren US, LLC is a publicly traded (NYSE: SOL) global solar and storage project developer, owner, and operator with a 3 GW pipeline of projects and IPP assets across Europe, North America, and Asia. Emeren focuses on solar and storage project development, construction management and project financing services with local professional teams in more than 10 countries, with over 250 MW of globally operating projects. It’s North American team has developed projects in Minnesota, North Carolina, Pennsylvania, New York, Florida, and California.

Gibson Renewables Org Chart:



GRANT OPPORTUNITY

In March 2023, VCE submitted a grant application to the California Department of Food and Agriculture (CDFA) for \$5.7M to enable the Gibson project to have the capability to operate in a microgrid state. The grant opportunity is part of the CDFA's Community Resilience Centers Program. The project would utilize the proposed Gibson project as well as additional electrical infrastructure (grant funds would support this additional infrastructure) to serve the Capay valley in times of electrical outages. The overall project would be called the Esparto Capay Multi-Customer Microgrid project. The grant application received support from Senator Dodd, Assembly Member Aguiar-Curry, The Climate Center and PG&E.

STRATEGIC PLAN

The Gibson project supports several Goals/Objectives of VCE's Strategic Plan, specifically Objectives 2.1 2.2 and 2.3 as well as Goal 4 related to community resilience (if VCE is successful with the CDFA grant).

- Goal 2: Manage power supply resources to consistently exceed California's Renewable Portfolio Standard (RPS) while working toward a resource portfolio that is 100% carbon neutral by 2030.
 - 2.1 Objective: Continue to identify and pursue cost effective local renewable energy resources.
 - 2.2 Objective: Acquire sufficient bundled energy and renewable resources to achieve VCE's greenhouse gas reduction targets.
 - 2.3 Objective: Deploy storage and other strategies to achieve renewable, carbon neutral, resource adequacy, and resiliency objectives.
- Goal 4. Promote and deploy local decarbonization and grid innovation programs to improve grid stability, reliability, community energy resilience, and safety.

In addition, as a result of the project delay and subsequent re-sizing exercise, VCE will be able to satisfy a large tranche of the Mid-Term Reliability (MTR) order from the CPUC related to 5-hr duration resources. The initial project was a 4 hour duration battery, but the new design is 5 hour duration BESS.

CONCLUSION

Staff recommends the Board authorize the Executive Officer to execute the amended PPA for the Gibson project. The project supports several strategic plan initiatives as well as regulatory compliance obligations. Although the original project did not materialize on schedule, the delay was outside of the developer's control. In addition, the delay has allowed staff to fine tune the design that has multiple benefits (smaller footprint, grant opportunity, additional storage, etc).

ATTACHMENTS

1. Resolution 2023-XXX
2. Amended Power Purchase Agreement - redacted
3. Gibson Solar SWHA No Mitigation Letter JUN-2021 – redacted

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2023 - ____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE
APPROVING AN AMENDED AND RESTATED POWER PURCHASE AGREEMENT WITH GIBSON
RENEWABLES, LLC AND AUTHORIZING THE EXECUTIVE OFFICER, IN CONSULTATION WITH
LEGAL COUNSEL, TO FINALIZE AND EXECUTE THE AMENDED AND RESTATED POWER
PURCHASE 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; and

WHEREAS, on April 20, 2020 VCE issued a solicitation for Long Term Local Renewable power supply; and

WHEREAS, after compiling and consolidating the technical details from each response received and evaluating for consideration, VCE Staff executed exclusivity negotiating agreements, collected short list deposits, and began negotiating power purchase agreements (“PPA”) for several projects; and

WHEREAS, Gibson Renewables, LLC (“Gibson”) proposed to construct a 20-MW solar photovoltaic (PV) facility combined with 6.5-MW/26 MWh (4-hour) battery energy storage system (BESS) (Gibson Solar), in Madison, Yolo County, California; and

WHEREAS, the Gibson Solar project meets the requirements of VCE under the solicitation; and

WHEREAS, a PPA has been negotiated with Gibson for VCE to procure output from the Gibson Solar project for 20 years; and

WHEREAS, the initial interconnection System Impact Study (SIS) results proved the original project size was cost-prohibitive; and

WHEREAS, Gibson and VCE staff worked to “right-size” the project to accommodate the point of interconnection capacity as well as storage sizing to satisfy VCE’s CPUC mandated mid-term reliability requirement; and

WHEREAS, the revised project is a 13MW PV facility combined with 13 MW/65 MWh (5-hour) BESS.

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

1. The Executive Officer is authorized to execute the amended and restated PPA substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the PPA 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 _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tom Stallard, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Amended and Restated Power Purchase Agreement with Gibson Renewables LLC

Attachment A

Amended and Restated Power Purchase Agreement with Gibson Renewables LLC

Execution Version

AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Gibson Renewables LLC, a California limited company

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

Description of Facility: A 13 MW_{AC} (25.2 MW_{DC}) solar photovoltaic Generating Facility combined with a DC-coupled 65 MWh (13 MW_{AC} x 5 hours) battery energy Storage Facility, as more fully described in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Execute Interconnection Agreement	3/15/2023
Procure major equipment	12/1/2023
Obtain federal and state discretionary permits	5/2/2023
Expected Construction Start Date	6/1/2024
Guaranteed Construction Start Date	9/1/2024
Expected Commercial Operation Date	6/1/2025
Guaranteed Commercial Operation Date	9/30/2025

Delivery Term: Twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	53,345
2	53,171
3	52,999
4	52,784

5	52,547
6	52,309
7	52,076
8	51,844
9	51,613
10	51,382
11	51,155
12	50,927
13	50,705
14	50,483
15	50,259
16	50,036
17	49,817
18	49,601
19	49,382
20	49,164

Guaranteed Capacity: 35.6 MW of total Facility capacity

Guaranteed Storage Capacity: 13 MW_{AC} of Installed Storage Capacity at five (5) hours of continuous discharge

Guaranteed PV Capacity: 25.2 MW_{DC} of Installed PV Capacity

Guaranteed Efficiency Rate:


Contract Year	Guaranteed Efficiency Rate
1	87.0%
2	86.7%

3	86.4%
4	86.3%
5	86.2%
6	86.2%
7	86.1%
8	86.1%
9	86.0%
10	86.0%
11	85.9%
12	85.9%
13	85.8%
14	85.7%
15	85.7%
16	85.6%
17	85.6%
18	85.5%
19	85.4%
20	85.4%

RA Guarantee Date: Commercial Operation Date

Contract Price:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[REDACTED]

Product

- Facility Energy
- Green Attributes
- Installed Storage Capacity and Effective Storage Capacity
- Ancillary Services, if applicable
- Capacity Attributes

Scheduling Coordinator: Buyer

Security:

Development Security: [REDACTED]

Performance Security: [REDACTED]

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	26
ARTICLE 2 TERM; CONDITIONS PRECEDENT	27
2.1 Contract Term.	27
2.2 Conditions Precedent	27
2.3 Development; Construction; Progress Reports.....	28
2.4 Remedial Action Plan	29
ARTICLE 3 PURCHASE AND SALE	29
3.1 Purchase and Sale of Product.....	29
3.2 Sale of Green Attributes.....	29
3.3 Imbalance Energy.	30
3.4 Ownership of Renewable Energy Incentives.....	30
3.5 Future Environmental Attributes.	30
3.6 Test Energy.	30
3.7 Capacity Attributes.	31
3.8 Resource Adequacy Failure	31
3.9 CEC Certification and Verification.	32
3.10 Eligibility.	32
3.11 California Renewables Portfolio Standard.....	32
3.12 Compliance Expenditure Cap.	33
3.13 Project Configuration.....	34
ARTICLE 4 OBLIGATIONS AND DELIVERIES	34
4.1 Delivery.....	34
4.2 Title and Risk of Loss.	35
4.3 Forecasting.....	35
4.4 Dispatch Down/Curtailment.	37
4.5 Energy Management	38
4.6 Reduction in Delivery Obligation.....	40
4.7 Guaranteed Energy Production.	41
4.8 Storage Facility Availability; Ancillary Services	42
4.9 Storage Facility Testing	42
4.10 WREGIS	44
ARTICLE 5 TAXES	45
5.1 Allocation of Taxes and Charges.....	45
5.2 Cooperation.....	46
ARTICLE 6 MAINTENANCE OF THE FACILITY	46
6.1 Maintenance of the Facility.	46
6.2 Maintenance of Health and Safety.....	46
6.3 Shared Facilities.....	46

ARTICLE 7 METERING	47
7.1 Metering.....	47
7.2 Meter Verification.....	47
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	48
8.1 Invoicing.....	48
8.2 Payment.....	48
8.3 Books and Records.....	48
8.4 Payment Adjustments; Billing Errors.....	49
8.5 Billing Disputes.....	49
8.6 Netting of Payments.....	49
8.7 Seller’s Development Security.....	49
8.8 Seller’s Performance Security.....	50
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.....	50
ARTICLE 9 NOTICES	52
9.1 Addresses for the Delivery of Notices.....	52
9.2 Acceptable Means of Delivering Notice.....	52
ARTICLE 10 FORCE MAJEURE	52
10.1 Definition.....	52
10.2 No Liability If a Force Majeure Event Occurs.....	53
10.3 Notice.....	54
10.4 Termination Following Force Majeure Event.....	54
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION	54
11.1 Events of Default.....	54
11.2 Remedies; Declaration of Early Termination Date.....	58
11.3 Damage Payment; Termination Payment.....	58
11.4 Notice of Payment of Termination Payment or Damage Payment.....	60
11.5 Disputes with Respect to Termination Payment or Damage Payment.....	60
11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.....	60
11.7 Rights and Remedies Are Cumulative.....	61
11.8 Mitigation.....	61
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES	61
12.1 No Consequential Damages.....	61
12.2 Waiver and Exclusion of Other Damages.....	62
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	63
13.1 Seller’s Representations and Warranties.....	63
13.2 Buyer’s Representations and Warranties.....	63
13.3 General Covenants.....	65
13.4 Workforce Development.....	65
13.5 Pollinators.....	65

ARTICLE 14 ASSIGNMENT	66
14.1 General Prohibition on Assignments.....	66
14.2 Collateral Assignment.....	66
14.3 Permitted Assignment by Seller.....	68
14.4 Shared Facilities; Portfolio Financing.....	68
ARTICLE 15 DISPUTE RESOLUTION	69
15.1 Governing Law.....	69
15.2 Dispute Resolution.....	69
15.3 Attorneys’ Fees.....	69
ARTICLE 16 INDEMNIFICATION	69
16.1 Indemnification.....	69
16.2 Claims.....	70
ARTICLE 17 INSURANCE	70
17.1 Insurance.....	70
ARTICLE 18 CONFIDENTIAL INFORMATION	72
18.1 Definition of Confidential Information.....	72
18.2 Duty to Maintain Confidentiality.....	72
18.3 Irreparable Injury; Remedies.....	73
18.4 Further Permitted Disclosure.....	73
18.5 Press Releases	73
ARTICLE 19 MISCELLANEOUS	74
19.1 Entire Agreement; Integration; Exhibits.....	74
19.2 Amendments.....	74
19.3 No Waiver.....	74
19.4 No Agency, Partnership, Joint Venture or Lease.....	74
19.5 Severability.....	74
19.6 Mobile-Sierra.....	75
19.7 Counterparts.....	75
19.8 Electronic Delivery.....	75
19.9 Binding Effect.....	75
19.10 No Recourse to Members of Buyer.....	75
19.11 Forward Contract.....	76
19.12 Change in Electric Market Design.....	76
19.13 Further Assurances.....	76

Exhibits:

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities

Exhibit E	Progress Reporting Form
Exhibit F	Form of Annual Expected Available Generating Facility Capacity Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I-1	Form of Installed Capacity Certificate
Exhibit I-2	Form of Effective Storage Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Storage Capacity Tests
Exhibit P	Annual Storage Capacity Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Form of Pollinator Scorecard

AMENDED AND RESTATED
RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2023 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Renewable Power Purchase Agreement dated as of November 3, 2020 (the “**Original PPA**”), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, on the terms and conditions set forth in the Original PPA, the Product (as defined in the Original PPA);

WHEREAS, the Parties desire to amend and restate the Original PPA in accordance with the terms of the transaction as set forth in this Agreement;

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

ARTICLE 1
DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Adjusted Facility Energy**” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Efficiency Rate for such period.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%)

of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternative Dispatches**” has the meaning set forth in Section 4.4(d).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“**Annual Forecast**” has the meaning set forth in Section 4.3(a).

“**Annual Storage Capacity Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means any of (x) the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3.

“**Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automated Dispatches**” has the meaning set forth in Section 4.4(d).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) 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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

“**Battery Charging Factor**” means the percentage SOC of the Storage Facility after the first six and a quarter (6.25) hours of the charging phase of the applicable Storage Capacity Test.

“**Battery Discharging Factor**” means one (1) minus the percentage SOC of the Storage Facility after the first five (5) hours of the discharging phase of the applicable Storage Capacity Test.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” has the meaning set forth on the Cover Sheet.

“**Buyer Assignee**” has the meaning set forth in Section 14.5.

“**Buyer Bid Curtailment**” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Facility to deliver less Facility Energy for a period of time than the amount of PV Energy that is forecasted in accordance with Section 4.3 that can be delivered to the Delivery Point consistent with the Interconnection Capacity Limit; and

(b) for the same time-period as referenced in (a), Buyer or the SC for the Generating Facility did not submit a Self-Schedule with respect to the MWs subject to the reduction.

If either the Generating Facility or Storage Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time-period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“**Buyer Curtailment Order**” means the occurrence of either of the following:

(a) Buyer instructs Seller to reduce Facility Energy by the amount, and for the period of time set forth in such instruction; or

(b) Buyer instructs Seller to deliver less PV Energy from the Generating Facility to the Storage Facility for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period.

If either the Generating Facility or Storage Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not

include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Default or breach hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point or the Storage Facility; *provided*, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO-Approved Meter” means a CAISO-approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or **“CT”** means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility or Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility or Generating Facility (as applicable) indicating that the planned operations of the Facility or Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided* that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility net of Electrical Losses, as measured at the Storage Facility Metering Point by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Clipped Energy Period” means any period during the Delivery Term in which (a) the SOC is one hundred percent (100%), (b) the Facility Energy level (in MW) is equal to the Interconnection Capacity Limit or a CAISO operating limit.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” means the date Commercial Operation is achieved.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“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 the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPUC” means the California Public Utilities Commission, or successor entity.

“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 issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to forty (40) hours multiplied by the Installed PV Capacity.

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the

MWhs forecasted in accordance with Section 4.3 that can be delivered to the Delivery Point consistent with the Interconnection Capacity Limit during the relevant time period;

(b) a curtailment of Facility Energy ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment of Facility Energy ordered by CAISO or the Transmission Provider due to a Transmission System Outage;

(d) a curtailment of Facility Energy in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator; or

(e) the CAISO provides notice to a Party or the SC for the Facility, requiring the Facility to deliver less PV Energy from the Generating Facility to the Storage Facility, if the CAISO Tariff is modified after the Effective Date to give the CAISO such authority.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) five (5) times the weighted average Effective Storage Capacity for such Contract Year to date.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" has the meaning set forth in Section 4.3(b).

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means the amount of PV Energy (excluding PV Energy subject to Buyer Curtailment Orders up to the Curtailment Cap in each Contract Year) expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility and/or the Delivery Point during any day of the Delivery Period, but that is not produced by the

Generating Facility (a) during a Buyer Curtailment Period or (b) during any Clipped Energy Period (without duplication of subsection (a) of this definition), which amount in each case shall be equal to the total amount of Energy the Generating Facility was capable of producing during such period (calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during the Buyer Curtailment Period or Clipped Energy Period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period or Clipped Energy Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0); *provided further*, with respect to any Clipped Energy Period, the quantity of “Deemed Delivered Energy” for each day of the Delivery Period shall not exceed the sum of (i) the Stored Energy Level (in MWh) at the point in time during such day when the PV Energy delivered to the Delivery Point first reaches the Interconnection Capacity Limit or CAISO operating limit, plus (ii) any PV Energy that cannot be delivered to the Delivery Point due to a (A) Buyer Bid Curtailment, (B) a Buyer Curtailment Order or (C) a Buyer Default or breach hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point (excluding PV Energy subject to Buyer Curtailment Orders up to the Curtailment Cap in each Contract Year) after the point in time during such day when the PV Energy delivered to the Delivery Point first reaches the Interconnection Capacity Limit or CAISO operating limit, and such Energy is stored in the Storage Facility.

“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.10(e).

“**Delay Damages**” means Daily Delay Damages and Commercial Operation Delay Damages.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Discharging Energy**” means all Energy delivered from the Storage Facility to the Storage Facility Metering Point, net of Station Use, pursuant to a Discharging Notice, and measured by the Storage Facility Meter. All Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions

and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit or CAISO operating limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the full amount of PV Energy up to (but no more than) the Interconnection Capacity Limit or CAISO operating limit can be delivered to the Delivery Point, until such time as Buyer's SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order; *provided*, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy.

"Disclosing Party" has the meaning set forth in Section 18.2.

"Dispatch Operating Target" has the meaning set forth in the CAISO Tariff.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Date" has the meaning set forth on the Preamble.

"Effective FCDS Date" means the date identified in Seller's Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Storage Facility has attained Full Capacity Deliverability Status.

"Effective Storage Capacity" means the lesser of (a) P_{MAX}, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for five (5) hours of continuous discharge, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

"Efficiency Rate" means the rate calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"Electrical Losses" means, as applicable, all transmission and transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, (c) between the Generating Facility Metering Point and the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours or multiple units thereof.

“Energy In” has the meaning set forth in Section III.A(5) of Exhibit O.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Out” has the meaning set forth in Section III.A(10) of Exhibit O.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of Adjusted Facility Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means the sum of PV Energy and Discharging Energy, as applicable, that is delivered to the Delivery Point, net of Electrical Losses and Station Use, during any Settlement Interval or Settlement Period, as measured by the Facility Meter.

“Facility Meter” means the CAISO-Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the Delivery Point, net of Electrical Losses and Station Use.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Force Majeure Unavailability” has the meaning set forth in Exhibit C.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasting Penalty” has the meaning set forth in Section 4.3(e).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” or **“FCDS”** has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Storage Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“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 this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; *provided*, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Meter” means the meter or meters (with a 0.6 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement

devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

“Generating Facility Testing Condition” has the meaning set forth in Part I.B.4 of Exhibit O.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy or PV Energy, as applicable.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (x) the Guaranteed PV Capacity in MW_{DC} and (y) the Guaranteed Storage Capacity in MW_{AC}.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW_{DC} at the Generating Facility Meter, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for five (5) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least [REDACTED] (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Hybrid Resources” has the meaning set forth in the CAISO Tariff.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement

Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Facility Energy to the Delivery Point.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW_{DC} at the Generating Facility Meter, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto. Seller shall have the right and option in its sole discretion to install Generating Facility capacity in excess of the Guaranteed Storage Capacity in an amount not to exceed one (1) MW_{DC}.

“Installed Storage Capacity” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for five (5) hours of continuous discharge, as measured in MW_{AC} at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times five (5) hours.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, which amount is 13 MW_{AC}.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“**Investment Grade**” means a Credit Rating of at least “Baa3” with respect to Moody’s and at least “BBB-” with respect to S&P.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**kWh**” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (a) 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 or operation of the Facility, 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 Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**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 substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local Capacity Area Resource**” has the meaning set forth in the CAISO Tariff.

“**Local RAR**” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as

local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**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 this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” means PV Energy in the amount the Facility could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods. The amount of Lost Output (in MWh) shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during the for the period of time during the Force Majeure Event, System Emergency, Transmission System Outage, or Curtailment Period, less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the during the Force Majeure Event, System Emergency, Transmission System Outage, or Curtailment Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Capacity Payment**” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of the Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

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

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP-15 as set forth in the CAISO Tariff.

“**Operating Restrictions**” means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; *provided*, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Performance Security**” means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its reasonable discretion) in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“**Planned Outage**” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Financing**” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“**Portfolio Financing Entity**” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but

rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“**PV Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**PV Energy**” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point, net of Station Use, and measured by the Generating Facility Meter.

“**Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**RA Compliance Showing**” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“**RA Guarantee Date**” means the date set forth in the deliverability Section of the Cover Sheet which is the date the Storage Facility is expected to achieve Full Capacity Deliverability Status.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Storage Facility for such month was less than the Qualifying Capacity of the Storage Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“**Real-Time Forecast**” has the meaning set forth in Section 4.3(c).

“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

“**Real-Time Price**” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“**Receiving Party**” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“RTE Cure Plan” has the meaning set forth in Section 11.1(b)(v).

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be [REDACTED]. The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff.

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SOC” or **“State of Charge”** means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by five (5) hours, expressed as a percentage.

“Station Use” means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“Storage Capability” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity, and/or Efficiency Rate conducted in

accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with a 0.6 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point, amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter shown in Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time will be greater than the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and

use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Total YTD Calculation Intervals**” has the meaning set forth in Exhibit P.

“**Transmission Provider**” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“**Ultimate Parent**” means Emeren US LLC, a Delaware limited liability company.

“**Unavailability Notice**” means any reduction in the available Effective Storage Capacity or Storage Capability communicated to Buyer pursuant to this Agreement, including pursuant to Sections 4.3 and 4.6, other than through Seller’s EMS or SCADA System.

“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent.

Seller shall provide Notice of expected Commercial Operation to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a

Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity and the Installed Storage Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility that are capable of being satisfied on the Commercial Operation Date have been obtained and all conditions thereof required for commencement of operations have been satisfied and shall (as applicable) be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility; Seller has received CEC Precertification of the Facility or the Generating Facility (as applicable) (and reasonably expects to receive final CEC Certification and Verification for the Facility or the Generating Facility (as applicable) in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.**

Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date 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 reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably 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 is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**.

If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default or other Buyer breach hereunder which directly prevents Seller from achieving such Milestone, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product**.

Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes**.

During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy or Facility Energy (as applicable). Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.**

Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. Following the Commercial Operation Date and subject to Section 4.5, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.**

Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.**

No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from

Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy-five percent (75%) of the Renewable Rate (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.**

Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Storage Facility. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to obtain and deliver Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer’s benefit, including applying for a deliverability allocation for the Generating Facility one (1) time after the Effective Date, at no cost to Buyer. Seller shall (i) submit additional applications for a deliverability allocation for the Generating Facility if reasonably requested by Buyer, and (ii) take such additional steps as Buyer may reasonably request to obtain Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer’s benefit, so long as Buyer agrees to reimburse Seller for Seller’s associated costs.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility (or, if applicable,

during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Storage Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”); *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, *provided* that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.**

Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller’s application for CEC Certification and Verification.

3.10 **Eligibility.**

Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility or the Generating Facility (as applicable) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s or the Generating Facility’s (as applicable) output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default (and Buyer’s payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.**

Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy or Facility Energy (as applicable) is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC

or CEC from time to time.

3.12 **Compliance Expenditure Cap.**

If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date. Notwithstanding anything to the contrary hereunder, to the extent any Compliance Actions, despite Seller's use of commercially reasonable efforts to avoid any reduction in capacity and/or availability of the Storage Facility, cause the Storage Facility to have reduced capacity and/or availability during the time period within which such Compliance Actions are being completed, such reduced capacity and/or availability shall be excluded for purposes of calculating the Annual Storage Capacity Availability and/or Effective Storage Capacity.

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.**

In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy and the ability of the Facility to be operated in connection with a local microgrid; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties in their sole discretion as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with Test Energy and the PV Energy or Facility Energy (as applicable) during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) **Energy and Ancillary Services Products.** If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.**

Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of PV Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and as updated by Seller from time to time thereafter in its discretion or as may be required below, and (ii) the beginning of each calendar year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the "**Annual Forecast**").

(b) **Day-Ahead Forecast.** Seller shall take commercially reasonable actions to enable Buyer's SC to receive a CAISO VER day-ahead forecast. Seller shall also provide (or arrange for an Approved Forecast Vendor to provide) to Buyer's SC, by 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, a non-binding forecast of the hourly expected total amount of PV Energy capable of being produced by the Generating Facility (not taking into account any limitations on the ability to deliver such Energy to the Delivery Point or to the Storage Facility) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately following day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's (or the Approved Forecast Vendor's) best estimate of the PV Energy capable of being produced by the Generating Facility (not taking into account any limitations on the ability to deliver such Energy to the Delivery Point or to the Storage Facility). Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller (or the Approved Forecast Vendor) fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Annual Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(c) **Real-Time Forecasts.** Seller shall take commercially reasonable actions to enable Buyer's SC to receive a CAISO VER intra-day forecast. So long as the CAISO is providing such VER intra-day forecast, Seller shall have no other intra-day or real-time forecasting

obligations except as set forth in this Section 4.3(c). Seller shall notify Buyer's SC of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected amount of available Installed PV Capacity or available Effective Storage Capacity ("**Real-Time Forecast**"), in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the hourly expected amount of available Installed PV Capacity or available Effective Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify (or arrange for an Approved Forecast Vendor to notify) Buyer's SC as soon as reasonably possible. Such Real-Time Forecasts of available Installed PV Capacity or available Effective Storage Capacity shall contain information regarding the beginning date and time of the event resulting in the change in any PV Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer's SC. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer's SC; *provided*, Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(c), then Seller (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(d) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall use commercially reasonable efforts to notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages within ten (10) minutes of the commencement of the Forced Facility Outage, including changes to PMAX, PMIN, or telemetry, and shall notify Buyer of the expected timeframe of such Forced Facility Outage. Seller shall keep Buyer informed of any developments that will affect either the duration of the Forced Facility Outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. So long as the CAISO is providing VER day-ahead and intra-day forecasts, Seller shall have no liability under this Section 4.3(e). If the CAISO is not providing VER day-ahead and intra-day forecasts as a result of any failure by Seller of its obligations under this Agreement, then in the event Seller does not in a given hour provide, or Seller has failed to arrange for an Approved Forecast Vendor to provide, the Day-Ahead Forecast required in Section 4.3(b) or the Real-Time Forecast required in Section 4.3(c), and due to such failures Buyer incurs a loss or penalty resulting from its scheduling activities with respect to PV Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, assumes no Charging Energy or Discharging Energy in such hour) set forth in the most recent Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV Energy for such hour (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all obligations applicable to Hybrid Resources under the CAISO Tariff and the Eligible Intermittent Resource

Protocol, if applicable, including providing appropriate operational data, metering and telemetry data, and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

(g) Meteorological and Storage Facility Status Data. Seller shall provide to Buyer's SC the following real-time data at a granularity of no less than five (5)-minutes:

- (i) Generating Facility point-of-array irradiance;
- (ii) PV Energy delivered to the Generating Facility Meter;
- (iii) Ambient temperature at the Site;
- (iv) Storage Facility operational capacity;
- (v) State of Charge;
- (vi) Stored Energy Level; and
- (vii) ADS and AGC set points.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Facility Energy by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions; *provided further*, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch Operating Target or Operating Instruction as required by the CAISO Tariff.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy resulting from a Buyer Curtailment Order in excess of the Curtailment Cap at the Renewable Rate, subject to the limitations of Section (b) of Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and

(C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such SCADA Systems, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an automated electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the CAISO or Buyer's SC in accordance with this Agreement ("**Automated Dispatches**") and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with the methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices ("**Alternative Dispatches**"). Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than (i) pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), (ii) in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), (iii) pursuant to a notice from the Transmission Provider

or Governmental Authority, or (iv) any PV Energy that Seller cannot deliver to the Delivery Point (which Seller shall cause to occur even in the absence of a Charging Notice), unless expressly instructed not to charge the Storage Facility by Buyer pursuant to a Buyer Curtailment Order or the CAISO pursuant to a Curtailment Order, and subject to there being sufficient available charging capacity in the Storage Facility to receive such PV Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch other than as permitted pursuant to Sections 4.5(c) or 4.5(d) or as permitted pursuant to the CAISO Tariff within the applicable tolerance band established by the CAISO for Imbalance Energy that does not result in CAISO penalties, Seller shall be responsible for all CAISO charges

and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.5(c)). To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Storage Facility; *provided*, prior to the Commercial Operation Date Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

4.6 Reduction in Delivery Obligation.

(a) Facility Maintenance. Without limiting Sections 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(i) Seller shall provide to Buyer written schedules for Planned Outages for each of the Generating Facility and Storage Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments on the proposed Planned Outage schedule no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Generating Facility and/or Storage Facility, as applicable, will be dispatched.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Generating Facility or Storage Facility shall be scheduled or planned

during the hours of 6 a.m. to 10 p.m. from each June 1 through September 30 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all commercially reasonable efforts to reschedule such Planned Outage if requested to do so by Buyer.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and the expected duration (if known) of any Forced Facility Outage; *provided*, Seller may provide such Notice (i) pursuant to Seller's forecasts provided to Buyer pursuant to Section 4.3, or (ii) through compliance with CAISO's outage reporting protocols.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 Guaranteed Energy Production.

During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of Adjusted Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "Guaranteed Energy Production" means an amount of Adjusted Facility Energy, as measured in MWh, equal to one hundred seventy percent (170%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) Lost Output. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at NP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.8 **Storage Facility Availability; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than ninety-seven percent (97%) (the “**Guaranteed Storage Availability**”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is reimbursement of Buyer’s excess Energy costs pursuant to Section (e) of Exhibit C.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) As of the Effective Date, the Parties acknowledge and agree that a DC-coupled solar plus energy storage generating facility does not qualify under the CAISO Tariff to provide Ancillary Service to the CAISO market. Subject to the terms of this Agreement, including Section 4.1(c), if after the Effective Date there is a change of Law that permits the Storage Facility to provide Ancillary Services, thereafter Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s revised CAISO Certification associated with the Effective Storage Capacity

(e) Upon Buyer’s reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined

pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Automated Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and Buyer shall pay Seller the Renewable Rate for all Adjusted Facility Energy associated with such discharge. For all Seller Initiated Tests, the Adjusted Facility Energy associated with such Charging Energy shall be calculated in a manner such that there is no “gross up” benefit to Seller for Storage Facility efficiency losses associated with such Charging Energy, and Seller shall be entitled to all CAISO revenues (but not the Renewable Rate) associated with a Storage Facility discharge, but all Green Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer.. Buyer

shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS**.

Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy or Facility Energy (as applicable) are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy or Facility Energy (as applicable) generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy or Facility Energy (as applicable) for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy or Facility Energy (as applicable) for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy or Facility Energy (as applicable) in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy or Facility Energy (as applicable) in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement (to the extent such steps are reasonably capable of being taken prior to the first delivery under this Agreement).

ARTICLE 5 TAXES

5.1 Allocation of Taxes and Charges.

Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product

that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.**

Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.**

Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.**

Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership

and shared maintenance and operation arrangements; *provided*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 Metering.

Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have one CAISO Resource ID for the Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter, Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter, and Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter or account for all Station Use. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter (but not the Generating Facility Meter or the Storage Facility Meter) shall be programmed to adjust for all Electrical Losses to the Delivery Point in a manner that complies with the CAISO Tariff and subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter, Generating Facility Meter and Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) and/or directly from the CAISO meter(s) at the Facility.

7.2 Meter Verification.

Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall make commercially reasonable efforts to cause the meter to be tested. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 Invoicing.

Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Facility Energy, Replacement RA and Replacement Product delivered to Buyer (if any); for each day that is subject to the invoice, the Stored Energy Level (in MWh) at the point in time when the PV Energy delivered to the Delivery Point first reached the Interconnection Capacity Limit, the calculation of each day's Deemed Delivered Energy (if any) that is not covered by the Curtailment Cap, if applicable; the calculation of Adjusted Facility Energy and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 Payment.

Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after Buyer's receipt of each invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records.

To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to

the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.**

Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.**

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. 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 original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **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 or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, 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.

8.7 **Seller's Development Security.**

To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) Business Days after the Effective Date. Seller shall maintain the Development Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.**

(a) To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller 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.

(b) In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.**

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 Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 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. 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 Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) 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 such obligations are satisfied in full.

8.10 **Buyer's Covenants**

(a) **Buyer's Reporting of Financial and Credit Information.** Beginning on the first full calendar quarter of the Contract Term and continuing until the expiration of the Contract Term, Buyer shall provide to Seller the following reports and information:

(i) within sixty (60) days after the end of each fiscal quarter: (1) the number of customers of Buyer by customer category (including retail, commercial and industrial) as of the end of such fiscal quarter, (2) Buyer's Historical Load Served for the prior quarter and (3) unaudited quarterly financial statements of Buyer; and

(ii) within one hundred twenty (120) days after the end of each fiscal year, annual audited financial statements of Buyer (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

(b) **Cooperation with Financing Parties.** Buyer shall cooperate with Seller and any of Seller's financing counterparties to execute and arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and any other documents and information reasonably requested in connection with the debt or equity (including tax equity) financing of the Facility.

8.11 **Escrow Account.**

(a) If requested by Seller, the Parties shall negotiate in good faith and enter into a three-party escrow arrangement (an "**Escrow Agreement**") with a mutually agreeable financial institution or other creditworthy escrow agent pursuant to a written agreement under which Seller shall deposit any cash to be paid to or provided to Buyer as Development Security, Performance Security, Commercial Operation Delay Damages and Daily Delay Damages, if applicable, (an "**Escrow Account**").

(b) Buyer shall have the unconditional right to draw on the Development Security, Performance Security, Commercial Operation Delay Damages and Daily Delay Damages as expressly set forth in this Agreement and the terms of the Escrow Agreement.

(c) Seller shall have the unconditional right to withdraw funds from the Escrow Account upon the occurrence of a failure by Buyer to make any payment to Seller when due under this Agreement, and Buyer agrees to release its Security Interest with respect to such funds (and to take all action required to effectuate such release). Within ten (10) days following any such draw by Seller, Buyer shall replenish the Escrow Account to its prior amount.

ARTICLE 9 NOTICES

9.1 Addresses for the Delivery of Notices.

Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 Acceptable Means of Delivering Notice.

Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic (including the COVID-19 pandemic and related disruptions and events, notwithstanding the existence or foreseeability of the occurrence thereof or delays attributable thereto as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; changes in Law that render this Agreement or any provisions hereof incapable of (or delayed in) being performed or administered civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.**

Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default

of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.**

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

10.4 **Termination Following Force Majeure Event.**

(a) If the cumulative extensions granted under the Development Cure Period following the Effective Date of this Amended and Restated Renewable Power Purchase Agreement (other than the extensions granted pursuant to clause 4(c) in Exhibit B) equal or exceed one hundred twenty (120) days or two hundred eighty (180), as applicable pursuant to the cause of the Development Cure Period, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement. For avoidance of doubt, Development Cure Period days approved under the Original PPA prior to the Effective Date of this Amended and Restated Renewable Power Purchase Agreement shall not apply to this Section 10.4(a).

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.**

An “**Event of Default**” shall mean:

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) 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 default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for) any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) 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;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial

Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year beginning with the second Contract Year, the Adjusted Energy Production (calculated in accordance with Exhibit G) for such period is not at least fifty percent (50%) of the Expected Energy for such Contract Year, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the fifty percent (50%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, in any two (2) consecutive Contract Years during the Delivery Term, the Annual Storage Capacity Availability multiplied by the weighted average Effective Storage Capacity of the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Storage Cure Plan”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; *provided*, in the event of a Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10, any unavailability of the Storage Facility caused by a Force Majeure Event for which Seller is the claiming party shall be excluded from the calculation of Annual Storage Capacity Availability and weighted average Effective Storage Capacity for purposes of determining whether a Seller Event of Default has occurred under this Section 11.1(b)(iv). If a Force Majeure Event prevents Seller from completing a Storage Cure Plan within one hundred eighty (180) days, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event, up to an additional one hundred eighty (180) days;

(v) if, over any rolling twelve (12) month period, the average Efficiency Rate is less than seventy percent (70%) and Seller fails to (a) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“RTE Cure Plan”) and (y) complete such RTE Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit;

(viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material

respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

11.2 **Remedies; Declaration of Early Termination Date.**

If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment.**

If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate,

in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller's assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“**Termination Payment**”) shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment.**

As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60) days period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes with Respect to Termination Payment or Damage Payment.**

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.**

If the Agreement is terminated prior to the Commercial Operation Date for any reason other than due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights and Remedies are Cumulative.

Except as set forth in Section 4.8 and except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation.

Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

11.9 Seller Pre-COD Termination.

At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date; *provided*, in no event shall the sum of (A) and (B) exceed an amount equal to one and one half (1.5) times the Development Security amount.

**ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

12.1 No Consequential Damages.

EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A

LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.**

EXCEPT AS EXPRESSLY 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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 DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller's Representations and Warranties.

As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in 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, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller 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) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) 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.

(e) The Facility is located in the State of California.

13.2 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 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.

13.3 **General Covenants.**

Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.**

The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller shall complete the "Supplier Diversity and Labor Practices" questionnaire provided by Buyer, and Seller agrees to comply with similar regular reporting requirements related to diversity and labor practices.

13.5 **Support for Pollinators.**

Seller agrees to maintain the Site and to design, construct and operate the Facility in a manner that provides healthy habitats for bees, bats, butterflies, hummingbirds and other pollinators by undertaking the following pollinator habitat creation, restoration, and protection efforts:

(a) Seller shall provide to Buyer before the Construction Start Date a written narrative that describes the vegetation design and management plan for the Site, including landscape drawings and seed/plant listing.

(b) Within thirty (30) days of the Commercial Operation Date, Seller shall provide to Buyer a pollinator-friendly solar scorecard in the form attached as Exhibit S ("**Pollinator Scorecard**"). Seller shall use commercially reasonable efforts to achieve and maintain a score of at least seventy (70) on the Pollinator Scorecard during the Delivery Term.

(c) Within sixty (60) days after the end of each third (3rd) Contract Year during the Delivery Term, Seller shall provide to Buyer an updated Pollinator Scorecard.

(d) Seller shall use commercially reasonable efforts to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats: (i) 36-inch minimum height above ground of the lowest edge of the solar panels; (ii) burying conduits and wiring with homeruns tight to bottom of panels; (iii) designing inter-row access/spacing to enable vegetation management; and (iv) utilizing BeeWhere registration (<https://beewherecalifornia.com/register-here/>) if bee hives are placed at the Site.

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments.

Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 Collateral Assignment.

Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions (with such changes as may be reasonably requested by Lenders):

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; *provided*, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior written notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's remaining obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's remaining obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement required to be cured in accordance with Section 14.2(g), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or its designee must promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.**

Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.**

Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the

Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 Governing Law.

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

15.2 Dispute Resolution.

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

15.3 Attorneys' Fees.

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to

Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims.

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

ARTICLE 17 INSURANCE

17.1 Insurance

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in

a minimum limit of liability of Five Million Dollars (\$5,000,000). 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.

(b) Employer's Liability Insurance. Employers' Liability insurance shall 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.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. 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.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer

and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information.

The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality.

The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, 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 applicable to such Party or any of its Affiliates; *provided*, 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. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“**Buyer’s Indemnified Parties**”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.**

Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.**

Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates’ agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.**

Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits.

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

19.2 Amendments.

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 No Waiver.

Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 No Agency, Partnership, Joint Venture or Lease.

Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 Severability.

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on

the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.**

Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.**

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

19.8 **Electronic Delivery.**

This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.**

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

19.10 **No Recourse to Members of Buyer.**

Buyer 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 its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.**

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

19.12 **Change in Electric Market Design.**

If, after the Effective Date, (i) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, or (ii) a change in the CAISO Tariff, CPUC rules or other Law (or any new Law) results in the Net Qualifying Capacity of the Storage Facility on a consistent or ongoing basis falling below the Qualifying Capacity of the Storage Facility through no fault of Seller and such change in Law is not reasonably addressable by Seller under the requirements imposed on Seller under Section 3.12, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered (or, in the case of preceding clause (ii), to maintain Seller’s level of burdens or obligations under Section 3.8), in each case while attempting to preserve to the maximum extent possible the overall benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.**

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

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

GIBSON RENEWABLES LLC

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Signature Page

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Gibson Solar

Site includes all or some of the following APNs: 049-100-035

City: Madison

County: Yolo

Zip Code: 95653

Latitude and Longitude: 38.680812°, -121.986841°

Facility Description: Gibson Solar facility will be constructed on a 147-acre vacant parcel of land located on State Highway 16 approximately 1 mile west of County Road 89 in an unincorporated area of Yolo County. It will consist of a 13 MW_{AC} (25.2 MW_{DC} solar photovoltaic Generating Facility DC-coupled with a 65 MWh (13 MW_{AC} x 5 hours) battery energy Storage Facility.

Delivery Point: Pnode for the Facility, and as reflected on the Metering Diagram in Exhibit R

Generating Facility Metering Points: See Metering Diagram in Exhibit R

Storage Facility Metering Points: See Metering Diagram in Exhibit R

P-node: WOODLD_1_B1

Transmission Provider: Pacific Gas & Electric Company

Additional Information: See Site diagram on the next page.



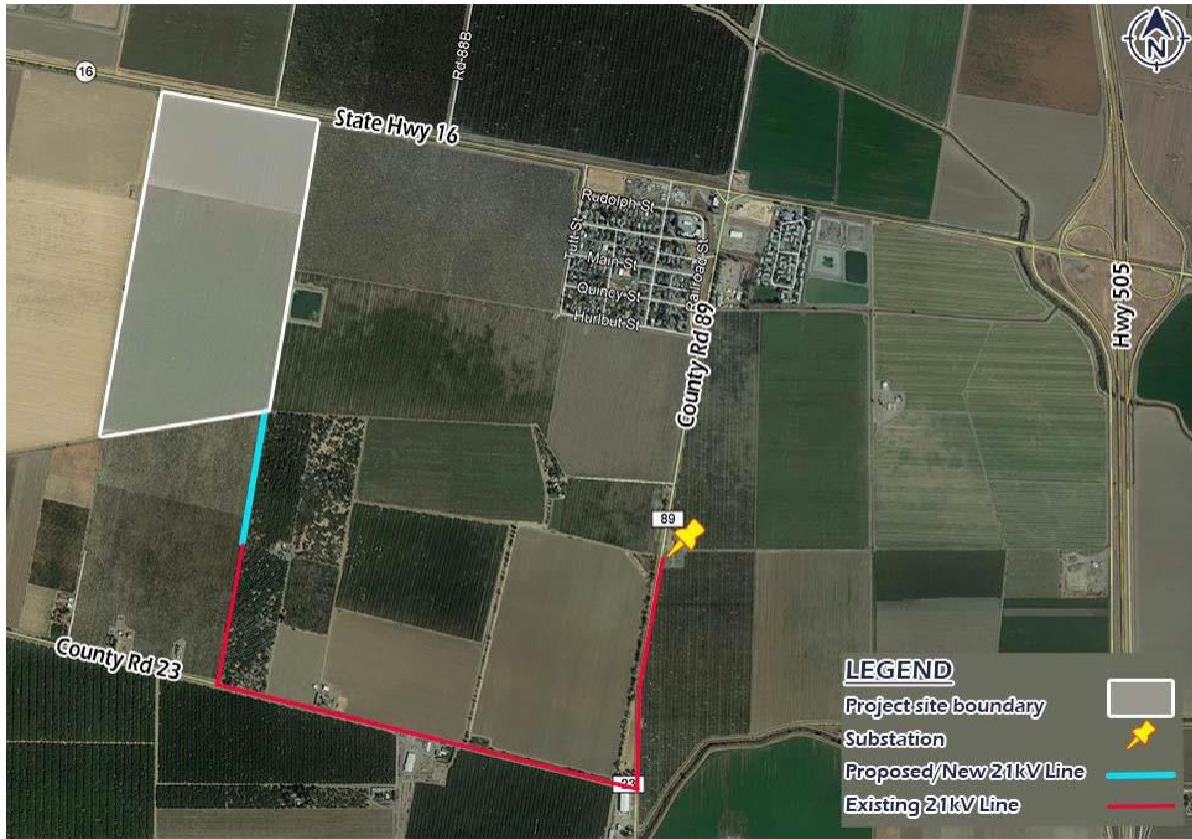


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once 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 Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) 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 J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of ninety (90) days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, or as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least ninety (90) days before the anticipated Commercial Operation Date.

b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of sixty

(60) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for up to sixty (60) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation 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 to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for initial synchronization and to connect and sell Product at the Delivery Point by the date that is sixty (60) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - c. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event; *provided*, such one hundred twenty (120) day period shall be extended on a day-for-day basis (up to an additional sixty (60) days maximum) for each day of delay hereunder that is based on a COVID-19 Force Majeure Event; *provided further*, the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred eighty (180) days. 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 actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW_{DC} that the Guaranteed PV Capacity exceeds the Installed PV Capacity.
- b. *Guaranteed Storage Capacity.* If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW_{AC} at five (5) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy (excluding any Deemed Delivered Energy resulting from Buyer Curtailment Orders up to the Curtailment Cap in each Contract Year), if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of Adjusted Facility Energy plus Deemed Delivered Energy for which Buyer has paid the Renewable Rate exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy and/or Deemed Delivered Energy shall be [REDACTED]/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Adjusted Facility Energy in excess of the product of the Interconnection Capacity Limit and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be [REDACTED], and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each calendar month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the "Storage Capacity Availability Payment True-Up"), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; *provided*, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability

Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

- (A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

- (B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}$

- (C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = $(\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * 1.5 - (\text{Force Majeure Unavailability} * 0.5)$

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

(e) **Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate**. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, times (ii) the percentage

amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, times (iii) the Renewable Rate.

(f) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(g) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephone or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth in this paragraph, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for

Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(iv) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as

Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F-1

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means PCC1 Renewable Energy Credits with the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Gibson Renewables LLC, a California limited company 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]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on ___[DATE]____.
5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.
6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of installed capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Gibson Renewables LLC, a California limited company 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.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW_{DC} (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW_{AC} to the Delivery Point at five (5) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”); and

(c) The Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Gibson Renewables LLC, a California limited company 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.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of ___ MW_{AC} to the Delivery Point at five (5) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Gibson Renewables LLC, a California limited company (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**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 the following:

- (1) Construction Start (as defined in Exhibit B of 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.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”); and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

GIBSON RENEWABLES LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Valley Clean Energy Alliance, 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. [XXXXXXXX] (the “Letter of Credit”) in favor of Valley Clean Energy Alliance, a California joint powers authority (“Beneficiary”), [Address], for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] 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 [XXXXXXXX] 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. [XXXXXXXX] (“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 [XXXXXXXX] or [XXXXXXXX] 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. [XXXXXXXX]. 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: Valley Clean Energy Alliance, 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 Valley Clean Energy Alliance, a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (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 Valley Clean Energy Alliance, 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 Valley Clean Energy Alliance, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Valley Clean Energy Alliance

Name and Title of Authorized Representative

Date _____

**EXHIBIT L
FORM OF GUARANTY**

This Guaranty (this “*Guaranty*”), is entered into as of _____, ____ (the “*Effective Date*”), by and between [____], a [____] (“*Guarantor*”), in favor of VALLEY CLEAN ENERGY ALLIANCE, a California joint powers authority (“*Counterparty*”).

RECITALS

WHEREAS, Counterparty and [____], a [____] (“*Obligor*”) have entered into that certain Renewable Power Purchase Agreement dated as of _____, ____ (as amended, restated or otherwise modified from time to time, the “*Agreement*”); and

WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

WHEREAS, Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the Agreement, as required by Section 8.8 of the PPA.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. *Guaranty.* Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement (and giving effect to any applicable grace or cure period) on or after the Effective Date (the “*Guaranteed Obligations*”). This Guaranty shall constitute a guarantee of payment and not merely of collection. The liability of Guarantor under this Guaranty shall be primary to the Guarantor and unconditional subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ Dollars (\$_____), exclusive of Counterparty’s costs of collection and enforcement under Section 1(b) (the “*Maximum Recovery Amount*”). This Guaranty is a continuing guaranty of payment and shall apply to all Guaranteed Obligations whenever arising.

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including reasonable attorney’s fees) to the extent reasonably and actually incurred by the Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages, except to the extent such damages are allowed under the Agreement.

2. Demands and Payment.

(a) If Obligor fails to pay any Guaranteed Obligation to Counterparty when such Obligation is due and owing under the Agreement, Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Guaranteed Obligation pursuant to this Guaranty (a "**Payment Demand**").

(b) Guarantor's obligation hereunder to pay any particular Guaranteed Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Guaranteed Obligation(s) covered by such demand, the specific date(s) upon which such Guaranteed Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Guaranteed Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Guaranteed Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Guaranteed Obligation(s) specified in that Payment Demand, and Guarantor shall be required to promptly make payment with respect to the Guaranteed Obligation(s) specified in that Payment Demand, but in no event later than ten (10) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of California or the State of New York.

3. Representations and Warranties. Guarantor represents and warrants that:

(a) it is a [_____] duly organized and validly existing under the laws of the State of [_____] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. No Counterclaims or Setoffs; Deferral of Defenses. The obligations of the Guarantor to the Counterparty hereunder shall not be subject to any counter-claim, set-off, withholding, or deduction unless required by applicable law, and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor other than the

satisfaction of the Guaranteed Obligations. A separate action or actions may be brought against the Guarantor whether or not any action is brought against the Obligor under the Agreement and whether or not the Obligor is joined in any such action or actions. Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor, any lack of power or authority of Obligor to enter into and/or perform the Agreement, and other defenses expressly waived by in this Guaranty.

5. Amendments. Guarantor agrees that the Counterparty and the Obligor may modify, amend and supplement the Agreement and that the Counterparty may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, waive, exercise or refrain from exercising any rights against the Obligor, or subordinate any obligation or liability of the Obligor to the Counterparty, including any security therefor, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Counterparty. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; *provided*, however, that an amendment to this Guaranty extending the termination date of this Guaranty shall not be effective unless and until it is executed solely by Guarantor.

6. Waivers and Consents. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Guarantor hereby expressly waives diligence, presentment, protest, notice, acceleration, dishonor and acceptance of this Guaranty and demand concerning the liabilities of Guarantor, and any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof or to subrogate to any claims the Counterparty may have against the Obligor or the Obligor may have against the Counterparty.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. Reinstatement. Guarantor agrees that this Guaranty shall continue to be effective

or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. Termination. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all of the Guaranteed Obligations have been fully discharged; (ii) the satisfaction of all obligations of the Obligor under the Agreement; (iii) the Guarantor or Obligor causes this Guaranty to be replaced with one or a combination of cash, a fully effective letter of credit and/or another fully effective guaranty similar in form and substance to this Guaranty and by a party otherwise meeting the criteria set forth in the definition of Guarantor in the Agreement, or (iv) the twentieth (20th) anniversary of the first day of the first month following the Commercial Operation Date under the Agreement; provided that no such termination shall affect Guarantor's liability with respect to any Obligations arising under this Agreement prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

9. Notices. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

To Guarantor:

To Counterparty:

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. Miscellaneous.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the laws of the State of California.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor; provided that the Counterparty may, without prior notice to Guarantor or Obligor, make such an assignment, in conjunction with the grant or enforcement of a security interest or if otherwise required to do so under the terms of a mortgage or indenture to which Counterparty is or becomes a party.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) EACH OF COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date

[Guarantor]

By: _____

Name: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Gibson Renewables LLC, a California limited company (“**Seller**”) to Valley Clean Energy Alliance, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

GIBSON RENEWABLES LLC

By: _____

Its: _____

Date: _____

EXHIBIT N
NOTICES

GIBSON RENEWABLES ("Seller")	VALLEY CLEAN ENERGY ALLIANCE ("Buyer")
All Notices: Street: 100 First Stamford Place, Suite 302 City: Stamford, CT 06902 Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	All Notices: Street: 604 2 Nd Street City: Davis, CA 95616 Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]	Invoices: Attn: Accounting Phone: [REDACTED] E-mail: [REDACTED]
Scheduling: Attn: TBD Phone: TBD Email: TBD	Scheduling: Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]	Confirmations: Attn: [REDACTED] Phone: [REDACTED] Email: [REDACTED]
Payments: Attn: [REDACTED] Phone: [REDACTED] E-mail: [REDACTED]	Payments: Attn: Accounting Phone: [REDACTED] E-mail: [REDACTED]
Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

- A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the SCADA Systems should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA Systems data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy may be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period (the "**Generating Facility Testing Condition**"); *provided*, Seller may waive such Generating Facility Testing Condition at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the Generating Facility Testing Condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom (including pursuant to part I.B.4). The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O (including pursuant to Part I.B.4.).

- (1) Electrical output at maximum discharging level (MW_{AC}) for five (5) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW_{AC}), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage

Facility Meter (MW_{AC}), as sustained until the SOC reaches 100%, not to exceed six and a quarter (6.25) hours of total charging time, as may be adjusted per Part I.B.4 above, if applicable.

- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
 - (2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
 - (3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
 - (4) SOC (%)
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
 - (2) The maximum sustained discharging level for five (5) consecutive hours pursuant to A(1) above, including, if applicable, as adjusted pursuant to Part I.B.4 above;
 - (3) The maximum sustained charging level for six and a quarter (6.25) consecutive hours pursuant to A(2) above, including, if applicable, as adjusted pursuant to Part I.B.4 above;
 - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
 - (6) Amount of Charging Energy registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC;

- (7) Amount of Discharging Energy registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
- (2) Abnormal Conditions. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including ambient air temperature above 40° Celsius or below 0° Celsius), Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

- F. Incomplete Test. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
- (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
- (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with modifications and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended modifications and updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:
- (1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first five (5) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) five (5) hours) shall be divided by five (5) hours to determine the Effective Storage Capacity, which shall be expressed in MW_{AC}, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.
 - (2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate; *provided*, for the purpose of determining the Efficiency Rate pursuant to this paragraph, the amount of Discharging Energy and Charging Energy shall not be adjusted for Electrical Losses occurring between the Storage Facility Meters and the Delivery Point.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) six and a quarter (6.25) hours have lapsed since the Storage Facility commenced charging.
- (4) Record and log the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) six and a quarter (6.25) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and log the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) ("**Energy In**").
- (6) Following an agreed-upon rest period (taking into account operating conditions of the Facility and the Interconnection Capacity Limit), command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for five (5) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record the Storage Facility SOC after five (5) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for five (5) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.
- (8) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Part III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter for determining the Effective Storage Capacity. "**Energy Out**" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) from the

commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- Test Results

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter (without adjusting for Electrical Losses).
- (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by five (5) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
 - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff.)
- This AGC Charge Test may only be performed while there is anticipated to be sufficient Charging Energy for the duration of the test.

- System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Storage Facility active power level at the Storage Facility Meter.
 - (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
 - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “Available Effective Storage Capacity,” which shall be calculated as the sum of the available capacity, in MW_{AC}, expected from each Storage Facility inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage Capability**” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual normal operating conditions pursuant to the manufacturer’s guidelines.)

“**Total YTD Calculation Intervals**” means, for each applicable Contract Year, the total

number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) (A) for “available Effective Storage Capacity,” such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for “Storage Capability,” such amount equal to (1) the Effective Storage Capacity multiplied by five (5) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) After three hundred sixty-five (365) Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols. Notwithstanding anything herein to the contrary, Seller acknowledges that Buyer intends to use this Agreement to meet Buyer’s procurement requirement pursuant to CPUC Decision 21-06-035, Ordering Paragraph 6 (June 24, 2021), and if any of the Operating Restrictions prevent Buyer from meeting such requirement, Seller agrees to discuss with Buyer reasonable changes to this Exhibit Q that would allow Buyer to meet such requirement; *provided*, Seller shall not be required to agree to any changes that are reasonable anticipated to have more than a *de minimus* negative financial impact on Seller unless Buyer agrees to keep Seller whole.

I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium Iron Phosphate (LFP) Battery Storage	
Storage Unit Name:	TBD	
A. Contract Capacity		
Guaranteed Storage Capacity (MW_{AC}):	13	
Effective Storage Capacity (MW_{AC}):	[TBD]	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	21	
Maximum Storage Level (MWh):	65	
Minimum Storage Level (MWh):	0.0	
Stored energy capability (MWh):	[TBD]	
Maximum Discharge (MW_{AC}):	13	
Maximum Charge (MW_{AC}):	13	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum energy throughput (BET) (MWh/year):	365 Cycles per year	
C. Charge and Discharge Rates		
Mode	Maximum (MW_{AC})	Ramp Rate Description
Energy (Charge)	13	P _{max} within 1 minute
Energy (Discharge)	13	P _{max} within 1 minute
D. Ancillary Services		
Frequency regulation is included:	No	
Spin is included:	No	
E. Additional Restrictions		
1. The Storage Facility shall be charged exclusively with PV Energy.		

2. 365 Cycles per Contract Year maximum.
3. Seller shall not be required to operate the Facility in a manner that would cause Facility Energy to exceed the Interconnection Capacity Limit.
4. Average resting SOC of the Storage Facility in each Contract Year must be less than 50%. Stored Energy Level may not remain below 10% for more than 24 consecutive hours.
5. Maximum ambient operating temperature without de-rate: 45° C. The rated power of the Facility shall be reduced by 0.3% per each Degree C above the maximum ambient operating temperature, up to 55° C, at which point the Facility may shut down in Seller's discretion; <i>provided</i> , any such de-rate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under <u>Exhibit P</u> .
6. Minimum ambient operating temperature without de-rate: -10 Degrees C. Below – 10 C, the Facility may shut down in Seller's discretion; <i>provided</i> , any such derate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under <u>Exhibit P</u> .

EXHIBIT R

METERING DIAGRAM

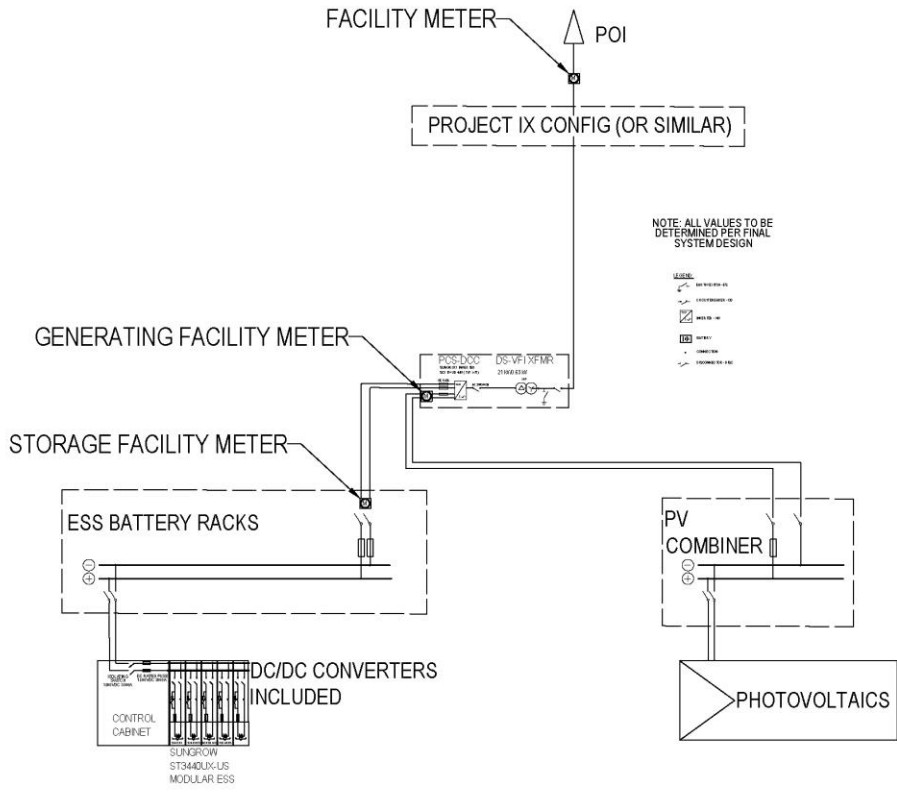


EXHIBIT S

FORM OF POLLINATOR SCORECARD



Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- 31-45 % +5 points
- 46-60 % +10 points
- 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grassseeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- 26-50% +5 points
- 51-75% +10 points
- 76-100% +15 points

Total points

3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- 9-11 species +5 points
- 12-15 species +10 points
- 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- Spring (March-May) +5 points
- Summer (June-August) +5 points
- Fall (September-November) +5 points
- Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- Native bunch grasses, leaf litter, woody debris, bare ground +2 points
 - Native trees/shrubs +2 points
 - Clean, perennial water sources +2 points
 - Created nesting feature(s) +2 points
- (i.e., native bee houses) Total points

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

6. SITE PLANNING AND MANAGEMENT

- Detailed establishment and management plan developed with funding/ contract to implement. +15 points
- Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

7. RE-VEGETATION

- Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points
- 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points
- For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

8. PESTICIDE RISK

- Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points
- Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points
- Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

9. OUTREACH/EDUCATION

- Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

POLLINATOR PARTNERSHIP





Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.



1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY WILDFLOWERS

- 31-45 % +5 points
- 46-60 % +10 points
- 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- 26-50% +5 points
- 51-75%. +10 points
- 76-100% +15 points

Total points

3. PLANNED COVER DIVERSITY (# of species in seed mixes; numbers from upland and wetland mixes can be combined)

- 10-19 species +5 points
- 20-25 species +10 points
- 26 or more species +15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check/add all that apply)

- Spring (April-May) +5 points
- Summer (June-August) +5 points
- Fall (September-October) +5 points

Total points

Note: Check local resources for data on bloom seasons

5. AVAILABLE HABITAT COMPONENTS WITHIN .25 MILES (check/add all that apply)

- Native bunch grasses for nesting +2 points
- Native trees/shrubs for nesting +2 points
- Clean, perennial water sources +2 points
- Created nesting feature/s (bee blocks, etc.) +2 points

Total points

6. SITE PLANNING AND MANAGEMENT

- Detailed establishment and management plan developed with funding/contract to implement +15 points
- Signage legible at 40 or more feet stating "pollinator friendly solar habitat" (at least 1 every 20ac.) +5 points

Total points

7. SEED MIXES

- Mixes are composed of at least 40 seeds per square foot +5 points
- All seed genetic origin within 175 miles of site +5 points
- At least 2% milkweed cover to be established from seed/plants +10 points

Total points

8. INSECTICIDE RISK

- Planned on-site insecticide use or pre-planting seed/plant treatment (excluding buildings/ electrical boxes, etc.) -40 points
- Perpetual bare ground under the panels as a result of pre and post emergent herbicide. -40 points
- Communication/registration with local chemical applicators about need to prevent drift from adjacent areas. +10 points

Total points

9. OUTREACH/EDUCATION

- Site is part of a study with a college, university, or research lab. +5 points

Grand total

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

Note: Percent "cover" should be based on "absolute cover" (the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above). To measure cover diversity use plots, and/or transects in addition to meander searches. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.



June 29, 2021

[REDACTED]
ReneSola Power
5000 Hopyard Road, Suite 302
Pleasanton, CA 94588
[REDACTED]

Re: Gibson Solar Facility Project (APN 049-100-035), Yolo County – Analysis of No Mitigation Required for Swainson’s Hawk Foraging Habitat

Dear Jamie,

This letter is being submitted on behalf of the Applicant for the above-referenced Project to provide additional information regarding the potential significance of Project-related impacts on Swainson’s hawk foraging habitat. Sol Ecology prepared a Biological Resources Report (BRR), dated November 20, 2020, regarding the potential for sensitive biological resources at the Project site, and the likelihood for significant impacts on these resources as a result of the Project.

The impacts analysis included in Sol Ecology’s BRR concluded that the Project is not likely to result in significant impacts to Swainson’s hawk foraging habitat, due to availability of high-quality forage habitat surrounding the site, and because most of the agricultural habitat below the array would remain intact ensuring preservation of the amount and quality of foraging opportunities for Swainson’s hawk potentially nesting on-site or in nearby habitats. As such, Sol Ecology’s analysis determined that no additional mitigation is required for Swainson’s hawk foraging habitat. This letter provides further evidence to support Sol Ecology’s determination of less-than-significant impacts for Swainson’s hawk foraging habitat based on planned measures to not only avoid existing habitat but to manage lands to support and increase the prey base over time.

Species Account – Foraging Needs

Swainson’s hawk (*Buteo swainsoni*) is a primarily summer resident and migrant in California’s central valley and scattered portions of the southern California interior. Foraging occurs in open habitats, including grasslands, pasture, or suitable row crops and grain fields primarily, and hawks often congregate to forage together near to nest sites (CDFW 2016). While breeding, adults feed primarily on rodents, bats, birds, small reptiles, and amphibians. Outside the breeding season, adults rely almost exclusively on insect prey (e.g., grasshoppers, dragonflies, moths, and butterflies)¹.

¹ Woodbridge, B. 1998. Swainson's Hawk (*Buteo swainsoni*). In The Riparian Bird Conservation Plan: a strategy for reversing the decline of riparian-associated birds in California. California Partners in Flight. http://www.prbo.org/calpif/htmldocs/riparian_v-2.html

Summary of Project Elements That Benefit Swainson’s Hawk Foraging Habitat

The Project includes voluntary biological mitigation elements to reduce the potential for unavoidable impacts on Swainson’s hawk foraging habitat to less-than-significant levels. The Project includes the following elements for the benefit of pollinators, currently threatened by increasing production of non-compatible crops in the area including vineyards and cannabis:

1. Colocation of apiaries along the center of the solar panel array fields to attract pollinators to the site and increase the biodiversity of on-site vegetation communities.
2. Establishment of grass substrate under the solar panel array fields, and seasonal sheep grazing to maintain the vegetation height.

Together, the Project elements listed above will produce diverse plant and pollinator populations within the Project Site, which will in turn produce healthy populations of rodents and other food sources for local (nesting) and migrating raptors, including Swainson’s hawk. This will also foster these types of sustainable agricultural practices and contribute to education and stewardship related to apiary projects within the local agricultural community and throughout the region to further benefit this species in the future.

The Applicant developed a multi-use plan (“Plan”) for Gibson Solar site. The Plan includes Valley Clean Energy (VCE) oversight of plan implementation and potentially partnering with U.C. Davis to conduct research on how co-locating solar PV and apiary can result in a net positive impact to local agricultural activities in Yolo County. Given the current larger threats to Swainson’s hawk foraging habitat from increasing non-row crop agricultural practices, such cooperation with the scientific community to develop better practices to ensure the preservation of grassland habitat and pollinator species will likely offset any unavoidable impacts to Swainson’s hawk foraging habitat as a result of the Project. The plan includes a vegetation design and management for the plan, as well as monitoring to ensure the Project provides healthy habitats for bees, bats, butterflies, hummingbirds, and other pollinators – all of which are prey sources for Swainson’s hawk.

Please do not hesitate to contact me at [REDACTED] with any questions.

Respectfully,

[REDACTED]
[REDACTED]

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 13**

TO: Board of Directors

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

SUBJECT: Receive and approve audited December 31, 2022 financial statements presented by James Marta & Company

DATE: April 13, 2023

RECOMMENDATIONS

1. Accept and approve the Draft Audited Financial Statements for the period of January 1, 2022, to December 31, 2022;
2. Accept the Draft Communication with Governance Letter; and
3. Accept the Draft Internal Control Letter

BACKGROUND & DISCUSSION

As part of VCE's Board approved transition to a fiscal year aligned with the calendar year, VCE has commissioned a financial audit to align its annual financial audit with its new January to December fiscal year. The attached financial statements were audited by VCE's Independent Auditor, James Marta & Company.

The Financial Statements include the following reports:

- Independent Auditor's Report
- Management's Discussion and Analysis
- Statement of Net Position
- Statement of Revenues, Expenditures and Changes in Net Position
- Statement of Cash Flows
- Notes to the Basis Financial Statements

As part of the accounting Professional standards, the auditors are required to communicate to the VCE Board of Directors various matters relating to the audit as noted in the following:

- Governance letter
- Internal Control Letter

This report and attachments constitute the auditor's communication to the Board.

AUDITOR'S FINDINGS

During the course of the audit, the auditor's found no material concerns over the financial statements and no material weakness in our internal controls. Specifically:

- VCE received an unqualified ("clean") audit opinion, meaning the financial statements present VCE's financial position fairly and appropriately
- VCE's internal controls over financial reporting were considered by the auditor, with no material weakness in internal controls over financial reporting
- No significant issues were identified in working with our management team or performing the audit

Attachments:

1. Audited Financial Statements for the period of January, 2022 to December 31, 2022
2. Communication with Governance Letter
3. Internal Control Letter



VALLEY CLEAN ENERGY

**VALLEY CLEAN ENERGY ALLIANCE
FINANCIAL STATEMENTS**

FOR THE YEAR ENDED DECEMBER 31, 2022 AND
SIX MONTHS ENDED DECEMBER 31, 2021

DRAFT

VALLEY CLEAN ENERGY ALLIANCE

TABLE OF CONTENTS

DECEMBER 31, 2022

	<u>PAGE</u>
Independent Auditor's Report	1
Management's Discussion and Analysis	4
BASIC FINANCIAL STATEMENTS	
Statement of Net Position	9
Statement of Revenues, Expenses and Changes in Net Position	10
Statement of Cash Flows	11
Notes to the Basic Financial Statements	12



James Marta & Company LLP
Certified Public Accountants

Accounting, Auditing, Consulting, and Tax

INDEPENDENT AUDITOR'S REPORT

Board of Directors
Valley Clean Energy Alliance
Davis, California

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of Valley Clean Energy Alliance (VCE), which comprise the statements of net position as of December 31, 2022 and 2021, and the related statements of revenues, expenses and changes in net position, and cash flows for the periods then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Valley Clean Energy Alliance as of the year ended December 31, 2022 and the six months ended December 31, 2021, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America, the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, and the State Controller's Minimum Audit Requirements for California Special Districts. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of Valley Clean Energy Alliance and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Valley Clean Energy Alliance's Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about VCE's ability to continue as a going concern for twelve months beyond the date when the financial statements are issued.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore, is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users made on the basis of these financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of VCE's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about VCE's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated **DATE** on our consideration of the VCE's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the VCE's internal control over financial reporting and compliance.

DRAFT

James Marta & Company LLP
Certified Public Accountants
Sacramento, California
DATE

MANAGEMENT DISCUSSION AND ANALYSIS

VALLEY CLEAN ENERGY ALLIANCE

MANAGEMENTS DISCUSSION AND ANALYSIS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND SIX MONTHS ENDED JUNE 30, 2021

The Management's Discussion and Analysis provides an overview of Valley Clean Energy Alliance's (VCE) financial activities for the periods ended December 31, 2022 and December 31, 2021. The information presented here should be considered in conjunction with the audited financial statements.

BACKGROUND

The formation of VCE was made possible by the passage, in 2002, of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses, and creating competition in power generation.

VCE was created as a California Joint Powers Authority (JPA) in January 2017 pursuant to the Joint Exercise of Powers Act and is a public agency separate from its members. Governed by a board of directors consisting of two elected officials representing each of the following local governments: the County of Yolo and the cities of Davis and Woodland. VCE provides electric service to retail customers as a Community Choice Aggregation Program (CCA) under the California Public Utilities Code Section 366.2.

VCE's mission is to deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emission reductions. VCE provides electric service to retail customers and has the rights and powers to set rates and charges for electricity and services it furnishes, incur indebtedness, and other obligations. VCE acquires electricity from commercial suppliers and delivers it through existing physical infrastructure and equipment managed by the California Independent System Operator (CAISO) and Pacific Gas and Electric Company (PG&E).

In June 2018, VCE began providing service to approximately 56,000 customer accounts as part of its initial enrollment phase. In calendar year 2020, VCE phased in approximately 7,000 Net Energy Metering (NEM) customers. In January 2021, VCE phased in approximately 7,100 customers from its new City of Winters jurisdiction.

Since its formation, Valley Clean Energy has operated with a fiscal accounting year ending on June 30, aligned with the Member Jurisdictions' Fiscal Year. Over the past two years, VCE has experienced high volatility in the energy sector and overall economy, primarily driven by the uncertainty during the COVID-19 pandemic and possible long-term recession. VCE has experienced other financial impacts compared to the adopted budgets driven by forces outside VCE's direct control, including the forward market pricing for energy costs, PG&E generation rate adjustments, and power charge indifference adjustments (PCIA). The VCE Board adopted the calendar year as its new financial year as the optimal timeline of financial milestones to reduce the risks of operating budget performance.

Financial Reporting

VCE presents its financial statements in accordance with Generally Accepted Accounting Principles for proprietary funds, as prescribed by the Governmental Accounting Standards Board.

Contents of this Report

This report is divided into the following sections:

- Management's Discussion and Analysis, which provides an overview of operations.
- The Basic Financial Statements, which offer information on VCE's financial results.

VALLEY CLEAN ENERGY ALLIANCE

MANAGEMENTS DISCUSSION AND ANALYSIS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND SIX MONTHS ENDED JUNE 30, 2021

- The Statement of Net Position includes all of VCE’s assets, liabilities, and net position using the accrual basis of accounting. The Statement of Net Position provide information about the nature and amount of resources and obligations at a specific point in time.
- The Statement of Revenues, Expenses, and Changes in Net Position report all of VCE’s revenue and expenses for the period shown.
- The Statement of Cash Flows report the cash provided and used by operating activities, as well as other sources and payments, such as debt financing.
- Notes to the Basic Financial Statements, which provide additional details and information pertaining to the financial statements.

FINANCIAL AND OPERATIONAL HIGHLIGHTS

The following table is a comparative summary of VCE’s assets, liabilities, and net position.

	December 31, 2022	December 31, 2021	% change from 2021 to 2022	June 30, 2021	% change from June 30, 2021 to December 31, 2021
Current assets	\$ 20,172,977	\$ 14,853,514	36%	\$ 21,175,913	-30%
Noncurrent assets	3,961,586	3,561,158	11%	3,099,608	15%
Total Assets	24,134,563	18,414,672	31%	24,275,521	-24%
Current liabilities	8,542,745	8,728,436	-2%	11,531,607	-24%
Noncurrent liabilities	181,284	-	0%	-	0%
Total Liabilities	8,724,029	8,728,436	0%	11,531,607	-24%
Net Position					
Designated – Local Programs	224,500	224,500	0%	224,500	0%
Restricted	3,809,273	3,561,158	7%	3,099,608	15%
Unrestricted	11,376,761	5,900,578	93%	9,419,806	-37%
Total Net Position	\$ 15,410,534	\$ 9,686,236	59%	\$ 12,743,914	-24%

Assets

Current assets ended December 31, 2022, at approximately 20.2 million, an increase of approximately \$5.3 million compared to December 31, 2021. The primary contributor to the overall increase in current assets was an increase in accounts receivable and cash resulting from rate increases and the rebuilding of cash reserves. The VCE Board adopted a cost-based rate policy and automatic rate adjustment policy to continue to preserve and build cash reserves in preparation for obtaining our initial investment grade credit rating.

Current assets ended December 31, 2021, at approximately 14.9 million, a decrease of approximately \$6.3 million compared to June 30, 2021. The primary contributor to the overall decrease in current assets was a decrease in cash utilized for rate stabilization. In response, the VCE Board adopted a cost-based rate policy and a temporary rate increase above PG&E in November 2021 to minimize the total decrease of cash due to the increased PG&E power charge indifference adjustment (PCIA) rates and rising in power costs experienced during the 2021 heat storm.

VALLEY CLEAN ENERGY ALLIANCE

MANAGEMENTS DISCUSSION AND ANALYSIS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND SIX MONTHS ENDED JUNE 30, 2021

Overall, non-current assets increased approximately \$400 K in December 31, 2022 due to an increase of in restricted cash for power purchase reserves.

Liabilities

Current liabilities at December 31, 2022, were comprised primarily of the accrued cost of electricity, accounts payable, other accrued liabilities, security deposits, and the current portion of long-term debt. Current liabilities decreased by \$ 187K for the period ended December 31, 2022 due to extending our term loan agreement with River City Bank with a maturity in 2024.

Current liabilities at December 31, 2021, were comprised primarily of the accrued cost of electricity, accounts payable, other accrued liabilities, security deposits, and the current portion of long-term debt. Current liabilities decreased by \$2.8 million to \$8.7 million in the period ended December 31, 2021. The most significant contributor to the overall decrease in current liabilities was the decrease in power costs related to the change in accounting year ending period. Prior audited financial statements ending in June reflected an ending balance during the peak season. Current and future financial statements ending in December reflect an ending balance during off peak season.

Non-current liabilities increased \$181K in the year ended December 31, 2022 related to the term loan described above in current liabilities.

The following table is a summary of VCE's results of operations:

	December 31, 2022 (Twelve Months)	December 31, 2021 (Six Months)	% change from 2021 to 2022	June 30, 2021	% change from June 30, 2021 to December 31, 2021
Operating revenues	\$ 86,661,734	\$ 29,357,623	195%	\$ 54,656,880	-46%
Interest income	46,501	8,731	433%	50,285	-83%
Total Income	86,708,235	29,366,354	195%	54,707,165	-46%
Operating Expenses	80,897,469	32,401,487	150%	58,494,704	-45%
Interest and related expenses	86,468	22,545	284%	56,232	-60%
Total Expenses	80,983,937	32,424,032	150%	58,550,936	-45%
Change in Net Position	\$ 5,724,298	\$ (3,057,678)	287%	\$ (3,843,771)	-20%

Operating Revenues

In the period ended December 31, 2021, VCE's operating revenues were approximately \$4.4M below budgeted amount. The 2022 Budget incorporated revenues associated with extreme temperatures and drought conditions that did not fully materialize in the actuals for 2022. VCE's operating revenue is from the sale of electricity to its customer base.

In the period ended December 31, 2021, VCE's operating revenues were approximately \$4.7M higher than budgeted, driven by the increased load required during the heatwave of 2021. Residential and agricultural customers were the primary customers requiring additional load. VCE's operating revenue is from the sale of electricity to its customer base.

VALLEY CLEAN ENERGY ALLIANCE

MANAGEMENTS DISCUSSION AND ANALYSIS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND SIX MONTHS ENDED JUNE 30, 2021

Operating Expenses

In the period ended December 31, 2022, VCE's operating expenses were 11% over the budgeted operations. This increase was primarily due to a \$7.4 million increase in the cost of electricity, driven by the increased energy power costs resulting from warmer weather than forecast during the winter months, heat storms in June and September, and natural gas prices driving short-term power market increases. VCE procures energy from various sources and focuses on purchasing at competitive prices and maintaining a balanced renewable power portfolio. The remaining operating expenses consist of contract services, staff compensation, and other general administrative expenses.

In the period ended December 31, 2021, VCE's operating expenses were 8% over the budgeted operations. This increase was primarily due to a \$2.7 million increase in the cost of electricity, driven by the increased load noted above.

ECONOMIC OUTLOOK

As a CCA in its fifth year of operations transitioned out of the COVID-19 pandemic, VCE continues to focus on limiting customer opt outs by keeping rates competitive, increasing brand recognition, and providing a superior customer experience. VCE has recently started to procure power through long-term power purchase agreements to assist in stabilizing renewable power costs in the future and help VCE accomplish its mission of providing renewable energy and reducing greenhouse gas emissions. This will help reduce the potential effect of future energy market price volatility and create a stable environment for VCE and its ratepayers. VCE faces significant budgetary pressures that have been subject to regulatory and market pressures outside of direct control, including rising Power Charge Indifference Adjustment (PCIA) costs and increasing market costs to procure resource adequacy supplies.

VCE's Board adopted a rate policy in November 2021 to set customer rates to recover operating costs and build reserve funds and an automatic rate adjustment policy to address environmental and regulatory changes within a budget year. VCE has also adopted a base green product to maintain its competitiveness with PG&E by offering a least-cost option to its customers. VCE has recovered from COVID, began rebuilding cash reserves, and maintained its credit lines for liquidity in 2023. Longer-term, VCE continues to transition additional long-term fixed-price renewable PPA's that are scheduled to come online in 2023 and 2024. VCE customer rates, including PCIA costs, have reduced and are currently forecasted to stabilize for 2024.

REQUESTS FOR INFORMATION

This financial report is designed to provide VCE's board members, stakeholders, customers, and creditors with a general overview of the VCE's finances and to demonstrate VCE's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to the Director of Finance and Internal Operations, 604 2nd Street, Davis, CA 95616.

VALLEY CLEAN ENERGY ALLIANCE

STATEMENT OF NET POSITION

AS OF DECEMBER 31, 2022 AND 2021

	<u>2022</u>	<u>2021</u>
ASSETS		
Current assets		
Unrestricted Cash	\$ 3,850,610	\$ 3,671,384
Accounts receivable, net of allowance	11,085,087	7,406,469
Accrued revenue	3,430,397	1,768,193
Prepaid expenses	-	9,192
Other current assets and deposits	1,806,883	1,998,276
Total Current Assets	<u>20,172,977</u>	<u>14,853,514</u>
Restricted assets:		
Cash in - debt service reserve fund	1,100,000	1,100,000
Cash in - power purchase reserve fund	2,709,273	2,461,158
Total Restricted assets	<u>3,809,273</u>	<u>3,561,158</u>
Noncurrent Assets		
Other noncurrent assets and deposits	152,313	-
Total Noncurrent Assets	<u>152,313</u>	<u>-</u>
TOTAL ASSETS	<u>\$ 24,134,563</u>	<u>\$ 18,414,672</u>
LIABILITIES		
Current Liabilities		
Accounts payable	\$ 399,529	\$ 445,042
Accrued cost of electricity	4,657,891	4,580,941
Accrued payroll	116,285	63,909
Interest payable	2,248	2,786
Due to member agencies	25,160	117,945
Other accrued liabilities	2,810,664	2,364,787
Line of credit	530,968	1,153,026
Total Current Liabilities	<u>8,542,745</u>	<u>8,728,436</u>
Noncurrent Liabilities		
Line of credit	181,284	-
Total Noncurrent Liabilities	<u>181,284</u>	<u>-</u>
TOTAL LIABILITIES	<u>8,724,029</u>	<u>8,728,436</u>
NET POSITION		
Net position		
Designated - local program reserves	224,500	224,500
Restricted	3,809,273	3,561,158
Unrestricted	11,376,761	5,900,578
TOTAL NET POSITION	<u>\$ 15,410,534</u>	<u>\$ 9,686,236</u>

The accompanying notes are an integral part of these financial statements.

VALLEY CLEAN ENERGY ALLIANCE

**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021**

	2022 (Twelve Months)	2021 (Six Months)
OPERATING REVENUE		
Electricity sales, net	\$ 85,322,760	\$ 29,357,623
Other revenue	1,338,974	-
TOTAL OPERATING REVENUES	86,661,734	29,357,623
OPERATING EXPENSES		
Cost of electricity	75,130,283	30,138,826
Contractors	2,556,894	1,383,829
Staff compensation	1,282,519	537,689
Program expenses	1,168,019	-
General and administrative	759,754	341,143
TOTAL OPERATING EXPENSES	80,897,469	32,401,487
TOTAL OPERATING INCOME (LOSS)	5,764,265	(3,043,864)
NONOPERATING REVENUES (EXPENSES)		
Interest income	46,501	8,731
Interest and related expenses	(86,468)	(22,545)
TOTAL NONOPERATING REVENUES (EXPENSES)	(39,967)	(13,814)
CHANGE IN NET POSITION	5,724,298	(3,057,678)
Net position at beginning of period	9,686,236	12,743,914
Net position at end of period	\$ 15,410,534	\$ 9,686,236

The accompanying notes are an integral part of these financial statements.

VALLEY CLEAN ENERGY ALLIANCE

STATEMENT OF CASH FLOWS

**FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021**

	2022	2021
	(Twelve Months)	(Six Months)
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 79,912,041	\$ 31,149,236
Payments for security deposits with energy suppliers	(152,313)	-
Payments to purchase electricity	(74,983,435)	(32,255,458)
Payments for contract services, program expenses, general, and administration	(4,167,896)	(2,276,073)
Payments for staff compensation	(1,230,143)	(517,485)
Other cash payments	1,530,367	(11,393)
Net Cash Provided (Used) by Operating Activities	908,621	(3,911,173)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of debt	(440,774)	(197,661)
Interest and related expense	(87,007)	(23,019)
Net Cash Provided (Used) by Non-Capital Financing Activities	(527,781)	(220,680)
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	46,501	8,731
Net Cash Provided (Used) by Investing Activities	46,501	8,731
NET CHANGE IN CASH AND CASH EQUIVALENTS		
	427,341	(4,123,122)
Cash and cash equivalents at beginning of period	7,232,542	11,355,664
Cash and cash equivalents at ending of period	<u>\$ 7,659,883</u>	<u>\$ 7,232,542</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating income (loss)	\$ 5,764,265	\$ (3,043,864)
Adjustments to reconcile operating income to net cash provided (used) by operating activities:		
(Increase) decrease in net accounts receivable	(3,678,618)	576,071
(Increase) decrease in net accrued revenue	(1,662,204)	1,167,098
(Increase) decrease in prepaid expense	9,192	5,951
(Increase) decrease in other assets and deposits	39,080	(11,393)
Increase (decrease) in accounts payable	(45,513)	45,276
Increase (decrease) in accrued payroll	52,376	20,204
Increase (decrease) in due to member agencies	(92,785)	(5,461)
Increase (decrease) in accrued cost of electricity	146,848	(2,116,632)
Increase (decrease) in other accrued liabilities	445,877	(596,867)
Increase (decrease) in user taxes and energy surcharges	(69,897)	48,444
Net Cash Provided by Operating Activities	\$ 908,621	\$ (3,911,173)

The accompanying notes are an integral part of these financial statements.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED DECEMBER 31, 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

REPORTING ENTITY

The Valley Clean Energy Alliance (VCE) is a California joint powers authority created on January 1, 2017 and its voting members consist of the following local governments: the County of Yolo and the cities of Davis, Woodland and Winters (collectively, the “Member Agencies”). VCE is governed by an eight-member Board of Directors whose membership is composed of two elected officials representing each of the Member Agencies.

VCE’s mission is to address climate change by reducing energy related greenhouse gas emissions through renewable energy supply and energy efficiency at stable and competitive rates for customers while providing local economic and workforce benefits. VCE provides electric service to retail customers as a Community Choice Aggregation Program under the California Public Utilities Code Section 366.2.

VCE began the delivery of electricity in June, 2018. Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by the California Independent System Operator and Pacific Gas and Electric Company.

CHANGE IN FISCAL YEAR END

In November 2021, VCE’s Board of Directors approved a resolution to change the existing fiscal year of July 1st to June 30th to align with the calendar year of January 1st to December 31st. The financial statements presented in this report are not comparative due to this change in the reporting period. Advantages of the change to a calendar year include accounting for the peak revenue season, May through September, in the span of one reporting year. Additionally, VCE’s power contracts are based on the calendar year time frame, as is VCE’s regulatory compliance reporting.

BASIS OF ACCOUNTING

VCE’s financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

VCE’s operations are accounted for as a governmental enterprise fund, and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned and expenses are recognized at the time liabilities are incurred. Enterprise fund type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – net investment in capital assets, restricted, and unrestricted.

CASH AND CASH EQUIVALENTS

For purpose of the Statement of Cash Flows, VCE defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments. Cash and cash equivalents include restricted cash which were the amounts restricted for debt collateral and power purchase reserve.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

DEPOSITS

Deposits are classified as current and noncurrent assets depending on the length of the time the deposits will be held. Deposits include those for regulatory and other operating purposes.

OPERATING AND NON-OPERATING REVENUE

Operating revenues consists of revenue from the sale of electricity to customers. Interest income is considered non-operating revenue.

REVENUE RECOGNITION

VCE recognizes revenue on the accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will not be collected. Accordingly, an allowance has been recorded.

ELECTRICAL POWER PURCHASED

In 2017, VCE entered into a five (5) year contract with the Sacramento Municipal Utility District (SMUD) to provide technical and financial analysis; data management and call center services; wholesale energy services; and operational staff services. As part of the contract, SMUD provides power portfolio purchase services to and on behalf of VCE. Electricity costs include the cost of energy and ancillary services arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from VCE's participation in the California Independent System Operator's centralized market. The cost of electricity and ancillary services are recognized as "Cost of Electricity" in the Statements of Revenues, Expenses and Changes in Net Position. As of December 31, 2022, \$5,131,217 was accrued as payable to SMUD, comprised of \$5,131,217 in accrued electricity costs and \$0 in accrued contractual services. As of December 31, 2021, \$4,356,854 was accrued as payable to SMUD, comprised of \$4,028,559 in accrued electricity costs and \$328,295 in accrued contractual services

RENEWABLE ENERGY CREDITS

To comply with the State of California's Renewable Portfolio Standards (RPS) and self-imposed benchmarks, VCE acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). VCE obtains Certificates with the intent to retire them, and does not sell or build surpluses of Certificates. An expense is recognized at the point that the cost of the RPS eligible energy is billed by the supplier. VCE is in compliance with external mandates and self-imposed benchmarks.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

**FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

STAFFING COSTS

VCE pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan each month. VCE is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. VCE provides compensated time off, and the related liability is recorded in these financial statements

INCOME TAXES

VCE is a joint powers authority under the provision of the California Government Code, and is not subject to federal or state income or franchise taxes.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATION

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements.

NET POSITION

VCE reports net position balances in the following categories: Designated, Restricted, and Unrestricted. Local program reserves are designated funds as approved by the board in support of the VCE's mission and programs plan. Restricted funds are those restricted to a particular purpose, and that restriction is set out in the Contract Agreement. Unrestricted funds support the operating expenses or projects of the organization.

The following are the components of VCE's Net Position at December 31, 2022 and 2021.

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Designated - local program reserves	\$ 224,500	\$ 224,500
Restricted	3,809,273	3,561,158
Unrestricted	11,376,761	5,900,578
Totals	<u>\$ 15,410,534</u>	<u>\$ 9,686,236</u>

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021

2. CASH AND CASH EQUIVALENTS

VCE maintains its cash in interest and non-interest-bearing deposit accounts at River City Bank (RCB) of Sacramento, California. VCE's deposits with RCB are subject to California Government Code Section 16521 which requires that RCB collateralize public funds in excess of the FDIC limit of \$250,000 by 110%. VCE monitors its risk exposure to RCB on an ongoing basis. VCE's has not adopted its own Investment Policy and follows the investment policy of the County of Yolo.

3. ACCOUNTS RECEIVABLE AND ACCRUED REVENUE

Accounts receivable were as follows:

	<u>December 31, 2022</u>	<u>December 31, 2021</u>
Accounts receivable from customers	\$ 11,550,071	\$ 9,342,777
Allowance for uncollectible accounts	(464,984)	(1,936,308)
Accounts receivable, net	<u>\$ 11,085,087</u>	<u>\$ 7,406,469</u>

The majority of account collections occur within the first few months following customer invoicing. VCE estimates that a portion of the billed accounts will not be collected. VCE records reserves for its estimated uncollectible accounts as a reduction to the related operating revenues in the Statement of Revenues, Expenses and Changes in Net Position. Charges to reserve for uncollectible accounts for the year ended December 31, 2022 and six months ended 2021 were \$846,600 and \$353,400, respectively. Due to the COVID-19 pandemic, VCE could not to pursue collections due to state restrictions and expects to commence collections of remaining balances in 2023.

Accrued revenue presented in the Statements of Net Position represents revenue from customer electricity usage that has not been billed at the end of the period. Accrued revenue recognized for the period ended December 31, 2022 and 2021 was \$3,430,397 and \$1,768,193, respectively.

4. DEBT

LINE OF CREDIT AND TERM LOAN

In May 2018, VCE entered into a non-revolving, \$11,000,000 Credit Agreement (Agreement) with RCB for the purpose of providing working capital to fund power purchases during seasonal differences in cash flow and reserves as needed to support power purchases. RCB requires collateral for the line of credit of \$1.1 million which is reported as restricted cash. Interest accrues on the outstanding balance and is payable each month and computed at One-Month LIBOR plus 1.75% per annum, subject to a floor of 1.75% per annum. The Agreement expired on May 15, 2019 with an option to extend the line for another six months. VCE extended the line of credit and the Agreement to November 15, 2019, with continuing extensions granted until August 31, 2020. At the expiration of the Agreement, any outstanding balance can be converted to an amortizing term loan which matures up to five years from conversion date. The Agreement contains various covenants that include requirements to maintain certain financial ratios, stipulated funding of debt service reserves, and various other requirements including the subordination of the member agency loans.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED DECEMBER 31, 2021

LINE OF CREDIT AND TERM LOAN (CONTINUED)

At the October 10, 2019 Board meeting the Board authorized VCE to convert an existing \$1,976,610 Credit Agreement balance to an amortizing 5-year term loan. VCE converted the Agreement to the loan and has paid the loan down to \$712,252 and \$1,153,026 as of December 31, 2022 and 2021, respectively.

In September 2020, VCE had agreed in principle to one-year renewals to September 1, 2021, for both the Agreement and the term loan. The Agreement limit was reduced from \$11,000,000 to a line of credit which allows up to \$5,000,000 for cash advances and up to \$2,000,000 for letters of credit, with the total of both to not exceed \$7,000,000. The interest rate on the line of credit was 2.00% at the close of business on December 31, 2022.

The 5-year term loan had been shortened to a maturity date of September 1, 2021, with the outstanding balance due at that time unless another renewal is agreed upon. In August 2021, VCE had a second modification of the term loan whereas VCE will pay the loan in equal monthly principal payments of \$32,943.50 beginning September 1, 2021. The final payment is due January 1, 2022, and will be for all outstanding principal and all accrued interest not yet paid. The interest rate was 3.57%, fixed for the loan term.

At the March 10, 2022 board meeting, the board approved an Amended and Restated Credit Agreement with RCB including the following amendments:

Line of Credit

- Cash Facility - \$2,000,000 increase in cash from \$5,000,000 to \$7,000,000
- Letter of Credit Facility - \$4,000,000 increase from \$7,000,000 to \$11,000,000
- Maturity: March 1, 2024
- Interest Rate: 2.00% (unchanged)

Term Loan

- Maturity: March 1, 2024
- Interest Rate: Fixed 3.57% (unchanged)

If VCE defaults on the line of credit, RCB may, by notice of the 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.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

**FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021**

LINE OF CREDIT AND TERM LOAN (CONTINUED)

Debt principal activity and balances for all notes and loans were as follows:

	<u>Beginning</u>	<u>Addition</u>	<u>Payments</u>	<u>Ending</u>
Six Months Ended December 31, 2021				
River City Bank - Loan	1,350,687	-	(197,661)	1,153,026
Total	<u>\$ 1,350,687</u>	<u>\$ -</u>	<u>\$ (197,661)</u>	<u>\$ 1,153,026</u>
Amounts due within one year				<u>(1,153,026)</u>
Amounts due after one year				<u>\$ -</u>
Year Ended December 31, 2022				
River City Bank - Loan	1,153,026	-	(440,774)	712,252
Total	<u>\$ 1,153,026</u>	<u>\$ -</u>	<u>\$ (440,774)</u>	<u>\$ 712,252</u>
Amounts due within one year				<u>(530,968)</u>
Amounts due after one year				<u>\$ 181,284</u>

At the February 10, 2022 Board meeting, the Board authorized VCE to agree to a short term line of credit with the County of Yolo in the amount of \$5,000,000. VCE withdrew \$3,000,000 from the line of credit and were paid in full as December 31, 2022. Interest and fees paid during the year were \$25,000.

5. DEFINED CONTRIBUTION RETIREMENT PLAN

VCE provides retirement benefits to eligible employees through a 401(a) discretionary defined contribution plan and 457(b) deferred compensation plan (Plans). The Plans are administered by International City Management Association Retirement Corporation (ICMA-RC). At December 31, 2022, VCE had 4 plan participants. VCE contributes 7% of covered payroll and up to an additional 3% of covered payroll as a match to employee tax deferred contributions (into the 457(b) deferred compensation plan) into the 401(a) discretionary defined contribution plan.

For the year ended December 31, 2022 and six months ended December 31, 2021, VCE contributed \$64,716 and \$30,072, respectively. The Plans' provisions and contribution requirements as they apply to VCE are established and may be amended by the Board of Directors.

6. OPERATING LEASE

In 2018, VCE entered into a nine-month lease for its office space with the City of Davis. The most recent lease agreement renewal with the City covers the twelve months ending January 2023. Rental expense under this lease was \$19,200 and \$7,951 for the year ending December 31, 2022 and six months ending December 31, 2021, respectively. The total for future minimum lease payments are shown below:

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021

6. OPERATING LEASE (CONTINUED)

<u>Year</u>	<u>Payments</u>
2023	\$ 16,560
2024	17,057
2025	17,569
2026	18,096
2027	18,638

Management has reviewed lease agreements related to the new lease accounting rules under GASB 87. It has been determined that the office rent and a copier lease are the only operating leases for the period and are not material for the implementation of the new lease accounting requirements.

7. RELATED PARTY TRANSACTIONS

VCE entered into a cooperative agreement with each respective member agency to provide management, legal, accounting and administrative services. The services billed from the Member Agencies to VCE outstanding for the year ending December 31, 2022 and six months ending December 31, 2021 totaled \$25,160 and \$117,945, respectively. The cooperative agreements provide for interest to be accrued on any outstanding balances at an average yield.

8. RISK MANAGEMENT

VCE is exposed to various risks of loss related to torts; theft of, damages to, and destruction of assets; errors and omissions; injuries to and illnesses of employees; and natural disasters, for which VCE manages its risk by participating in the public entity risk pool described below and by retaining certain risks.

Public entity risk pools are formally organized and separate entities established under the Joint Exercise of Powers Act of the State of California. As separate legal entities, those entities exercise full powers and authorities within the scope of the related Joint Powers Agreements including the preparation of annual budgets, accountability for all funds, the power to make and execute contracts and the right to sue and be sued. The joint powers authority is governed by a board consisting of representatives from member municipalities. The board controls the operations of the joint powers authority, including selection of management and approval of operating budgets, independent of any influence by member municipalities beyond their representation on that board. Obligations and liabilities of this joint powers authority are not VCE's responsibility.

VCE is a member of the Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) which provides coverage for general and auto liability and workers' compensation. Once VCE's deductible is met, YCPARMIA becomes responsible for payment of all claims up to the limit. In addition, the California Joint Powers Risk Management Authority (CJPRMA) provide coverage for amounts in excess of YCPARMIA's limits. YCPARMIA provides workers' compensation insurance coverage up to statutory limits, above VCE's self-insurance limit of \$1,000 per occurrence, and general and auto liability coverage of \$40,000,000, above VCE's self-insurance

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2022 AND THE SIX MONTHS ENDED
DECEMBER 31, 2021

8. RISK MANAGEMENT (CONTINUED)

limit of \$1,000 per occurrence. For the year ended December 31, 2022 and six months ended December 31, 2021, VCE contributed \$14,668 and \$9,206 for coverage, respectively. Audited financial statements are available from YCPARMIA their website www.ycparmia.org. Condensed information for YCPARMIA for the most recent available year end is as follows:

	YCPARMIA June 30, 2021
Total Assets	\$ 25,629,982
Deferred Outflows of Resources	\$ 198,662
Total Liabilities	\$ 21,797,446
Deferred Inflows of Resources	\$ 430,929
Net Position	\$ 3,600,269
Total Revenues	\$ 14,444,472
Total Expenses	\$ 14,327,899
Change in Net Position	\$ 116,573

The June 30, 2021 were the most recent audited financial statements available at the time of the preparation of this report.

9. COMMITMENTS AND CONTINGENCIES

On October 25, 2017, VCE entered into an agreement with SMUD to provide on-going professional services, including, but not limited to: wholesale energy services, customer and data services, billing administration and reporting. As of December 31, 2022, VCE had outstanding non-cancelable commitments to SMUD for professional services to be performed estimated to be \$1.5 million.

10. SUBSEQUENT EVENTS

Management has reviewed its financial statements and evaluated subsequent events for the period of time from its period ended December 31, 2022 through **DATE**, the date the financial statements were issued. Management is not aware of any subsequent events that would require recognition or disclosure in the accompanying financial statements.



James Marta & Company LLP

Certified Public Accountants

Accounting, Auditing, Consulting, and Tax

COMMUNICATION WITH THOSE CHARGED WITH GOVERNANCE

Board of Directors
Valley Clean Energy Alliance
Davis, California

We have audited the financial statements of Valley Clean Energy Alliance as of and for the year ended December 31, 2022 and the six months ended December 31, 2021, and have issued our report thereon dated **DATE**. Professional standards require that we advise you of the following matters relating to our audit.

Our Responsibility in Relation to the Financial Statement Audit

As communicated in our engagement letter dated October 4, 2022 our responsibility, as described by professional standards, is to form and express an opinion(s) about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of Valley Clean Energy Alliance solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

We have provided our findings regarding internal controls and other matters noted during our audit in a separate letter to you dated **DATE**.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing previously communicated to you.

Compliance with All Ethics Requirements Regarding Independence

The engagement team, others in our firm, as appropriate, our firm, and our network firms have complied with all relevant ethical requirements regarding independence.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by Valley Clean Energy Alliance is included in Note 1 to the financial statements. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus. However, there are upcoming Governmental Accounting Standards that we have listed in Attachment A.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments. The most sensitive accounting estimate affecting the financial statements is the estimate of accounts receivable.

Management's estimate of the allowance for doubtful accounts is based on actual revenues earned for the year which may not be collectible. We evaluated the key factors and assumptions used to develop the estimate of doubtful accounts and determined that it is reasonable in relation to the basic financial statements taken as a whole and in relation to the applicable opinion units.

Management's estimate of the accrued revenue is based on actual revenues earned but not yet billed for December 2022. We evaluated the key factors and assumptions used to develop the estimate of accrued revenue and determined that it is reasonable in relation to the basic financial statements taken as a whole and in relation to the applicable opinion units.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting Valley Clean Energy Alliance's financial statements relate to revenue recognition.

Significant Difficulties Encountered during the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

For purposes of this communication, professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole and each applicable opinion unit. There were no uncorrected misstatements identified as a result of our audit procedures.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. We have provided a listing of the misstatements identified by us as a result of our audit procedures and corrected by management which were material, either individually or in the aggregate, to the financial statements taken as a whole. There were no corrected misstatements identified as a result of our audit procedures.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to Valley Clean Energy Alliance's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Representations Requested from Management

We have requested certain written representations from management, which are included in the attached letter dated **DATE**.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings, or Issues

In the normal course of our professional association with Valley Clean Energy Alliance, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as Valley Clean Energy Alliance's auditors.

James Marta & Company LLP
Certified Public Accountants

This report is intended solely for the information and use of the Board of Directors, and management of Valley Clean Energy Alliance and is not intended to be and should not be used by anyone other than these specified parties.

DRAFT

James Marta & Company LLP
Certified Public Accountants
Sacramento, California

DATE

As of June 30, 2022

The following pronouncements of the Governmental Accounting Standards Board (GASB) have been released recently and may be applicable to the Plan in the near future. We encourage management to review the following information and determine which standard(s) may be applicable to the Plan. For the complete text of these and other GASB standards, visit www.gasb.org and click on the “Standards & Guidance” tab. If you have questions regarding the applicability, timing, or implementation approach for any of these standards, please contact your audit team.

GASB Statement No. 91, Conduit Debt Obligations

Effective for the fiscal year ending June 30, 2023

The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures.

GASB Statement No. 92, Omnibus 2020

Effective dates vary

The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This Statement addresses a variety of topics and includes specific provisions about the following:

- The effective date of Statement No. 87, *Leases*, and Implementation Guide No. 2019-3, *Leases*, for interim financial reports – *Effective for the fiscal year ending December 31, 2021*
- Reporting of intra-entity transfers of assets between a primary government employer and a component unit defined benefit pension plan or defined benefit other postemployment benefit (OPEB) plan – *Effective for the fiscal year ending December 31, 2021*
- The applicability of Statements No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68*, and *Amendments to Certain Provisions of GASB Statements 67 and 68*, as amended, and No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, as amended, to reporting assets accumulated for postemployment benefits – *Effective for the fiscal year ending December 31, 2021*
- The applicability of certain requirements of Statement No. 84, *Fiduciary Activities*, to postemployment benefit arrangements – *Effective for the fiscal year ending December 31, 2021*

- Measurement of liabilities (and assets, if any) related to asset retirement obligations (AROs) in a government acquisition – *Effective for the government acquisitions occurring in reporting periods beginning after June 15, 2020*
- Reporting by public entity risk pools for amounts that are recoverable from reinsurers or excess insurers – *Effective for the fiscal year ending December, 2021*
- Reference to nonrecurring fair value measurements of assets or liabilities in authoritative literature – *Effective for the fiscal year ending December 31, 2021*
- Terminology used to refer to derivative instruments. – *Effective for the fiscal year ending December 31, 2021*

GASB Statement No. 93, Replacement of Interbank Offered Rates

Effective for the fiscal year ending June 30, 2023

The objective of this Statement is to address those and other accounting and financial reporting implications that result from the replacement of an IBOR. This Statement achieves that objective by:

- Providing exceptions for certain hedging derivative instruments to the hedge accounting termination provisions when an IBOR is replaced as the reference rate of the hedging derivative instrument's variable payment
- Clarifying the hedge accounting termination provisions when a hedged item is amended to replace the reference rate
- Clarifying that the uncertainty related to the continued availability of IBORs does not, by itself, affect the assessment of whether the occurrence of a hedged expected transaction is probable
- Removing LIBOR as an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap
- Identifying a Secured Overnight Financing Rate and the Effective Federal Funds Rate as appropriate benchmark interest rates for the qualitative evaluation of the effectiveness of an interest rate swap
- Clarifying the definition of reference rate, as it is used in Statement 53, as amended

Providing an exception to the lease modifications guidance in Statement 87, as amended, for certain lease contracts that are amended solely to replace an IBOR as the rate upon which variable payments depend.

GASB Statement No. 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements

Effective for the fiscal year ending June 30, 2024

The primary objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). As used in this Statement, a PPP is an arrangement in which a government (the transferor) contracts with an operator (a governmental or nongovernmental entity) to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction. Some PPPs meet the definition of a service concession arrangement (SCA), which the Board defines in this Statement as a PPP in which (1) the operator collects and is compensated by fees

from third parties; (2) the transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates that can be charged for the services; and (3) the transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement.

This Statement also provides guidance for accounting and financial reporting for availability payment arrangements (APAs). As defined in this Statement, an APA is an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction.

GASB Statement No. 95, Postponement of the Effective Dates of Certain Authoritative Guidance

Effective immediately

The primary objective of this Statement is to provide temporary relief to governments and other stakeholders in light of the COVID-19 pandemic. That objective is accomplished by postponing the effective dates of certain provisions in Statements and Implementation Guides that first became effective or are scheduled to become effective for periods beginning after June 15, 2018, and later.

The effective dates of the preceding statements have been updated to reflect the impact of the issuance of GASB 95.

GASB Statement No. 96, Subscription-Based Information Technology Arrangements

Effective for the fiscal year ending June 30, 2024

This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, Leases, as amended.

GASB Statement No. 97, Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans—An Amendment of GASB Statements No. 14 and No. 84, and a Supersession of GASB Statement No. 32

Effective dates vary

The primary objectives of this Statement are to (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other postemployment benefit

(OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.



James Marta & Company LLP

Certified Public Accountants

Accounting, Auditing, Consulting, and Tax

**REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON
COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL
STATEMENTS PERFORMED IN ACCORDANCE
WITH GOVERNMENT AUDITING STANDARDS**

Independent Auditor's Report

Board of Directors
Valley Clean Energy Alliance

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of Valley Clean Energy Alliance, as of and for the year ended December 31, 2022 and the six months ended December 31, 2021, and the related notes to the financial statements, which collectively comprise Valley Clean Energy Alliance's basic financial statements, and have issued our report thereon dated **DATE**.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered Valley Clean Energy Alliance's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Valley Clean Energy Alliance's internal control. Accordingly, we do not express an opinion on the effectiveness of Valley Clean Energy Alliance's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether Valley Clean Energy Alliance's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication should not be used for any other purpose.

DRAFT

James Marta & Company LLP
Certified Public Accountants
Sacramento, California

DATE

Status of Prior Year Findings

2021-01 Closing Entries

Observation

During the course of our audit, we identified three adjustments that needed to be posted which were material to the overall financial statements. See Attachment II, entries numbered 1, 3, 4, and 7. The material portions of the entries were related to the proper recording of receivables and revenues at December 31, 2021. The auditor identified entries number 1, 3, and 4 during the course of the audit and discussed with management, who approved them for posting into the general ledger. Based on differences we identified in cash, management researched and identified entry number 7 at the end of our audit. Since these adjustments were not identified by Valley Clean Energy Alliance as part of their standard closing procedures, they may indicate a deficiency in the internal control process over financial reporting.

Recommendation

We recommend that management set up a process in place for the timely review and approval of the cash, accounts receivable, and revenue reconciliations. This will help to identify and correct any possible errors and inconsistencies in a timely manner.

Management Response

Management agrees with the entries as discussed with the auditors. Coming out of the previous audit (FY2020-21), management identified areas for process improvements to specifically identify, address, and prevent findings such as those included in the entries in future reporting periods. Management notes that due to the unique and one-time shortened 6-month time-period for the current audit that is associated with VCE's transition to a fiscal year aligned with the calendar year, the improvements noted above have not yet been fully implemented. Management has also discussed and agreed with its partners engaged in the process to address the improvements needed. Management expects the process improvements to be included in the March accounting close period. They will be maintained from that point forward.

Status: Not an issue during the current year audit

ATTACHMENT II: ADJUSTING JOURNAL ENTRIES

Adjusting Journal Entries

Adjusting Journal Entries JE # 1			
Auditor entry to agree Equity to PY audit for AJEs not posted by client and for rounding variance.			
13710-0000	BILLED REVENUES	178,329	
22210-0000	ACCOUNTS PAYABLE	84,195	
45370-0000	BANKING FEES	1	
26310-0000	RETAINED EARNINGS - UNRESERVED		84,195
26310-0000	RETAINED EARNINGS - UNRESERVED		178,329
26310-0000	RETAINED EARNINGS - UNRESERVED		1
Total		262,525	262,525
Adjusting Journal Entries JE # 2			
PBC entry to correct Prepaids and Accrued Cost of Electricity balances at year-end.			
23040-0000	ACCRUED COST OF ELECTRICITY	870,000	
41510-0000	POWER PURCHASES	6,038	
14520-0000	RESERVE ADEQUACY		876,038
Total		876,038	876,038
Adjusting Journal Entries JE # 3			
Auditor entry to agree Billed Revenues to AR Aging.			
13710-0000	BILLED REVENUES	260,934	
30120-0000	COMMERCIAL & INDUSTRIAL SALES		260,934
Total		260,934	260,934
Adjusting Journal Entries JE # 4			
Auditor entry to adjust NEM receivables and payables to Aging report.			
30110-0000	RESIDENTIAL SALES	104,658	
30120-0000	COMMERCIAL & INDUSTRIAL SALES	156,988	
13725-0000	NEM RECEIVABLE		162,609
23020-0000	NEM CREDITS		99,037
Total		261,646	261,646
Adjusting Journal Entries JE # 7			
PBC entry to correct Lockbox and ICS cash accouts.			
13120-0000	CASH - LOCKBOX	300,000	
30110-0000	RESIDENTIAL SALES	191,176	
30120-0000	COMMERCIAL & INDUSTRIAL SALES	127,450	
13120-0000	CASH - LOCKBOX		318,626
13150-0000	CASH - ICS MM		300,000
Total		618,626	618,626

VALLEY CLEAN ENERGY ALLIANCE**Staff Report - Item 14**

TO: Board of Directors

FROM: Chad Rinde, VCE Treasurer
Edward Burnham, Finance and Operations Director

SUBJECT: Treasury and Finance Update

DATE: April 13, 2023

RECOMMENDATIONS

1. Receive Treasury and Finance Update
2. Ratify the County of Yolo Investment Policy for the calendar year 2023 as the Investment policy applicable to VCE.

OVERVIEW

The purpose of this staff report is to (1) ratify the County of Yolo Investment Policy for 2023, (2) receive an update on recent banking sector events and risk assessment, and (3) receive a preliminary timeline for the establishment of VCE's initial credit rating.

As detailed in the body of this report, VCE maintains a disciplined approach to assessing risks resulting from external challenges and continues to bolster its financial strength in preparation for its initial investment credit rating.

BACKGROUND

The Joint Powers Agreement between the County of Yolo, City of Davis, City of Woodland, and City of Winters specifies that the County of Yolo Chief Financial Officer will be the Treasurer and Auditor of Valley Clean Energy (VCE).

The Board has the discretion to appoint someone else qualified to perform these functions; however, at the formation of the Joint Powers Agency, it was determined that this arrangement provided additional oversight and a check and balance that was important as the agency matured. It also provided access to the experience of the County in serving special districts as the County Chief Financial Officer is the Treasurer and the Auditor for various other special districts such as rural Fire Districts, YCPARMIA, and others as required by law or voluntarily in JPA agreements.

The role of the Treasurer is three-fold and focuses on:

- Banking and Cash Management – Day to day transactions are ordinarily approved according to the delegation of authority provided to executive staff of VCE. However, the Treasurer retains the authority to select the banking institutions to be used and collaborate with staff in order to perform cash flow management to ensure that investing or financing occurs as needed.

- Investing – The Treasurer is responsible to invest funds in accordance with law and according to the agency’s investment policy.
- Financing – The Treasurer participates as a key team member in financing decisions in accordance with policies on borrowing, debt and obligations. VCE’s Debt policy was adopted to perform financings to comply with SB1029 (requires public agencies seeking financing to have a debt policy), which became effective in 2018.

ANALYSIS

As part of the VCE investment approach, the Treasurer collaborates with the Director of Finance and Internal Operations to update cash flow forecasts to determine VCE’s capacity to invest funds. This includes looking to VCE’s investment policy, which requires that funds invested are: first safe; second liquid to meet agency needs; and third to seek yields on investment (Att. A – County of Yolo Investment Policy).

In determining the ability to invest, the Treasurer reviewed VCE’s existing agreements within the River City Bank Revolving Line of Credit (RLOC) Agreement which state:

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 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 10.11. Investments, Acquisitions, Loans Advances and Guarantees. Borrower shall not directly or indirectly, make, retain or have 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 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, obligations 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.

In short, these restrictions effectively require VCE’s deposits to be placed with River City Bank and therefore, investment options are presently limited to those offered by River City Bank. River City Bank does, however, offer a money market account that allows for deposits to earn interest. Valley Clean Energy has opened a Money Market Account with RCB that provides same-day liquidity and generally pegs its interest rate to that of the Local Agency Investment Fund (LAIF) at the state level, (paid 1.250% annual interest rate for the month as of February 17, 2023 (Attachment B / Attachment C)), though the interest rate can be adjusted at the option of RCB at any time to reflect changing market conditions. This option is appropriate for VCE, considering the agency is still growing its cash position and has limited funds to invest. VCE staff meet regularly with River City Bank to explore options to ensure short-term yields on the account are rising in accordance with the present interest rate environment

Consistent with VCE’s current approach, staff is recommending Board ratification of the Yolo County Investment Policy as VCE’s Investment Policy for 2023.

Banking Environment and Risk Assessment

In early March 2023, Silvergate Bank, Silicon Valley Bank, and Signature Bank failed from financial distress due to significant market over-exposure to the technology sector or cryptocurrency. By March 16, the banking industry experienced large interbank flows of funds to shore up bank balance sheets, draws on federal reserve emergency liquidity tools, and many analysts were reporting on a U.S. banking crisis. Many banks had invested their reserves in U.S. Treasury securities, which had historically paid low interest rates. As the Federal Reserve began rapidly raising rates in 2022 to combat inflation, bond prices declined, which decreased the market value of bank capital reserves. When banks with high exposures to these sectors experienced rapid and significant customer withdrawals of funds, this led to these banks being required to sell the bonds at steep losses as yields on new bonds were much higher which ultimately contributed significantly to the previously mentioned bank failures.

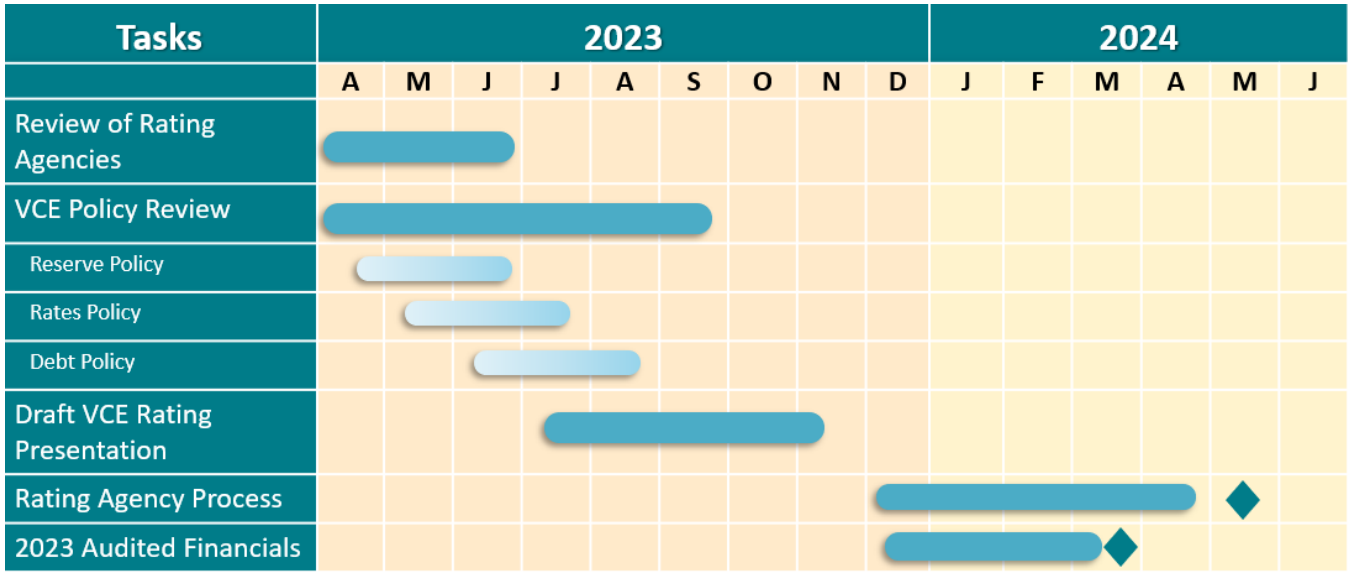
In response to banking failures, the Federal Reserve Board of Governors, Federal Deposit Insurance Corporation, and the United States Department of the Treasury announced that extraordinary measures would be taken to ensure all deposits were honored to stabilize the banking sector. The Federal Reserve separately announced the creation of the Bank Term Funding Program (BTFFP). This program offers up to one year loans to banks, savings associations, credit unions, and other eligible depository institutions pledging U.S. Treasuries, agency debt and mortgage-backed securities, and other qualifying assets as collateral.

VCE staff and the VCE Treasurer have discussed the associated risks and impacts resulting from the recent banking crisis and determined that no action is necessary at this time. This assessment included examining the strength of the current banking partner of VCE and looking at the banking and investment products utilized. VCE funds are limited to permitted investments (as described above) pursuant to the California Government Code (including Section 53601 et. seq.) or deposit funds for safekeeping in state or national banks, savings association, credit unions, or federal insured industrial loan companies (as described in Section 53635.2). Local agencies also have additional protections for their funds on deposit (excluding investment funds) in that they are required to be collateralized in accordance with Government Code 53630-53686. This requires banks or credit unions to set aside sufficient collateral to cover balances on deposit in the event of a bank failure and these balances are monitored by the California Department of Financial Protection and Innovation.

Initial Investment Grade Credit Rating - Timeline

Beginning in January 2020, the Board directed staff to develop a multi-year strategic plan to establish goals and guide VCE's activities over three years 2021 - 2023. On October 8, 2020, the Board adopted VCE's Three-Year Strategic Plan (Plan) for 2021-2023, which can be found [here](#). The Plan included Goal 1 – Financial Strength and set objective 1.2 to “achieve an investment grade credit rating by the end of 2024”, emphasizing the importance of VCE's financial health and independence. As part of the 2023 budget, the Board approved funding to begin the process of working toward an investment grade credit rating for VCE. The VCE Treasurer participated alongside the VCE executive team in the review of firm leading up to the selection of PFM as the financial advisor for VCE. VCE and it's Financial Advisor, PFM, will begin to establish VCE's initial investment grade credit rating based on the preliminary timeline outlined below.

VCE Initial Credit Rating Preliminary Timeline



An investment grade credit rating will reduce risks in power purchase agreement negotiations, banking institution lines of credit, CPUC provider of last resort financial requirements (POLR), and overall capital costs for VCE.

CONCLUSION

Based on the information provided in this report, VCE staff plan to continue to utilize the River City Bank MMA and ICS accounts where excess funds exist to invest funds as options are extremely limited while VCE maintains the Revolving Line of Credit Agreement. VCE will continue to monitor and evaluate investment options, monitor and assess financial risks, and commence the initial credit rating process for 2024.

Staff requests that the VCE Board ratify the County of Yolo Investment Policy for 2023 as the applicable investment policy for VCE.

Attachments:

- Attachment A – County of Yolo Investment Policy 2021
- Attachment B – River City Materials on Public Money Market Account
- Attachment C – River City Materials on Public Fund ICS Account

County of Yolo Administrative Policies and Procedures Manual

TITLE: Investment Policy

Department: Financial Services

TYPE: POLICY

DATE: December 6, 2022

A. PURPOSE

This document is known as the annual investment policy and represents the policies of the Board of Supervisors of the County of Yolo related to the investment of funds under the control of the Chief Financial Officer. The office of the Auditor-Controller and the Treasurer-Tax Collector have been consolidated. All statutory duties, responsibilities, and budgets of the Auditor-Controller and Treasurer-Tax Collector are consolidated into the office known as the Chief Financial Officer as per Yolo County code section 2-5.113 effective January 5, 2015.

The Department of Financial Services was established to consolidate and perform all functions of the offices of the Auditor, Controller, Tax Collector, and Treasurer, and any other county-wide fiscal functions directed by the board as per county code sec. 2-5.2001.

This policy is prepared annually by the Chief Financial Officer in accordance with the California Government Code and prudent asset management principles. Pursuant to Government Code sections 27133 and 53646 this policy has been reviewed by the Financial Oversight Committee and approved by the Board of Supervisors at a public meeting.

B. APPLICABILITY

This policy will cover the period of January 1, 2023 through December 31, 2023.

This policy applies to the cash management and investment activities performed by County personnel and officials for any local agency, public agency, public entity, or public official that has funds on deposit in the county treasury pool. The terms "County" and "county treasury pool" are used interchangeably and include all such funds so invested.

The investment of bond proceeds will be governed by the provisions of relevant bond and related legal documents.

The investment of endowment funds will be governed by the underlying laws, regulations, and specific governmental approvals under those laws pursuant to which the endowments were created. Endowment fund investments will primarily focus on the preservation of principal and use of investment income for operational purpose.

The investment of the Section 115 Trusts related to OPEB and Pension will be invested in compliance with the County Policies on "Accounting, Funding and Recovery of OPEB Costs" and the "Pension Funding Policy" and legal documents associated with the Section 115 Trusts.

County of Yolo Administrative Policies and Procedures Manual

C. STANDARD OF CARE

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The standard of prudence to be used by investment officials shall be the "prudent investor" standard which states that "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.

This standard shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

D. PUBLIC TRUST

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the County's ability to govern effectively.

E. OBJECTIVES

The primary objectives, in descending priority order, of the investment activities of the County shall be:

1. **Safety**. Safety of principal is the foremost objective of the investment program. Investments of the County shall be undertaken in a manner that seeks to ensure preservation of capital in the portfolio.
2. **Liquidity**. The investment portfolio shall be maintained in such a manner as to provide sufficient liquidity to meet the operating requirements of any of the participants.
3. **Return on Investment**. The investment portfolio of the County shall be designed with the objective of attaining a market rate of return on its investments consistent with the constraints imposed by its safety objective and liquidity considerations.

F. DELEGATION OF AUTHORITY

Subject to Section 53607 the authority of the Board of Supervisors to invest or to reinvest funds of the pooled investments, or to sell or exchange securities so purchased, may be delegated for a one-year period by ordinance in accordance with Government Code Sections 27000.1 and 27000.3.

The Board of Supervisors has designated the Chief Financial Officer as its agent authorized to make investment decisions after considering the strategy proposed by the investment advisor.

County of Yolo Administrative Policies and Procedures Manual

G. ETHICS AND CONFLICT OF INTEREST

Individuals performing the investment function and members of the Financial Oversight Committee (FOC) shall maintain the highest standards of conduct.

County Officers and employees involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. These individuals should follow the Code of Ethics for Procurement approved by the Board of Supervisors and comply with all relevant provisions of the Political Reform Act, especially the requirements of Chapter 7 – Conflict of Interest and Chapter 9.5 – Ethics. The key requirements are listed below:

1. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could affect their ability to make impartial decisions.
2. Officers and employees shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the County.
3. Officers and employees shall not accept gifts or gratuities with a value exceeding \$500 in any one year from any bank, broker, dealer, or any other person, firm, or organization who conducts business with the Department of Financial Services.
4. No person with investment decision-making authority in the County Administrator's office or the Department of Financial Services may serve on the board of directors or any committee appointed by the board or the credit committee or supervisory committee of a state or federal credit union which is a depository for County funds.

The Financial Oversight Committee Charter includes the following requirements for members of the committee:

1. A member shall disclose to the committee at a regular meeting any activities that directly or indirectly raised money for a member of the governing board of any local agency that has deposited funds in the County Treasury while a member of the committee. For purposes of this subsection, raising money includes soliciting, receiving, or controlling campaign funds of a candidate, but not the member's individual campaign contributions or non-financial support. This section does not apply to a member raising money for his or her own campaign.
2. A member shall disclose to the Committee at a regular meeting any contributions, in the previous three years or during the period that the employee is a member of the committee, by an employer to the campaign of a candidate to be a member of a legislative body of any local agency that has deposited funds in the County Treasury.
3. A member cannot secure employment with, or be employed by, bond underwriters, bond counsel, security brokerages or dealers, financial services firms, financial institutions, and municipal advisors with whom the County is doing business during the member's Financial Oversight Committee membership period or for one year after leaving the Financial Oversight Committee. This subsection only applies to employment or soliciting employment, and not other relationships with such companies with whom the County is doing business.

County of Yolo Administrative Policies and Procedures Manual

4. A member shall disclose to the Committee any honoraria, gifts, and gratuities from advisors, brokers, dealers, bankers, or other persons who conduct business with the Department of Financial Services while a member of the Committee. All members shall also comply with the requirements of the Political Reform Act or any other law or regulation regarding to receipt and disclosure of financial benefits and conflicts.

H. INTERNAL CONTROLS

Internal control procedures shall be established and maintained by the Department of Financial Services that provide reasonable assurance that the investment objectives are met and to ensure that the assets are protected from loss, theft, misuse, or mismanagement. The internal controls shall be reviewed as part of the regular annual independent audit. The controls and procedures shall be designed to prevent employee error, misrepresentations by third parties, and imprudent or illegal actions by employees or officers of the County.

I. CASH MANAGEMENT

In determining the amount that can be invested County personnel shall take into account the liquidity needs of the County and the agencies in the Treasury pool, and shall take reasonable steps to ensure that cash flow requirements of the County and pool participants are met for the next six months, barring unforeseen actions from the State Controller or other funding sources, such as deferral of cash payments.

County personnel shall maintain separate accounting for cash funds and monitor aggregate cash balances of the County and each agency in the Treasury pool, and shall notify the County Administrator or agency management of unhealthy trends in aggregate cash balances. Unhealthy trends may include but are not limited to deferral of cash payments from State, Federal grantors, or other funding sources, significant declines in available aggregate cash balances, or near-deficit aggregate balances. Agencies that are so notified are expected to take immediate action to cure any deficit and improve cash balances. Continuing deficits shall be reported to the Board of Supervisors for further action.

The Chief Financial Officer shall provide quarterly reports on total cash flows and balances of the Treasury Pool to the Financial Oversight Committee.

J. AUTHORIZED FINANCIAL DEALERS AND QUALIFIED INSTITUTIONS

The County may secure the services of an Investment Advisor. Precautionary contractual language with such an adviser shall include: delivery versus payment methods, third-party custody arrangements, prohibitions against self-dealings, independent audits, and other appropriate internal control measures as deemed necessary by the Chief Financial Officer.

The County or the County's Investment Advisor shall maintain a list of authorized broker/dealers and financial institutions which are approved for investment transaction purposes, and it shall be the policy of the County to purchase securities only from those authorized institutions or firms. Authorized brokers/dealers must either (i) be classified as Reporting Dealers affiliated with the New York Federal Reserve Bank as Primary Dealers or (ii) be registered to conduct business in the State of California and be licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code.

No broker/dealer shall be selected which has within any consecutive 48-month period made a political contribution to any member of the Board of Supervisors or to any candidate for these offices in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board.

County of Yolo Administrative Policies and Procedures Manual

K. PERMITTED INVESTMENT INSTRUMENTS

1. United States Treasury Obligations. Government obligations for which the full faith and credit of the United States are pledged for the payment of principal and interest.
2. Federal Agency Obligations. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
3. California Municipal Obligations. Obligations of the State of California, this local agency or any local agency within the state, including bonds payable solely out of revenues from a revenue-producing property owned, controlled or operated by the state, this local agency or any local agency or by a department, board, agency or authority of the state or any local agency that is rated in a rating category of "A" long term or "A-1" short term, the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Any investment in obligations of this local agency shall be in a ratio proportionate to the County's share of the pooled investments.
4. Other 49 State Municipal Securities. Registered treasury notes or bonds issued by any of the other 49 states, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any state that is rated in a rating category of "A" long term or "A-1" short term, the equivalent or higher by a NRSRO.
5. Repurchase Agreements. Agreements to be used solely as short-term investments not to exceed 90 days.

The County may enter into Repurchase Agreements with primary dealers in U.S. Government securities who are eligible to transact business with, and who report to, the Federal Reserve Bank of New York.

The following collateral restrictions will be observed: Only U.S. Treasury securities or Federal Agency securities, as described above in (K)(1) and (K)(2), will be acceptable collateral.

All securities underlying Repurchase Agreements must be delivered to the County's custodian bank versus payment or be handled under a properly executed tri-party repurchase agreement. The total market value of all collateral for each Repurchase Agreement must equal or exceed, 102 percent of the total dollar value of the money invested by the County for the term of the investment. For any Repurchase Agreement with a term of more than one day, the value of the underlying securities must be reviewed at least weekly.

Market value must be calculated each time there is a substitution of collateral.

The County or its trustee shall have a perfected first security interest under the Uniform Commercial Code in all securities subject to Repurchase Agreement.

The County will have properly executed a Public Securities Association (PSA) agreement with each counter party with which it enters into Repurchase Agreements.

6. Banker's Acceptances. Issued by domestic or foreign banks, the short-term paper of which is rated in the highest category by a nationally recognized statistical rating organization (NRSRO).

County of Yolo Administrative Policies and Procedures Manual

Purchases of Banker's Acceptances may not exceed 180 days maturity or 40 percent of the County's investment portfolio.

7. Commercial Paper. Of prime quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions shown in either paragraph (A) or paragraph (B):
 - a. The entity meets the following criteria:
 - i. Is organized and operating in the United States as a general corporation.
 - ii. Has total assets in excess of five hundred million dollars (\$500,000,000).
 - iii. Has debt other than commercial paper, if any, that is rated in a rating category of "A", the equivalent or higher by a nationally recognized statistical-rating organization (NRSRO).
 - b. The entity meets the following criteria:
 - i. Is organized within the United States as a special purpose corporation, trust, or limited liability company.
 - ii. Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.
 - iii. Has commercial paper that is rated in a rating category "A-1", the equivalent or higher by a nationally recognized statistical-rating organization (NRSRO).

Purchases of eligible commercial paper may not exceed 270 days maturity. No more than 40 percent of the County's investment portfolio may be invested in eligible commercial paper.

8. Medium-Term Corporate Notes. Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. Medium-term corporate notes shall be rated in a rating category "A", the equivalent or higher by a nationally recognized statistical rating organization (NRSRO) and shall have a maximum remaining maturity of five years or less. Purchase of medium-term corporate notes may not exceed 30 percent of the County's investment portfolio.
9. Non-Negotiable Certificates of Deposit. FDIC insured or fully collateralized time certificates of deposit in financial institutions located in California, including U.S. branches of foreign banks licensed to do business in California. All time deposits must be collateralized in accordance with California Government Code Section 53651, either at 150% by promissory notes secured by first mortgages and first trust deeds upon improved residential property in California eligible under section (m) or at 110% by eligible marketable securities listed in subsections (a) through (l) and (n) and (o). The County, at its discretion and by majority vote of the Board of Supervisors, on a quarterly basis, may waive the collateralization requirements for any portion of the deposit that is covered by federal insurance. Alternatively, the County may invest in deposits, including certificates of deposit, at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit as provided for in Government Code section 53635.8.

County of Yolo Administrative Policies and Procedures Manual

10. Negotiable Certificates of Deposit. Negotiable certificates of deposit issued by a nationally or state-chartered bank or a state or federal savings and loan association or by a federally-licensed or a state-licensed branch of a foreign bank that is rated in a rating category of "A" long-term or "A-1 short-term, the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Purchases of all negotiable certificates of deposit may not exceed 30 percent of the County's investment portfolio.
11. Local Government Investment Pools. (Either state-administered or through joint powers statutes and other intergovernmental agreement legislation.) Investments may be maximized to the level allowed by the State and should be reviewed periodically. Investment objectives, limitations, and controls of each pool must be consistent with this policy.
12. Money Market Funds. Shares of beneficial interest issued by diversified management companies that are money market mutual funds registered with Securities and Exchange Commission under the Investment Company Act of 1940. To be eligible for investment pursuant to this subdivision these companies shall either: (1) attain the highest ranking letter or numerical rating provided by not less than two of the largest nationally recognized statistical rating organizations or (2) have retained an investment advisor registered or exempt from registration with the Securities and Exchange Commission with not less than five years experience investing in securities and obligations authorized by Government Code Section 53601 and with assets under management in excess of \$500,000,000. Money Market Funds shall not exceed 20 percent of the investment portfolio of the County as recorded at purchase price on date of purchase.
13. Asset-Backed Securities. Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-back certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond. Eligible securities must be rated, by a nationally recognized statistical rating organization, as "AAA", and have a maximum remaining maturity of five years or less. No more than 20 percent of the County's investment portfolio may be invested in this type of security.
14. Reverse Repurchase Agreements. Reverse repurchase agreements shall be used primarily as a cash flow management tool and subject to all the following conditions
 - a. The security to be sold using a reverse repurchase agreement has been owned and fully paid for by the County for a minimum of 30 days prior to sale.
 - b. The total of all reverse repurchase agreements on investments owned by the County does not exceed 20 percent of the base value of the portfolio. The base value of the County's portfolio for this section is defined as that dollar amount obtained by totaling all cash balances placed in the portfolio by all participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.
 - c. The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.
 - d. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty using a reverse repurchase agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the

County of Yolo Administrative Policies and Procedures Manual

reverse repurchase agreement, unless the reverse repurchase agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

- e. Investments in reverse repurchase agreements or similar investments in which the County sells securities prior to purchase with a simultaneous agreement to repurchase the security shall be made only with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency. A significant banking relationship is defined by any of the following activities of a bank:
 - i. Involvement in the creation, sale, purchase, or retirement of the County's bonds, warrants, notes, or other evidence of indebtedness.
 - ii. Financing of the County's activities.
 - iii. Acceptance of the County's securities or funds as deposits.

15. Supranationals. United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), or Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated in a rating category of "AA", the equivalent or higher by a NRSRO. Purchases of these securities shall not exceed 30 percent of the County's portfolio.

The Chief Financial Officer may make permitted investments (as described above) pursuant to the California Government Code (including Section 53601 et. seq.) or deposit funds for safekeeping in state or national banks, savings association, credit unions, or federal insured industrial loan companies (as described in Section 53635.2). For purposes of compliance with this policy, an investment's term or remaining maturity shall be measured from the settlement date to final maturity. A security purchased in accordance with this section shall not have a forward settlement date exceeding 45 days from the time of investment.

Credit criteria listed in this section refers to the credit of the issuing organization at the time the security is purchased. Should a security owned by the County be downgraded below "A" the Investment Advisor shall immediately notify the Chief Financial Officer who will report to the Board of Supervisors, at their next regularly scheduled meeting, the circumstances of the downgrade and any action taken or recommended.

L. INELIGIBLE INVESTMENTS

The County shall not invest any funds in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages, or in any security that could result in zero interest accrual if held to maturity.

Effective January 1, 2021, the County may invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. The County may hold these instruments until their maturity dates. Securities described in this paragraph shall remain in effect only until January 1, 2026, and as of that date is repealed.

Any other security not specifically permitted by Section K is prohibited.

County of Yolo Administrative Policies and Procedures Manual

M. MAXIMUM MATURITY

Investment maturities shall be based on a review of cash flow forecasts. Maturities will be scheduled so as to permit the County to meet all projected obligations.

Where this policy does not specify a limitation on the term or remaining maturity at the time of the investment, or unless authorized by the Board of Supervisors no less than three months prior to the investment, no investment shall be made in any security, other than a security underlying a repurchase agreement as authorized by this policy that at the time of the investment has a term remaining to maturity in excess of five years.

The Board of Supervisors has specifically approved investment maturities beyond five years for certain three long-term portfolios: Yolo County Landfill Closure Trust Fund, the Yolo County Cache Creek Maintenance and Remediation Fund, and the Demeter Endowment (funds deallocated from the Ceres Tobacco Endowment Fund).

N. DIVERSIFICATION & PERCENTAGE LIMITATIONS

The County shall limit the County's investments in any one issuer to no more than 5 percent of the County's total investments at the time of purchase, except for U.S. Treasuries, Federal Agencies, Supranationals, repurchase and reverse repurchase agreements, and pooled investments such as local government investment pools, LAIF, and money market funds

All percentage limitations apply at the time of the investment (purchase date).

O. REPORTING REQUIREMENTS

The Chief Financial Officer shall render a quarterly investment report to the Board of Supervisors that includes, at a minimum, the following information for each investment:

- Type of investment instrument (e.g., U.S. Treasury note, Federal Agency note)
- Issuer name (e.g., General Electric Capital Corp.)
- Credit quality
- Purchase date
- Maturity date
- Par value
- Purchase price
- Current market value and the source of the valuation
- Current amortized or book value
- Accrued interest
- Original yield to maturity
- Overall portfolio yield based on cost
- New investment transactions

The quarterly report shall (i) state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance, (ii) include a description of any of the County's funds, investments or programs that are under the management of contracted parties, including lending programs, and (iii) include a statement explaining the ability of the County to meet its cash flows requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

County of Yolo Administrative Policies and Procedures Manual

This quarterly report shall be available within 45 days following the end of the quarter and submitted to the Board of Supervisors at the earliest reasonable opportunity, with copies published and available to all pool participants.

P. ANNUAL REVIEW OF INVESTMENT POLICY

The Chief Financial Officer shall annually prepare an investment policy that will be reviewed by the County Financial Oversight Committee and submitted to the Board of Supervisors for approval in a public meeting. Any change to the investment policy shall be reviewed and approved by the Board in a public meeting.

Q. SAFEKEEPING AND CUSTODY

All securities, whether negotiable, bearer, registered or non-registered shall be delivered either by book entry or physical delivery to the County's third-party custodian.

Monthly safekeeping statements are received from custodians where securities are held. Authorized personnel, other than the person handling daily investments, shall review the statements to confirm that investment transactions have settled and been delivered to the County's third-party custodian.

R. APPORTIONMENT OF EARNINGS AND COSTS

The manner of calculating and apportioning the cost of investing, depositing, banking, auditing, reporting, or otherwise handling or managing funds is as follows:

Investment earnings shall be apportioned to all pool participants quarterly based upon the ratio of the average daily balance of each individual fund to the average daily balance of all funds in the investment pool. Earnings are computed on an accrual basis and the effective date that earnings are deposited into each fund is the first day of the following quarter (January 1, April 1, July 1, and October 1).

Direct and Administrative (including indirect) costs associated with investing, depositing, banking, auditing, reporting, safekeeping, or otherwise handling or managing funds shall be netted against any moneys received pursuant to state mandated reimbursements and deducted from the gross investment earnings in the quarter received.

S. CRITERIA FOR CONSIDERING REQUEST TO WITHDRAW FUNDS

Withdrawal of funds from County Treasurer Pool may occur pursuant to Government Code Section 27136 and approval of the Board of Supervisors.

Assessment of the effect of a proposed withdrawal on the stability and predictability of the investment in the County Pool will be based on the following criteria:

- Size of withdrawal
- Size of remaining balances of:
 - Pool
 - Agency
- Current market conditions
- Duration of withdrawal
- Effect on predicted cash flows
- A determination if there will be sufficient balances remaining to cover costs

County of Yolo Administrative Policies and Procedures Manual

- Proof that adequate information has been supplied in order to make a proper finding that other pool participants will not be adversely affected.

The Chief Financial Officer reserves the right to mark a fund balance to market value prior to allowing a withdrawal if it is deemed necessary to be equitable to the remaining funds.

T. TERMS AND CONDITIONS FOR NON-STATUTORY COMBINED POOL PARTICIPANTS

All entities qualifying under California Government Code Section 27133 (g) may deposit funds for investment purposes providing all of the following has been accomplished: (1) the agency's administrative body has requested the privilege, (2) has agreed to terms and conditions of an investment agreement as prescribed by the County's Board of Supervisors, (3) has by resolution identified the authorized officer acting on behalf of the agency; and (4) the Chief Financial Officer has prescribed the appropriate accounting procedures.

U. AUDIT

1. Annual Compliance Audit - The Financial Oversight Committee is not designated a Treasury Oversight Committee however the FOC may cause an annual audit pursuant to Government Code section 27134 at its discretion which may include issues relating to the structure of the investment portfolio and risk. The costs of complying with this article shall be County charges and may be included with those charges enumerated under Section 27013.
2. Quarterly Review and Annual Financial Audit – The Chief Financial Officer shall cause quarterly reviews to be made of the Treasury Division records relative to the type and amount of assets in the treasury, pursuant to Government Code sections 26920 - 26923. The Chief Financial Officer shall also cause an annual financial audit to be made of the Treasury Division's records as of June 30. In addition to an opinion on the statement of assets held in the treasury this audit shall include a review of the adequacy of internal controls.

The annual compliance audit and the annual financial audit may be combined.

The Chief Financial Officer shall report audits that contain significant audit findings to the Audit Subcommittee of the Board of Supervisors immediately and to the full Board at the earliest reasonable opportunity. Copies of the audit reports shall be provided to the Financial Oversight Committee.

All audit recommendations shall be addressed timely and in a manner acceptable to the Board of Supervisors' Audit Subcommittee.



Public Fund Money Market

Product Information and Disclosure

Accurate as of: 2/17/2023

Your interest rate may change. At our discretion, we may change the interest rate on your account at any time.

Tier	Interest Rate
\$5,000 and Over	1.250%

Basic Terms and Conditions	
Minimum Deposit to Open Account	\$5,000
Maintenance Fee	\$10 per statement cycle
How to Avoid the Maintenance Fee	\$0 maintenance fee when you maintain an average daily balance of \$5,000.00 during each statement cycle. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.
Interest Compounding and Crediting Frequency	Interest will be compounded every day. Interest will be credited to your account every month.
Effect of Closing an Account	If you close your account before interest is credited, you will not receive the accrued interest.
Minimum Balance to Obtain the Disclosed Interest Rate	\$5,000.00 minimum daily balance
Balance Computation Method	We use the daily balance method to calculate interest on your account. This method applies a daily periodic rate to the principal in the account each day.
Accrual of Interest on Noncash Deposits	Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example checks).
Transaction Limitations	\$15 Excessive Withdrawal Fee will be charged for each preauthorized/automatic withdrawal or transfer to another account or third party in excess of 6 per calendar month. This limit does not apply to withdrawals or transfers made in person at a branch or ATM.
Refer to the Deposit Account Agreement, and Schedule of Miscellaneous Fees and Service Charges for additional information.	



Safety. Return. Freedom.

Through ICS®, the Insured Cash Sweep® service, many government depositors can access multi-million-dollar FDIC insurance on funds placed into money market deposit accounts.

Through ICS, you can:

Enjoy peace of mind

ICS funds are eligible for multi-million-dollar FDIC insurance that's backed by the full faith and credit of the United States government.

Earn interest

Put excess cash balances to work in savings accounts (money market deposit accounts).

Save time

By providing access to FDIC insurance through a single bank relationship, ICS can help your organization to comply with investment policy mandates and avoid the hassles associated with ongoing collateral-tracking.

Access funds

Enjoy daily liquidity in your transaction account at our bank; replenish the transaction account by withdrawing ICS funds up to six times per month.

Support your community

Feel good knowing that the full amount of your funds placed through ICS can stay local to support lending opportunities that build a stronger community.*

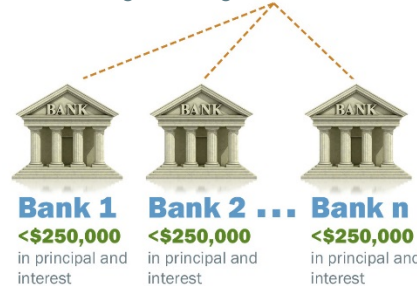
Simply put, with ICS, you can have it all.

How does ICS work?

Work directly with just us—an institution you already know and trust—to access coverage from many, receive just one regular statement, and know that your confidential information remains protected.



Your organization has or sets up a transaction account with our bank, signs the agreements, and deposits funds.



Deposits are sent to money market deposit accounts at other member institutions in amounts under the standard FDIC insurance maximum of \$250,000.*



* When deposited funds are exchanged on a dollar-for-dollar basis with other banks in the ICS Network, we can use the full amount of a deposit placed through ICS for local lending, satisfying some depositors' local investment goals or mandates. In certain states, and with a depositor's consent, we may choose to receive fee income instead of deposits from other banks. Under these circumstances, deposited funds would not be available for local lending.

Placement of funds through the ICS service is subject to the terms, conditions, and disclosures in the service agreements, including the Deposit Placement Agreement ("DPA"). Limits and customer eligibility criteria apply. In the ICS savings option, program withdrawals are limited to six per month. Although funds are placed at destination banks in amounts that do not exceed the FDIC standard maximum deposit insurance amount ("SMDIA"), a depositor's balances at the relationship institution that places the funds may exceed the SMDIA (e.g., before ICS settlement for a deposit or after ICS settlement for a withdrawal) or be ineligible for FDIC insurance (if the relationship institution is not a bank). As stated in the DPA, the depositor is responsible for making any necessary arrangements to protect such balances consistent with applicable law. If the depositor is subject to restrictions on placement of its funds, the depositor is responsible for determining whether its use of ICS satisfies those restrictions. ICS and Insured Cash Sweep are registered service marks of the Montromery Interfinancial Network, LLC.

Using ICS[®] for Public Funds In the State of California



CALIFORNIA GOVERNMENT CODE

Title 5. Local Agencies

Division 2. Cities, Counties, and Other Agencies

Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies

Chapter 4. Financial Affairs

Article 1. Investment of Surplus

53600. As used in this article, "**local agency**" means **county, city, city and county**, including a chartered city or county, **school district, community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.**

SECTION 53601.8 Excerpt [As amended, effective January 1, 2020
[SECTION 53635.8 is similar to Section 53601.8]

Notwithstanding any other provision of this code, a local agency that has the authority under law to invest funds, at its discretion, may invest a portion of its surplus funds in deposits at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of deposits. The following conditions shall apply:

- (a) The local agency shall choose a nationally or state-chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the "selected" depository institution.
- (b) The selected depository institution may use a private sector entity to help place local agency deposits with one or more commercial banks, savings banks, savings and loan associations, or credit unions that are located in the United States and are within the network used by the private sector entity for this purpose.
- (c) The selected depository institution shall request that the local agency inform it of depository institutions at which the local agency has other deposits, and the selected depository institution shall provide that information to the private sector entity.
- (d) Any private sector entity used by a selected depository institution to help place its local agency deposits shall maintain policies and procedures requiring all of the following:
 - (1) The full amount of each deposit placed pursuant to subdivision (b) and the interest that may accrue on each such deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
 - (2) Every depository institution where funds are placed shall be capitalized at a level that is sufficient, and be otherwise eligible, to receive such deposits pursuant to regulations of the Federal Deposit Insurance Corporation or the National Credit Union Administration, as applicable.
- (3) At the time of the local agency's investment with a selected depository institution and no less than monthly thereafter, the private sector entity shall ensure that the local agency is provided with an inventory of all depository institutions in which deposits have been placed on the local agency's behalf, that are within the private sector entity's network.
- (4) Within its network, the private sector entity shall ensure that it does not place additional deposits from a particular local agency with any depository institution identified pursuant to subdivision (c) as holding that local agency's deposits if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.
- (e) If a selected depository uses two or more private sector entities to assist in the placement of a local agency's deposits, the selected depository shall ensure that it does not place additional deposits from a particular local agency with a depository institution if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.
- (f) The selected depository institution shall serve as a custodian for each such deposit.
- (g) On the same date that the local agency's funds are placed pursuant to subdivision (b) by the private sector entity, the selected depository institution shall receive an amount of insured deposits from other financial institutions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution pursuant to subdivision (b).
- (h) Notwithstanding subdivisions (a) to (g), inclusive, a credit union shall not act as a selected depository institution under this section unless both of the following conditions are satisfied:
 - (1) The credit union offers federal depository insurance through the National Credit Union Administration.
 - (2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally insured credit unions in one or more deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.
- (i) It is the intent of the Legislature that this section shall not restrict competition among private sector entities that provide placement services pursuant to this section.
- (j) The deposits placed pursuant to this section shall be subject to Section 53638 and shall not, in total, exceed 50 percent of the agency's funds that may be invested for this purpose.
- (k) This section shall remain in effect until January 1, 2026, and as of that date is repealed.

(Amended (as amended by Stats. 2015, Ch. 181, Sec. 1) by Stats. 2019, Ch. 619, Sec. 1. (AB 945) Effective January 1, 2020. Repealed as of January 1, 2026, by its own provisions. See later operative version, as amended by Sec. 3 of Stats. 2019, Ch. 619.)