



**Regular Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, April 14, 2022 at 5 p.m.
Via Video/Teleconference**

Pursuant to Assembly Bill 361 (AB 361), legislative bodies may meet remotely without listing the location of each remote attendee, posting agendas at each remote location, or allowing the public to access each location, with the adoption of certain findings. The Board of Directors found that the local health official recommended measures to promote social distancing and authorized the continuation of remote meetings for the foreseeable future. Any interested member of the public who wishes to listen in should join this meeting via teleconferencing as set forth below.

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

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

Join meeting via Zoom:

- a. From a PC, Mac, iPad, iPhone, or Android device with high-speed internet.
(If your device does not have audio, please also join by phone.)**

<https://us02web.zoom.us/j/85110768299>

Meeting ID: 851 1076 8299

- b. By phone**

One tap mobile:

+1-669-900-9128,, 85110768299# US

+1-346-248-7799,, 85110768299# US

Dial:

+1-669-900-9128 US

+1-346-248-7799 US

Meeting ID: 851 1076 8299

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

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

5:00 p.m. Call to Order

1. **Welcome**
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. **Renew authorization of remote public meetings as authorized by Assembly Bill 361.**
4. **Approve March 10, 2022 Board meeting Minutes.**
5. **Receive 2022 Long Range Calendar.**
6. **Receive Financial Updates – February 28, 2022 (unaudited) financial statements.**
7. **Receive Legislative update.**
8. **Receive April 6, 2022 Regulatory update provided by Keyes & Fox.**
9. **Receive quarterly Customer Enrollment update.**
10. **Receive Community Advisory Committee March 24, 2022 meeting summary.**
11. **Approve agreement with TeMix, Inc. to provide implementation support services for the AgFIT (Flexible Irrigation Technology) dynamic pricing pilot program.**
12. **Receive SACOG Grant – Electrify Yolo Project update.**
13. **Approve Employee Handbook updates.**
14. **Approve process for selection of Community Advisory Committee At-Large seats.**

REGULAR AGENDA

15. **Presentation on OhmConnect program.**
16. **Approve participation in and authorize VCE Executive Officer to execute documents associated with VCE participating in the CC Power long duration storage project: Goal Line.**
17. **Receive and accept audited financial statements for the period of July 1, 2021 to December 31, 2021 presented by James Marta & Company.**
18. **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.
19. **Adjournment:** The next regular meeting is scheduled for May 12, 2022 at 5 p.m. via video/teleconference.

PUBLIC PARTICIPATION INSTRUCTIONS FOR VALLEY CLEAN ENERGY BOARD OF DIRECTORS SPECIAL MEETING ON THURSDAY, APRIL 14, 2022 AT 5:00 P.M.:

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

Public participation via e-mail: If you have anything that you wish to be distributed to the Board and included in the official record, please e-mail it to VCE staff at

Meetings@ValleyCleanEnergy.org. If information is received by 3:00 p.m. on the day of the Board meeting it will be e-mailed to the Board members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting.

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

- 1) If you are attending by computer, activate the “participants” icon at the bottom of your screen, then raise your hand (hand clap icon) under “reactions”.
- 2) If you are attending by phone only, you will need to press *9 to raise your hand. When called upon, please 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 Comments: If you wish to make a public comment at this meeting, please e-mail your public comment to Meetings@ValleyCleanEnergy.org or notifying the host as described above. Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Committee and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 3, Public Comment. Written public comment on individual agenda items should include the item number in the “Subject” line for the e-mail and the Clerk will read the comment during the item. Items read cannot exceed 300 words or approximately two (2) minutes in length. All written comments received will be posted to the VCE website. E-mail comments received after the item is called will be distributed to the Board and posted on the VCE website so long as they are received by the end of the meeting.

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

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

VALLEY CLEAN ENERGY ALLIANCE**Staff Report - Item 3**

TO: Board of Directors

FROM: Mitch Sears, Interim General Manager
Alisa Lembke, Board Clerk/Administrative Analyst

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

DATE: April 14, 2022

Recommendation

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

1. Pursuant to Assembly Bill 361 (AB 361), that, (a) the COVID-19 pandemic state of emergency is ongoing, and (b) local officials continue to recommend measures to promote social distancing.

Background/Summary of AB 361

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

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

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

However, legislative bodies must first find: (1) the legislative body is meeting during a state of emergency and determine by majority vote that meeting in person would present an imminent risk to the health or safety of attendees; or (2) state or local health officials impose or recommend social distancing measures.

Government Code Section 54953(e)(1). The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing. Government Code Section 54953(e)(3). On January 1, 2024, Government Code Section 54953(e) is repealed.

The recommended action is required by AB 361 to continue meeting remotely during a declared state of emergency. It includes a finding that social distancing measures continue to be recommended, consistent with the most recent memorandum from the Yolo County Health Officer dated March 1, 2022 (attached). This finding (or a finding that meeting in person would present imminent health and safety risks) is required on a monthly basis. As the Yolo County Health Officer's memorandum notes, COVID-19 rates continue to decline and her remote meeting recommendation may not be renewed in April. The VCE Board retains discretion under AB 361 to independently determine that remote meetings should continue because meeting in person would present imminent risks to the health and safety of attendees.

Staff continues to monitor the situation as part of our emergency operations efforts and will return to the Board every thirty (30) days or as needed with additional recommendations related to the conduct of public meetings.

Attachments:

1. Yolo County Health Officer memorandum dated 3/1/2022 to Board of Supervisors



COUNTY OF YOLO

Health and Human Services Agency

Karen Larsen, LMFT
Director

Aimee Sisson, MD, MPH
Health Officer

MAILING ADDRESS
137 N. Cottonwood Street • Woodland, CA 95695
www.yolocounty.org

Date: March 1, 2022

To: All Yolo County Boards and Commissions

From: Dr. Aimee Sisson, Health Officer

Subject: Remote Public Meetings

Since September 2021, I have issued monthly memoranda recommending remote meetings. The case rate in Yolo County has declined to 19 cases per 100,000 per day from a peak of 244 in January, but it continues to represent high community transmission. In the context of high community transmission, I recommend meetings continue to be held remotely whenever possible. I am re-issuing the earlier memorandum with updated COVID-19 case rate data.

In light of the ongoing public health emergency related to COVID-19 and the high level of community transmission of the virus that causes COVID-19, the Yolo County Public Health Officer recommends that public bodies continue to meet remotely to the extent possible. Board and Commissions can utilize the provisions of newly enacted AB 361 to maintain remote meetings under the Ralph M. Brown Act and similar laws.

Among other reasons, the grounds for the remote meeting recommendation include:

- The continued threat of COVID-19 to the community. As of March 1, 2022, the case rate is 19 cases per 100,000 residents per day. This case rate is considered “High” under the Centers for Disease Control and Prevention’s (CDC) framework for assessing community COVID-19 transmission; and
- The unique characteristics of public governmental meetings, including the increased mixing associated with bringing together people from across the community, the need to enable those who are immunocompromised or unvaccinated to be able to safely continue to fully participate in public governmental meetings, and the challenges of ensuring compliance with safety requirements and recommendations at such meetings.

Meetings that cannot feasibly be held virtually should be held outdoors when possible, or indoors only in small groups with face coverings, maximal physical distance between participants, use of a portable HEPA filter (unless comparable filtration is provided through facility HVAC systems), and shortened meeting times.

Davis

600 A Street
Davis, CA 95616
Mental Health (530) 757-5530

West Sacramento

500 Jefferson Boulevard
West Sacramento, CA 95605
Service Center (916) 375-6200
Mental Health (916) 375-6350
Public Health (916) 375-6380

Winters

111 East Grant Avenue
Winters, CA 95694
Service Center (530) 406-4444

Woodland

25 & 137 N. Cottonwood Street
Woodland, CA 95695
Service Center (530) 661-2750
Mental Health (530) 666-8630
Public Health (530) 666-8645

This recommendation is based upon current conditions. Given the ongoing decrease in case rates, with community transmission soon expected to drop below the threshold for high community transmission into substantial community transmission (<14 cases per 100,000 per day), this will likely be the final monthly memorandum recommending remote public meetings unless the COVID-19 situation unexpectedly worsens. Boards and Commissions should consider preparations for in-person or hybrid meetings beginning in April, except to the extent they may independently determine—as AB 361 allows—that meeting in person would present “imminent risks to the health or safety of attendees.”

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 4

TO: Board of Directors
FROM: Alisa Lembke, Board Clerk / Administrative Analyst
SUBJECT: Approval of Minutes from March 10, 2022 meeting
DATE: April 14, 2022

RECOMMENDATION

Receive, review and approve the attached March 10, 2022 meeting Minutes.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, MARCH 10, 2022**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting scheduled for Thursday, March 10, 2022 at 5:00 p.m., to be held via Zoom webinar. Chair Jesse Loren established that there was a quorum present and began the meeting at 5:02 p.m.

Board Members Present: Jesse Loren, Tom Stallard, Gary Sandy (arrived at 5:13 p.m.), Dan Carson, Wade Cowan, Mayra Vega, Lucas Frerichs

Members Absent: Don Saylor

Welcome Chair Loren welcomed everyone.

Public Comment – General and Consent The Board Clerk informed those present that there were no verbal or written public comments.

Approval of Consent Agenda / Resolution 2022-007 through Resolution 2022-009 Chair Loren announced that on the Consent agenda is item 15, the approval of an employment agreement with Mitch Sears and appointment as Executive Officer, and, General Legal Counsel is required to make an announcement under the Brown Act. VCE’s General Counsel Inder Khalsa of Richards, Watson & Gershon verbally announced the salary of the Executive Officer will be \$240,000 with benefits similar to those offered to other employees, with the addition of 120 hours of time paid off at the commencement of employment; reimbursement of out of pocket expenses; and, in the event that the Board terminates the Executive Officer “without cause” there would be a 3 month salary severance payment.

Chair Loren asked if the Board would like to remove any items from the Consent agenda or discuss any items. No items were pulled. Director Dan Carson had a correction to item 4 – February 10, 2022 meeting Minutes, on page 4 which should read “parity” with PG&E rates not “parody”. Also, Director Carson would like to note that item 15, the approval of the Executive Officer agreement, is a very significant step forward for VCE as an organization.

Motion made by Director Lucas Frerichs to approve the consent agenda with the correction to item 4 – February 10, 2022 meeting Minutes, seconded by Director Wade Cowan. Motion passed by the following vote:

AYES: Loren, Stallard, Carson, Cowan, Vega, Frerichs



NOES: None
ABSENT: Sandy, Saylor
ABSTAIN: None

The following items were:

3. Authorized to continue remote public meetings as authorized by Assembly Bill 361;
4. Approved February 10, 2022 Board special meeting Minutes with a correction on page 4 from “parody” to “parity”;
5. 2022 Long Range Calendar;
6. Received January 31, 2022 (unaudited) financial statement;
7. Received Legislative update provided by Pacific Policy Group;
8. Received March 2, 2022 Regulatory update provided by Keyes & Fox;
9. Received March 2, 2022 Customer Enrollment update;
10. Received Community Advisory Committee February 24, 2022 meeting summary and copies of 2022 Task Group Charges;
11. Received Bi-annual Enterprise Risk Management Report;
12. Approved agreement with Polaris Inc. to provide implementation support services for the AgFIT (Flexible Irrigation Technology) dynamic pricing pilot program as Resolution 2022-007;
13. Approved legislative positions: 1) support AB 1814 (Grayson) Transportation Electrification Funds, 2) support AB 1944 (Lee) Local Government, open and public meetings; and, oppose SB 1287 (Bradford) Electric service providers and CCAs, financial security requirements;
14. Approved Valley Clean Energy Collections Policy as Resolution 2022-008; and,
15. Approved Employment Agreement between VCE and Mitch Sears and appointment of Executive Officer as Resolution 2022-009.

As mentioned above, there were no verbal or written public comments on the Consent agenda items.

Gary Sandy arrived at 5:13 p.m.

Item 16: Approve amendment and restated credit agreement with River City Bank / Resolution 2022-010

VCE Staff Edward Burnham summarized the staff report by reviewing slides. There were no verbal or written public comments. A few questions were asked by the Board.

Director Carson made a motion to:

1. Adopt a resolution approving terms for an Amended and Restated Credit Agreement with River City Bank, including a revolving line of credit not to exceed \$11,000,000 and term loan for approximately \$1.1M.
2. Authorize the Interim General Manager to conduct any final negotiations



and implement the approval, sign all necessary documents, and ratify past actions related to the two-year Amended and Restated Credit Agreement with River City Bank.

This motion was seconded by Chair Loren. Motion passed as Resolution 2022-010 by the following vote:

AYES: Loren, Stallard, Carson, Cowan, Vega, Frerichs, Sandy

NOES: None

ABSENT: Saylor

ABSTAIN: None

Item 17: Approve Time of Use (TOU) Bill Protection customer program.

VCE Staff Rebecca Boyles summarized the staff report by reviewing slides. A few clarifying questions were asked by the Board on the difference between Option 1 and 4 and requirements to participate in the Bill Protection program. There were no verbal or written public comments.

Director Cowan made a motion to approve and adopt Bill Protection Option 3, in which customers can call and request bill protection if they choose to remain on the Time of Use rate for a full 12 months, seconded by Director Mayra Vega. Motion passed by the following vote:

AYES: Loren, Stallard, Carson, Cowan, Vega, Frerichs, Sandy

NOES: None

ABSENT: Saylor

ABSTAIN: None

Item 18: Approve Customer Heat Pump Pilot program.

Ms. Boyles introduced this item then turned it over to VCE Staff Sierra Huffman. Ms. Huffman summarized the Heat Pump Pilot program by reviewing slides. Staff are asking the Board to approve Phase 1 of VCE's Heat Pump Pilot Program.

The Board asked questions and discussed: how heat pumps work and their efficiency; lack of statewide power supply for the demand; and, potential future programs, such as lighting or geothermal for the residential customer. The Board asked that Staff bring back information after initiating Phase 1, such as, a list of participating contractors, how best to promote the technology, successful outreach methods, and helpful tips for the consumer to get through the process.

Verbal Public Comment: Christine Shewmaker supports electrification long term and the way to get to this goal is to reduce greenhouse gas emissions and to reduce dependence on fossil fuels. One of the reasons the Community Advisory Committee's (CAC) Program Task Group focused on heat pumps was due to the very large rebates that are offered. Her



impression is that the heat pump technology has gotten a lot better and heat pump water heaters use less energy than with gas.

There were no written public comments.

Director Lucas Frerichs made a motion to approve Phase 1 of Valley Clean Energy's Heat Pump Pilot Program, seconded by Director Dan Carson.

Motion passed by the following vote:

AYES: Loren, Stallard, Carson, Vega, Frerichs, Sandy

NOES: Cowan

ABSENT: Saylor

ABSTAIN: None

Item 19: Update on AgFIT (Agricultural Flexible Irrigation Technology) program. (Informational)

Ms. Boyles provided an update on the AgFIT Pilot program, including informing the Board that VCE filed a petition to modify the administrative budget for this program. Executive Officer Mitch Sears informed those present that VCE Staff continue to meet with legislative staff as there is a great interest in this program. He will continue to set up meetings.

There were no verbal or written public comments.

Item 20: Board Member and Staff Announcements

Mr. Sears informed those present that the CAC appointed David Springer and Marsha Baird as Chair and Vice Chair at their February 2022 meeting. He thanked Christine Shewmaker and Cynthia Rodriguez for serving as chair and vice chair in 2021. Mr. Sears informed those present that VCE had a booth at the Capay Valley Almond Festival in Esparto, which was well attended. There are several events coming up, California Honey Festival in Woodland and Celebrate Davis in Davis, and Staff welcomes volunteers. The Tierra Buena battery storage project is ahead of schedule and the CC Power Board approved the second long duration storage project, which is now moving forward to the individual CCA Boards for their consideration. Also, the CC Power Board is looking at the responses, mostly geothermal, to the "firm resource" request for offer, and CC Power is moving forward. Lastly, VCE has been working with Yolo County GIS to allow VCE to do some geospatial analysis using their GIS system to plug in our energy use data.

Chair Loren thanked everyone for attending and announced that the Board's next regular meeting is scheduled for Thursday, April 14, 2022 at 5 p.m.

Adjournment

Chair Loren adjourned the regular Board meeting at 6:15 p.m.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 5

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Board and Community Advisory Committee 2022 Long-Range Calendar

DATE: April 14, 2022

Recommendation

Receive and file the 2022 Board and Community Advisory Committee long-range calendar listing proposed meeting topics.

VALLEY CLEAN ENERGY
2022 Meeting Dates and *Proposed* Topics
Board and Community Advisory Committee (CAC)
(CAC: Topics and Discussion Dates may change as needed)

MEETING DATE		TOPICS	ACTION
January 13, 2022 Special Meeting scheduled for January 27, 2022	Board	<ul style="list-style-type: none"> • Election of Officers for 2022 (Annual) • Near-term Procurement Directives and Delegations for 2022 Power Procurement Activities • Calendar Year Budget and 2022 VCE customer rates • GHG Free Attributes • 2022 Legislative Platform • Receive CAC 2021 Calendar Year End Report (Annual) • 2021 Year End Review: Customer Care and Marketing 	<ul style="list-style-type: none"> • Action • Action • Action • Action • Action • Information • Information
January 27, 2022 January 20, 2022	Advisory Committee	<ul style="list-style-type: none"> • 2022 Task Groups Tasks/Charge (Annual) • Update on 2022 Power Charge Indifference Adjustment (PCIA) and Rates • Carbon Neutral by 2030 Study • CC Power long duration storage • Draft Collections Policy • Update on customer programs development (draft Heat Pump Pilot Program) 	<ul style="list-style-type: none"> • Action • Discussion/Action • Discussion/Action • Information • Information/Discussion • Information
February 10, 2022	Board	<ul style="list-style-type: none"> • CC Power long duration storage • Update on customer programs development • Update on 2022 PCIA and Rates • Update on Time of Use (TOU) • Update on SACOG Grant – Electrify Yolo • Strategic Plan Update (Annual) • Carbon Neutral Report 	<ul style="list-style-type: none"> • Action • Information • Information • Information • Information • Information • Information/Discussion
February 24, 2022	Advisory Committee	<ul style="list-style-type: none"> • Power Procurement / Renewable Portfolio Standard Update • Time of Use (TOU) and Bill Protection • Final Draft Collections Policy • Customer program concept (Heat Pump Pilot Program) • 2022 Task Group – energy resiliency 	<ul style="list-style-type: none"> • Information • Discussion/Action • Action • Discussion/Action • Discussion/Action

March 10, 2022	Board	<ul style="list-style-type: none"> • Receive Enterprise Risk Management Report (Bi-Annual) • Collections Policy • Presentment of customer program concept (Heat Pump Pilot Program) • Time of Use (TOU) Bill Protection • Ag FIT (Flexible Irrigation Technology) pilot program 	<ul style="list-style-type: none"> • Information • Discussion/Action • Action • Discussion/Action • Discussion/Action
March 24, 2022	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Customer program concept (draft EV Rebates Program) • CC Power long duration storage project • Overview of VCE Forecasting 	<ul style="list-style-type: none"> • Information • Information • Information/Discussion
April 14, 2022	Board	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • 7/1/21 thru 12/31/21 Audited Financial Statements (James Marta & Co.) • CC Power long duration storage project 	<ul style="list-style-type: none"> • Information • Action • Discussion/Action
April 28, 2022	Advisory Committee	<ul style="list-style-type: none"> • Program Concepts Development (EV Rebates Program) • Update on SACOG Grant – Electrify Yolo (placeholder) • Update on Customer Dividend and Programs Allocation • Forecasting - load 	<ul style="list-style-type: none"> • Discussion/Action • Information • Information • Information
May 12, 2022	Board	<ul style="list-style-type: none"> • Update on Customer Dividend and Programs Allocation • Presentment of customer program concept (EV Rebates Program) 	<ul style="list-style-type: none"> • Information • Action
May 26, 2022	Advisory Committee	<ul style="list-style-type: none"> • Update 3-Year Programs Plan • Forecasting – financial modeling 	<ul style="list-style-type: none"> • Information/Discussion • Information
June 9, 2022	Board	<ul style="list-style-type: none"> • Re/Appointment of Members to Community Advisory Committee (Annual) • Extension of Waiver of Opt-Out Fees for one year (Annual) • Update 3-Year Programs Plan 	<ul style="list-style-type: none"> • Action • Action • Information
June 23, 2022	Advisory Committee	<ul style="list-style-type: none"> • Mid-year rate update 	<ul style="list-style-type: none"> • Information
July 14, 2022	Board	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • Net Energy Metering (NEM) 3.0 Update (placeholder) 	<ul style="list-style-type: none"> • Information • Information
July 28, 2022	Advisory Committee	<ul style="list-style-type: none"> • Power Procurement / Renewable Portfolio Standard update • Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> • Information • Information

August 11, 2022	Board	<ul style="list-style-type: none"> • Mid-year rates review 	<ul style="list-style-type: none"> • Information/Discussion
August 25, 2022	Advisory Committee	<ul style="list-style-type: none"> • 2022 Operating Budget / Renewable Portfolio Standard update 	<ul style="list-style-type: none"> • Information
September 8, 2022	Board	<ul style="list-style-type: none"> • 2022 Operating Budget / Renewable Portfolio Standard update • Certification of Standard and UltraGreen Products (Annual) • Enterprise Risk Management Report (Bi-Annual) 	<ul style="list-style-type: none"> • Information • Action • Information
September 22, 2022	Advisory Committee	<ul style="list-style-type: none"> • Legislative End of Session Update • 2023 Draft Operating Budget 	<ul style="list-style-type: none"> • Information • Information
October 13, 2022	Board	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • Update on 2023 draft Operating Budget 	<ul style="list-style-type: none"> • Information • Information
October 27, 2022	Advisory Committee	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo • Update on Power Content Label Customer Mailer • Review Draft CAC Evaluation of Calendar Year End (Annual) 	<ul style="list-style-type: none"> • Information • Information • Information/Discussion
November 10, 2022	Board	<ul style="list-style-type: none"> • Certification of Power Content Label (Annual) • Preliminary 2023 Operating Budget (Annual) 	<ul style="list-style-type: none"> • Action • Information
November 17, 2022 (rescheduled November 24 th meeting due to the Thanksgiving holiday)	Advisory Committee	<ul style="list-style-type: none"> • Finalize CAC Evaluation of Calendar Year End (Annual) • Review Procurement Directives and Delegations (Annual) • GHG Free attributes • Power Procurement / Renewable Portfolio Standard Update • Review CAC Charge (Annual) • ERRR Filings Update (PCIA and bundled rates) (Annual) 	<ul style="list-style-type: none"> • Discussion/Action • Information • Information • Information • Discussion • Information
December 8, 2022	Board	<ul style="list-style-type: none"> • Approve 2023 Operating Budget (Annual) • Receive Enterprise Risk Management Report (Annual) • Approve Procurement Directives and Delegations (Annual) • GHG Free attributes • Update on SACOG Grant – Electrify Yolo • Receive CAC 2022 Calendar Year End Report (Annual) • Election of Officers for 2023 (Annual) 	<ul style="list-style-type: none"> • Action • Information • Action • Action • Information • Information • Nominations

December 15, 2022 (rescheduled December 22 nd meeting due to the Christmas holiday)	Advisory Committee	<ul style="list-style-type: none"> • 2023 CAC Task Group(s) formation (Annual) • Review draft 2023 Legislative Platform • Strategic Plan update (Annual) • Election of Officers for 2023 (Annual) 	<ul style="list-style-type: none"> • Discussion/Action • Discussion/Action • Information • Nominations
January 12, 2023	Board	<ul style="list-style-type: none"> • Oaths of Office for Board Members (Annual if new Members) • Update on SACOG Grant – Electrify Yolo • Strategic Plan Update (Annual) • 2023 Legislative Platform • Approve Updated CAC Charge (tentative) (Annual) 	<ul style="list-style-type: none"> • Action • Information • Action • Action • Action
January 26, 2023	Advisory Committee	<ul style="list-style-type: none"> • Update on SACOG Grant – Electrify Yolo 	<ul style="list-style-type: none"> • Information

- Notes:**
1. CalCCA Annual Meeting typically scheduled in November.
 2. Currently all meetings are held remotely via Zoom video/teleconference, “location” is subject to change.

CAC PROPOSED FUTURE TOPICS Topics and Discussion dates may change as needed	ESTIMATED MEETING DATE
Net Energy Metering (NEM) 3.0 (Information/Discussion/Action)	TBD
Carbon Neutral by 2030 (types of energy, where procured, BTM, FOM, policy) (Discussion/Action)	2022 Quarter 3
Integrated Resource Plan (IRP – update due 11/1/2022) (Discussion/Action)	August/September 2022
Draft Rate Structure (Discussion/Action)	April or May 2022
CAC Charge revision (as needed)	
Legislative Items (as needed)	
Strategic Plan additional updates (as needed)	
Time of Use (TOU) (as needed)	
SACOG Update (as needed)	

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 6**

TO: Board of Directors

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

SUBJECT: Financial Update – February 28, 2022 (unaudited) financial statements (with comparative year to date information) and Actual vs. Budget year to date ending February 28, 2022

DATE: April 14, 2022

RECOMMENDATION:

Accept the following Financial Statements (unaudited) for the period of February 1, 2022 to February 28, 2022 (with comparative year to date information) and Actual vs. Budget year to date ending February 28, 2022.

BACKGROUND & DISCUSSION:

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

The Financial Statements include the following reports:

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

In addition, Staff is reporting the Actual vs. Budget variances year to date ending February 28, 2022.

Financial Statements for the period February 1, 2022 – February 28, 2022

In the Statement of Net Position, VCEA, as of February 28, 2021, has a total of \$918,812 in its checking, money market and lockbox accounts, \$1,100,000 restricted assets for the Debt Service Reserve account, \$1,998,276 restricted assets related to supplier deposits, and \$2,462,533 restricted assets for the Power Purchases Reserve account. VCE has incurred obligations from Member agencies and owes as of February 28, 2021, \$159,872. VCE member obligations are incurred monthly due to staffing, accounting, and legal services.

The term loan with River City Bank includes a current portion of \$1,120,082. On February 28, 2022, VCE's net position is \$6,908,534.

In the Statement of Revenues, Expenditures, and Changes in Net Position, VCEA recorded \$2,644,501 of revenue (net of allowance for doubtful accounts), of which \$3,417,595 was billed in February and \$1,496,861 represent estimated unbilled revenue. The cost of the electricity for the February revenue totaled \$4,195,943. For February, VCEA's gross margin was approximate -53% and net loss totaled (\$1,767,604). The year-to-date change in net position was (\$3,103,087).

In the Statement of Cash Flows, VCEA cash flows from operations were (\$1,571,782) due to February cash receipts of revenues being less than the monthly cash operating expenses.

Actual vs. Budget Variances for the year to date ending February 28, 2022

Below are the financial statement line items with variances >\$50,000 and 5%

- Electric Revenue - \$399,134 and 7% – favorable variance is due to load being more favorable than planned and the weather has been warmer than forecast.
- Purchased Power – (\$1,076,916) and -17% – favorable variance is due to load being more favorable than planned, weather has been warmer than forecast, and lower power market prices for January and February.

Attachments:

- 1) Financial Statements (Unaudited) February 1, 2022 to February 28, 2022 (with comparative year to date information.)
- 2) Actual vs. Budget for the year to date ending February 28, 2022



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF FEBRUARY 1 TO FEBRUARY 28, 2022

PREPARED ON APRIL 6, 2022

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
FEBRUARY 28, 2022
(UNAUDITED)

ASSETS

Current assets:

Cash and cash equivalents	\$	918,812
Accounts receivable, net of allowance		5,826,084
Accrued revenue		1,698,209
Prepaid expenses		21,243
Other current assets and deposits		1,998,276
Total current assets		<u>10,462,624</u>

Restricted assets:

Debt service reserve fund		1,100,000
Power purchase reserve fund		2,462,533
Total restricted assets		<u>3,562,533</u>

Noncurrent assets:

Other noncurrent assets and deposits		
Total noncurrent assets		-

TOTAL ASSETS	\$	<u>14,025,157</u>
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LIABILITIES

Current liabilities:

Accounts payable	\$	412,776
Accrued payroll		64,455
Interest payable		2,260
Due to member agencies		159,872
Accrued cost of electricity		3,363,964
Other accrued liabilities		(80,848)
Security deposits - energy supplies		1,980,000
User taxes and energy surcharges		94,062
Limited Term Loan		1,120,082
Total current liabilities		<u>7,116,623</u>

Noncurrent liabilities

Term Loan- RCB		
Total noncurrent liabilities		-

TOTAL LIABILITIES	\$	<u>7,116,623</u>
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NET POSITION

Restricted		
Local Programs Reserve		224,500
Restricted		3,562,533
Unrestricted		3,121,501
TOTAL NET POSITION	\$	<u>6,908,534</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF FEBRUARY 1, 2022 TO FEBRUARY 28, 2022
(WITH COMPARATIVE YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING FEBRUARY 31, 2022	YEAR TO DATE
OPERATING REVENUE		
Electricity sales, net	\$ 2,751,191	\$ 6,353,834
TOTAL OPERATING REVENUES	<u>2,751,191</u>	<u>6,353,834</u>
OPERATING EXPENSES		
Cost of electricity	4,195,943	8,734,484
Contract services	140,515	368,494
Staff compensation	95,801	191,481
General, administration, and other	84,378	158,214
TOTAL OPERATING EXPENSES	<u>4,516,637</u>	<u>9,452,673</u>
TOTAL OPERATING INCOME (LOSS)	(1,765,446)	(3,098,839)
NONOPERATING REVENUES (EXPENSES)		
Other Revenue		
Interest income	637	2,315
Interest and related expenses	(2,795)	(6,563)
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>(2,158)</u>	<u>(4,248)</u>
CHANGE IN NET POSITION	(1,767,604)	(3,103,087)
Net position at beginning of period	8,676,138	9,749,097
Net position at end of period	<u>\$ 6,908,534</u>	<u>\$ 6,646,010</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF FEBRUARY 1 TO FEBRUARY 28, 2022
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	<u>FOR THE PERIOD ENDING FEBRUARY 28, 2022</u>	<u>YEAR TO DATE</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 3,917,591	\$ 7,881,178
Payments to purchase electricity	(5,606,047)	(10,618,494)
Payments for contract services, general, and administration	204,255	(103,853)
Payments for staff compensation	(87,581)	(190,935)
Net cash provided (used) by operating activities	<u>(1,571,782)</u>	<u>(1,460,322)</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Principal payments of Debt	(32,944)	(32,944)
Interest and related expenses	(3,219)	(7,089)
Net cash provided (used) by non-capital financing activities	<u>(36,163)</u>	<u>(3,870)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	637	2,315
Net cash provided (used) by investing activities	<u>637</u>	<u>1,678</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	(1,607,308)	(3,069,822)
Cash and cash equivalents at beginning of period	6,088,653	13,639,820
Cash and cash equivalents at end of period	<u>\$ 4,481,345</u>	<u>\$ 6,088,653</u>
Cash and cash equivalents included in:		
Cash and cash equivalents	918,812	918,812
Restricted assets	3,562,533	3,562,533
Cash and cash equivalents at end of period	<u>\$ 4,481,345</u>	<u>\$ 4,481,345</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF FEBRUARY 1 TO FEBRUARY 28, 2022
(WITH YEAR TO DATE INFORMATION)
(UNAUDITED)

	FOR THE PERIOD ENDING FEBRUARY 28, 2022	YEAR TO DATE
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating Income (Loss)	\$ (1,765,446)	\$ (3,098,839)
(Increase) decrease in net accounts receivable	1,206,144.00	1,481,760.59
(Increase) decrease in accrued revenue	-	69,984.26
(Increase) decrease in prepaid expenses	558,068	863,987.00
Increase (decrease) in accounts payable	(3,878)	(31,966.00)
Increase (decrease) in accrued payroll	8,220	546.00
Increase (decrease) in due to member agencies	20,963	41,927.00
Increase (decrease) in accrued cost of electricity	(1,494,299)	(1,968,205.00)
Increase (decrease) in other accrued liabilities	(61,510)	(366,598.00)
Increase (decrease) in user taxes and energy surcharges	(40,044)	(24,700.90)
Net cash provided (used) by operating activities	\$ (1,571,782)	\$ (1,460,322)

VALLEY CLEAN ENERGY
2022 YTD ACTUAL VS. BUDGET
FOR THE YEAR TO DATE ENDING 02/28/22

Description	YTD Actuals	YTD Budget	YTD Variance	% over/-under
Electric Revenue	\$ 3,602,643	\$ 3,355,600	\$ 247,043	7%
Interest Revenues	\$ 1,678	\$ 1,500	\$ 178	12%
Purchased Power	\$ 4,538,541	\$ 5,480,900	\$ (942,359)	-17%
Purchased Power Base	\$ 4,538,541	\$ 4,838,600	\$ (300,059)	-6%
Purchased Power Contingency 2%	\$ -	\$ 642,300	\$ (642,300)	-100%
Labor & Benefits	\$ 95,679	\$ 109,900	\$ (14,221)	-13%
Salaries & Wages/Benefits	\$ 77,674	\$ 90,800	\$ (13,126)	-14%
Contract Labor (SMUD Staff Aug)	\$ -	\$ 4,900	\$ (4,900)	-100%
Human Resources & Payroll	\$ 18,005	\$ 14,200	\$ 3,805	27%
Office Supplies & Other Expenses	\$ 40,597	\$ 16,400	\$ 24,197	148%
Technology Costs	\$ 4,568	\$ 2,900	\$ 1,668	58%
Office Supplies	\$ 24	\$ 200	\$ (176)	-88%
Travel	\$ -	\$ 500	\$ (500)	-100%
CalCCA Dues	\$ 9,115	\$ 10,600	\$ (1,485)	-14%
CC Power	\$ 26,891	\$ 2,000	\$ 24,891	1245%
Memberships	\$ -	\$ 200	\$ (200)	-100%
Contractual Services	\$ 210,924	\$ 209,600	\$ 1,324	1%
Other Contract Services	\$ -	\$ 2,100	\$ (2,100)	-100%
Don Dame	\$ 380	\$ 800	\$ (420)	-53%
SMUD - Credit Support	\$ 50,937	\$ 43,500	\$ 7,437	17%
SMUD - Wholesale Energy Services	\$ 48,987	\$ 48,800	\$ 187	0%
SMUD - Call Center	\$ 65,656	\$ 65,800	\$ (144)	0%
SMUD - Operating Services	\$ 1,108	\$ 5,000	\$ (3,892)	-78%
Commercial Legal Support	\$ -	\$ -	\$ -	100%
Legal General Counsel	\$ 13,983	\$ 12,900	\$ 1,083	8%
Regulatory Counsel	\$ 21,596	\$ 16,600	\$ 4,996	30%
Joint CCA Regulatory counsel	\$ 192	\$ 2,700	\$ (2,508)	-93%
Legislative - (Lobbyist)	\$ 5,000	\$ 5,000	\$ -	0%
Accounting Services	\$ 1,084	\$ 2,200	\$ (1,116)	-51%
Financial Consultant	\$ -	\$ 2,100	\$ (2,100)	-100%
Audit Fees	\$ 2,000	\$ 2,100	\$ (100)	-5%
Marketing	\$ 17,053	\$ 20,500	\$ (3,447)	-17%
Marketing Collateral	\$ 17,053	\$ 20,000	\$ (2,947)	-15%
Community Engagement Activities & Sponsorships	\$ -	\$ 500	\$ (500)	-100%
Programs	\$ 1,058	\$ 14,500	\$ (13,442)	-93%
Program Costs	\$ 1,058	\$ 14,500	\$ (13,442)	-93%
Rents & Leases	\$ 3,200	\$ 1,800	\$ 1,400	78%
Hunt Boyer Mansion	\$ 3,200	\$ 1,800	\$ 1,400	78%
Other A&G	\$ 28,932	\$ 28,000	\$ 932	3%
Development - New Members	\$ -	\$ 2,100	\$ (2,100)	-100%
Strategic Plan Implementation	\$ 5,892	\$ 2,100	\$ 3,792	181%
PG&E Data Fees	\$ 21,730	\$ 23,000	\$ (1,270)	-6%
Insurance	\$ 1,310	\$ 700	\$ 610	87%
Banking Fees	\$ -	\$ 100	\$ (100)	-100%
Miscellaneous Operating Expenses	\$ 51	\$ 600	\$ 600	100%
Contingency	\$ -	\$ 20,000	\$ 20,000	100%
TOTAL OPERATING EXPENSES	\$ 4,936,036	\$ 5,902,200	\$ (925,015)	-16%
Interest on RCB loan	\$ 3,768	\$ 3,400	\$ 368	11%
Interest Expense - Bridge Loan	\$ -	\$ -	\$ -	100%
NET INCOME	\$ (1,335,483)	\$ (2,548,500)	\$ 1,171,868	-46%

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Legislative Update – Pacific Policy Group

Date: April 14, 2022

Staff, VCE’s lobby services consultant at Pacific Policy Group, and the Community Advisory Committee’s Legislative - Regulatory Task Group continues to meet and discuss legislative matters. Below is a summary:

The month of April is always one of the busiest months of the legislative session and this year it’s shaping up as a “return to normal.” Over the past two legislative sessions, COVID forced the Legislature to significantly curtail the number of bill proposals considered; this session there are no limitations on the amount of bills that legislators can pursue, and committees were conducting hearings throughout the month of March. In addition, some committees have begun to require lead witnesses to deliver their testimony in person. Despite these developments, the day-to-day business of the Legislature mostly remains in a virtual setting. In addition, any in-person meetings that are happening are not taking place in the Capitol as the legislators and staff have all moved to their temporary offices while the Capitol annex building is made over.

In addition to policy bills, the Legislature is discussing and vetting the Governor’s proposed 2022-23 budget which came in at \$286.4 billion, a 9% increase from last year. This includes a \$21 billion discretionary surplus, plus billions more for schools, pension payments and reserve accounts. The Legislature’s approach so far has been to defer nearly all of its decisions on the Governor’s proposal to later in the Spring after the Governor releases the May Revision to the budget, and some reports have indicated that the surplus will grow anywhere from \$5 billion to \$20 billion.

VCE’s current legislative efforts have concentrated on the following bills:

1. AB 1814 (Grayson) Transportation Electrification Funds: Community Choice Aggregators

Summary: AB 1814 would authorize Community Choice Aggregators (CCAs) to submit applications to the California Public Utilities Commission (CPUC) to receive funding to administer transportation electrification programs in their service areas.

Specifically, this bill would explicitly authorize CCAs to file applications for programs and investments to accelerate widespread transportation electrification. In order to submit these applications, CCAs would be regulated to meet all of the same requirements that IOUs are currently required to meet.

This is CalCCA's sponsored bill for the 2022 legislative session. The bill is consistent with the VCE Legislative Platform, specifically Provision 10 regarding Local Economic Development and Environmental Objectives.

At the time this staff report was drafted, the prospects for AB 1814 this legislative session are uncertain. The bill had been scheduled to be heard in Assembly Utilities & Energy but was pulled from the hearing at the request of the author. AB 1814 is facing opposition from the California Coalition of Utility Employees and all three investor-owned utilities.

Additional Information:

- This bill is sponsored by CalCCA
- VCE has submitted a support position
- Next Hearing; The bill has been referred to Asm. Utilities & Energy Committee and is awaiting a hearing date.
- Bill language: [AB 1814](#)

2. 1287 (Bradford) CCA and ESP Financial Security Requirements

Summary: This bill would require the posted bond amount, or demonstrated insurance amount, at the time of registration by an electric service provider or a community choice aggregator to be no less than \$500,000. The bill would also require the commission to update the financial security requirements for electric service providers and community choice aggregators to instead include costs for no less than 12 months of incremental procurement incurred by the provider of last resort, upon the customers' involuntary return.

Specifically, the bill will:

- 1) Amend current law that requires a CCA or ESP to post a bond or demonstrate insurance sufficient to cover the reentry fees of customers who are involuntarily returned to an investor-owned utility to instead require a minimum bond or insurance in the amount of \$500,000.
- 2) In calculating the insurance or bonding requirement, the PUC shall include costs for no less than 12 months of incremental procurement incurred by the provider of last resort. SB 1287 will significantly increase the amount of insurance that VCE will need to hold to cover the unlikely event that VCE folds and its customers are involuntarily returned to PG&E. The \$500,000 minimum figure and the requirement that the insurance amount include incremental procurement made by the IOU does not factor in already contracted energy for VCE's customers. In addition, calculating the incremental procurement will be incredibly complex and challenging and will contribute to additional unnecessary cost to VCE. Lastly, this requirement will create another significant obstacle for communities who wish to explore CCA and for all

practical purposes prevent new CCAs from forming – especially concerning for under-represented and under-resourced portions of the State (e.g. Central Valley).

Additional Information

- Next hearing: The bill has been referred to the Senate Energy, Utilities & Communications Committee but has yet to be scheduled for a hearing.
- The VCE Board approved an “oppose” position and staff is working on letter to register this position with the committee.
- Bill language: [SB 1287](#)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: April 14, 2022

Please find attached Keyes & Fox's March 2022 Regulatory Memorandum dated April 6, 2022, 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 6, 2022.

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: Regulatory Update

Date: April 6, 2022

Summary

Keyes & Fox LLP and EQ Research, LLC, are pleased to provide VCE’s Board of Directors with this monthly informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC). A [Glossary of Acronyms](#) used is provided at the end of this memo.

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

- **Ensuring Summer 2021 Reliability:** On March 2, 2022, PG&E and the Public Advocates Office (PAO) filed Responses to the Petition for Modification of D.21-12-015 filed by VCE, Polaris and TeMix (the Pilot Partners) relating to VCE’s dynamic rates pilot for agricultural irrigation pumping customers (Pilot). The Pilot Partners filed a Reply to those Responses on March 14, 2022. On March 3, 2022, PG&E filed a Reply to the Pilot Partners’ Protest of PG&E’s Advice Letter 6495-E. Authorization of VCE’s administrative expenses and reimbursement of vendor expenses remains pending before the Commission.
- **IRP Rulemaking:** On March 29, 2022, a Proposed Decision addressing cost allocation and recovery under the Modified Cost Allocation Mechanism (MCAM) was issued. The Final Decision is expected on or after May 5, 2022 and will be followed by Tier 2 Advice Letters from IOUs describing their implementation of the MCAM. VCE’s next IRP is due November 1, 2022.
- **RPS Rulemaking:** On March 10, 2022, the Joint IOUs filed a Motion requesting authorization to submit their proposed modifications to the Market Offer Process via Tier 3 Advice Letter on April 28, 2022. The proposed modifications would allow implementation of Market Offer REC transactions to coincide with the start of Voluntary Allocation deliveries and provide cost savings. VCE’s 2022 RPS Procurement Plan is due in late spring or summer (exact date TBD) and its 2021 RPS Compliance Report is due August 1, 2022.
- **PCIA Rulemaking:** On April 4, 2022, PG&E submitted Tier 2 advice letter proposing its pro forma Market Offer Contract, and requested proposed contract become effective on May 4, 2022, with protests/responses due April 25, 2022. On February 28, 2022, PG&E submitted Tier 2 advice letter proposing its pro forma Voluntary Allocation Contract and providing an updated timeline.

Additionally, on March 8, 2022, Rulemaking 17-06-026 was reassigned from Commissioner Martha Guzman Aceves to Commissioner John R.D. Reynolds.

- **NEW PG&E 2021 ERRRA Compliance:** PG&E filed its 2021 ERRRA Compliance application on February 28, 2022, in which it requests the CPUC find that the company complied with its CPUC-approved Bundled Procurement Plan, reasonably managed utility-owned generation facilities, and made other reasonable expenditures and accounting entries consistent with CPUC directives.
- **PG&E Phase 2 GRC:** The single carryover issue of material fact about the Marginal Generation Capacity Cost (MGCC) Property Tax Adder was resolved with issuance of a Final Decision adopting the Joint Stipulation on March 18, 2022. PG&E's MGCC Report was filed March 17, 2022, and PG&E filed its non-NEM export compensation proposal for BEV on March 24, 2022.
- **PG&E Phase 1 GRC:** PG&E filed an Amended Application and submitted supplemental testimony on wildfire mitigation programs in March 2022. A March 10 ALJ Ruling denied the Motion to Shorten Time filed by TURN, PG&E, and PAO, and suspended the March 30, 2022, deadline for intervenor testimony pending a ruling on their February 16, 2022, Motion to Modify the Schedule. PG&E filed its recorded expense and capital cost data for 2021 on March 9, 2022. Public Participation Hearings were held on three days during March 2022 regarding the February 2022 joint report, submitted by PG&E and Caltrain, on the status of the third-party audit of costs that PG&E will incur to upgrade the East Grand and FMC substations in connection with Caltrain's project to electrify its commuter rail system between San Jose and San Francisco.
- **RA Rulemaking (2023-2024):** On March 18, 2022, the CPUC issued a Decision on Phase 1 of Implementation Track Modifications that made several changes to the CPE, including changes encouraging LSEs to self-show resources and modifying the timeline of CPE activities. This Decision concludes Phase 1 of the Implementation Track Modifications.
- **RA Rulemaking (2021-2022):** On March 18, 2022, the CPUC issued a Proposed Decision that would deny OhmConnect's September 2021 Petition for Modification of D.20-06-031 to increase the demand response Maximum Cumulative Capacity limit of 8.3% to 11.3%.
- **PG&E 2020 ERRRA Compliance:** On March 16, 2022, the CPUC issued a Proposed Decision for Phase 1 in which the Settlement Agreement filed by the parties on October 15, 2021, was found to be reasonable and therefore resolves all the disputed issues in this proceeding. Phase 2 of the proceeding, which remains open, will address issues related to unrealized sales and revenues resulting from PG&E's Public Safety Power Shutoff events in 2020.
- **Provider of Last Resort Rulemaking:** Comments on the March 7, 2022, workshop to discuss the proposed framework for considering the issues and recommendations resulting from the previous Phase 1 workshop were filed March 28, 2022.
- **RA Rulemaking (2019-2020):** No updates this month. Rulemaking is effectively closed except for one outstanding application for rehearing that was filed in August 2020.
- **Utility Safety Culture Assessments:** A telephonic Prehearing Conference was held on March 30, 2022, to determine the parties, scope, schedule of the proceeding, and other procedural matters.

- **2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking:** No updates this month. The CPUC issued D.21-12-006 adopting a Wildfire Fund NBC of \$0.00652/kWh for January 1, 2022, through December 31, 2022.
- **Investigation into PG&E’s Organization, Culture and Governance:** No updates this month except to note that on March 7, 2022, Investigation 15-08-019 was reassigned from President Marybel Batjer to Commissioner John R.D. Reynolds.
- **PG&E Regionalization Plan:** No updates this month. The statutory deadline for a final decision was extended to June 30, 2022, in an order issued December 16, 2021.
- **PG&E 2022 ERRA Forecast:** No updates this month. On February 11, 2022, the CPUC issued D.22-02-002, resolving all issues and closing the proceeding. The final system average PCIA rate for the 2017 vintage is \$0.01897/kWh.
- **PG&E 2019 ERRA Compliance:** No update this month except to note that Opening Briefs are due May 6, 2022. On March 23, 2022, consolidated Application (A.) 20-02-009, A.20-04-002 and A.20-06-001 was reassigned from Commissioner Martha Guzman Aceves to Commissioner John R.D. Reynolds.
- **Direct Access Rulemaking:** On March 1, 2022, Rulemaking 19-03-009 was reassigned from Commissioner Martha Guzman Aceves to Commissioner John R.D. Reynolds. In August 2021, CalCCA filed a response to a July 2021 application for rehearing filed by a coalition of parties supporting expansion of Direct Access in which the coalition of parties challenged a June CPUC decision recommending against any re-opening of Direct Access. This proceeding is otherwise closed.

Ensuring Summer 2021 Reliability

On March 2, 2022, PG&E and the Public Advocates Office (PAO) filed Responses to the Petition for Modification of D.21-12-015 filed by VCE, Polaris and TeMix (the Pilot Partners) relating to VCE’s dynamic rates pilot for agricultural irrigation pumping customers (Pilot). The Pilot Partners filed a Reply to those Responses on March 14, 2022. On March 3, 2022, PG&E filed a Reply to the Pilot Partners’ Protest of PG&E’s Advice Letter 6495-E.

Background: CAISO experienced rolling blackouts (Stage 3 Emergency) on August 14, 2020, and August 15, 2020, when a heatwave struck the Western U.S. and there was insufficient available supply to meet high demand. The OIR was issued to ensure reliable electric service in the event that an extreme heat storm occurs in the summer of 2021.

D.21-03-056 instituted modifications to the planning reserve margin (PRM), effectively increasing the PRM beginning summer 2021 from 15% to 17.5%. For 2021, this results in a minimum target of incremental procurement of 450 MW for PG&E, 450 MW for SCE, and 100 MW for SDG&E. The net costs associated with this incremental procurement would be shared by all customers (including CCA customers) in each IOU’s service territory. It also authorized the IOUs to implement a Flex Alert paid media campaign program to encourage ratepayers to voluntarily reduce demand during moments of a stressed grid, adopts modifications and expansions to the Critical Peak Pricing (CPP) program, and established an emergency load reduction program.

D.21-12-015 approved VCE’s dynamic rate Pilot for three years (2022-2024) and directed that it start no later than May 1, 2022. VCE’s Pilot will test whether agricultural irrigation pumping customers, which consume on average 18% of VCE’s total annual load, can shift load to more optimal times of the day, thereby saving money, reducing burden to the grid and reducing GHG impacts. Customers

participating in VCE's Pilot will receive a "shadow bill." PG&E will continue to bill participating customers based on existing tariffs, but the shadow bill will show the customer savings under the Pilot dynamic rate, and VCE will pay customers for the difference between the shadow bill and the customer's usage under the otherwise applicable tariff. The Pilot scale will be limited to 5 MW of peak load. PG&E will provide funds to or reimburse VCE for crediting any savings realized by the customers with respect to the delivery component of the VCE dynamic rate Pilot in the customers' shadow bills. D.21-12-015 authorized new funding of \$3.25 million for the pumping automation technology, pricing platform and vendor fees and PG&E's administration of the three-year Pilot.

On January 5, 2022, VCE submitted Advice Letter 11-E in accordance with D.21-12-015. On January 25, 2022, PG&E protested VCE's Advice Letter, to which VCE replied on January 31, 2022.

On January 31, 2022, the Pilot Partners filed a Petition for Modification (PFM) of D.21-12-015 to increase the budget for this Pilot to cover VCE's administrative costs, and the Pilot Partners also filed a Motion to Shorten Time for comments on the PFM as well as on the Commission's proposed decision resolving the PFM. PAO filed a Response to the Pilot Partners' Motion to Shorten Time, on February 9, 2022, to which the Pilot Partners replied on February 18, 2022.

On February 4, 2022, PG&E submitted Advice Letter 6495-E, which the Pilot Partners Protested on February 24, 2022. The Pilot Partners objected to the pricing methodology proposed by PG&E, on the grounds that it is inconsistent with the UNIDE framework because the differentials between peak and off-peak are too small to effectively test the impacts of dynamic pricing. The Pilot Partners objected to PG&E's attempt to establish various participation rules for the Pilot, including determining eligibility for various types of net energy metering (NEM) customers and other participation requirements.

D.21-12-015 also creates an additional procurement mandate of 2,000 MW-3,000 MW for 2023, allocated exclusively to the three large IOUs (900 MW-1,350 MW each for PG&E and SCE, and 200 MW-300 MW for SDG&E). It requires all incremental resources procured as a result of this proceeding to be available during the net peak. It adopted numerous additional demand-side and supply-side changes aimed at ensuring sufficient resource availability to meet the summer net peak load.

Details: The PAO's Response to the PFM opposed to the Pilot Partners' request for an increased budget. PG&E's Response to the PFM did not oppose VCE's request for additional funding to cover administrative costs, but stated that PG&E would not release any funds to enable VCE to pay its vendors until the Commission issued a decision resolving the PFM, asserted that VCE be required to prepare semiannual Demand Response Emerging Technologies Reports (DRET) with numerous elements, and asserted numerous PG&E management responsibilities for the Pilot to be reflected in contracts with TeMix and VCE. PG&E's Reply to the Pilot Partners' Protest to Advice Letter 6495-E, submitted on February 4, 2022, asserted that PG&E would file a supplement to its advice letter to revise the delivery component of the Pilot rate, but reiterated that it would not enter into a contract with nor release reimbursement of expenses to VCE prior to the Commission's decision on the PFM.

On March 14, 2022, the Pilot Partners filed a Reply to the March 2 Responses of PG&E and the PAO to the PFM, requesting the Commission to direct PG&E to release at least \$1,197,118 in previously authorized funding to enable the Pilot to launch by May 1, 2022, and authorization of VCE's administrative costs, including DRET reporting, if required, and asserting a narrower role for PG&E in the Pilot administration.

Analysis: VCE is seeking approval and clarification of its advice letter and PFM to facilitate implementation of the Pilot, authorize reimbursement of VCE's administrative expenses as well as the release of about \$1.197 million to cover vendor expenses to-date and enable the Pilot to begin on May 1, 2022. PG&E was resistant to the authorization of VCE's Pilot in its comments to the Commission, and its actions since the Pilot was approved have had the impact of delaying Pilot implementation and hampering VCE's ability to pay its vendors. In its advice letter and other filings,

PG&E has asserted control over various elements of the Pilot that were not authorized by the Commission and the utility has not yet revised its proposed design for the delivery component of the Pilot rate.

Next Steps: The Commission's Energy Division has yet to resolve VCE's Advice Letter 11-E, PG&E's Advice Letter 6495-E, the PFM, or the Motion to Shorten Time. Absent a Commission ruling on the Pilot Partners' Motion to Shorten Time, a Commission Decision on the PFM is expected no earlier than April 21, 2022. D.21-12-015 requires that the Pilot launch by May 1, 2022.

Additional Information: VCE, Polaris, and TeMix [Reply](#) to PAO & PG&E Responses (March 14, 2022); PAO [Response](#) to VCE, Polaris, and TeMix Reply (March 2, 2022); PG&E [Response](#) to VCE, Polaris, and TeMix Reply (March 2, 2022); VCE, Polaris, and TeMix [Protest](#) of PG&E [AL 6495-E](#) (February 24, 2022); VCE, Polaris, and TeMix [Reply](#) to PAO Response (February 18, 2022); PAO [Response](#) to Motion to Shorten Time (February 9, 2022); PG&E [AL 6495-E](#) (February 4, 2022) and [Substitute Sheets](#) for AL 6495-E (March 29, 2022); PG&E [AL 6496-E](#) on Emergency Load Reduction Program Pilot (February 4, 2022); VCE [Reply](#) to PG&E Protest of VCE AL 11-E (January 31, 2022); VCE, TeMix and Polaris [Petition for Modification](#) (January 31, 2022); [Motion](#) to Shorten Time (January 31, 2022); PG&E [Protest](#) of VCE AL 11-E (January 25, 2021); [D.21-12-069](#) correcting errors in D.21-12-014 (December 27, 2021); [D.21-12-015](#) (December 6, 2021); [D.21-09-045](#) denying rehearing of D.21-03-056 (September 23, 2021); [D.21-06-027](#) (approved June 24, 2021); [Order](#) denying applications for rehearing (May 20, 2021); [D.21-03-056](#) (March 25, 2021); [D.21-02-028](#) directing IOUs to seek additional capacity for summer 2021 (February 17, 2021); [Scoping Memo and Ruling](#) (December 21, 2020); [Order Instituting Rulemaking](#) (November 20, 2020); Docket No. [R.20-11-003](#).

IRP Rulemaking

On March 29, 2022, a Proposed Decision addressing cost allocation and recovery under the Modified Cost Allocation Mechanism (MCAM) was issued. The Final Decision is expected on or after May 5, 2022 and will be followed by Tier 2 Advice Letters from IOUs describing their implementation of the MCAM. VCE's next IRP is due November 1, 2022.

Background: On September 1, 2020, LSEs including VCE filed their 2020 IRPs, which included updates on each LSE's progress towards completing additional system RA procurement ordered for the 2021-2023 years under D.19-11-016. The September 24, 2020, Scoping Memo and Ruling clarified that the issues planned to be resolved in this proceeding are organized into the following tracks: General IRP oversight issues, procurement track, Preferred System Portfolio development, the Transmission Planning Process, and Reference System Portfolio Development.

D.20-12-044 established a backstop procurement process that would apply to LSEs that did not opt-out of self-procuring their capacity obligations under D.19-11-016. It requires LSEs to file bi-annual (due February 1 and August 1) updates on their procurement progress relative to the contractual and procurement milestones defined in the decision.

D.21-06-035 established a new procurement mandate of 11,500 MW of additional zero-emitting or RPS-eligible net qualifying capacity to be procured by 2026 by LSEs through long-term (10 or more years) contracts. It specifies that 2,000 MW of the procurement mandate required for 2026 must be "long-lead-time" (LLT) resources, with half coming from long-duration storage and the other half from zero-emitting resources with an 80% or greater capacity factor (e.g., geothermal and biomass). VCE is permitted to use resources that were not online or in-development and contracted and approved by its Board as of June 30, 2020, to count towards its procurement requirements (i.e., contracts approved by the VCE Board and executed after June 30, 2020, can count towards VCE's procurement mandates). LSEs will **not** be given the option to opt out up-front from providing their proportional share of the capacity required by D.21-06-035. The February 1, 2023, compliance filing

will be the first check on the status of LLT resource procurement. **VCE's obligations** are 8 MW by 2023, 23 MW by 2024, 6 MW by 2025, 4 MW of long-duration storage and 4 MW of zero-emitting resources by 2026. In addition, 10 MW out of its 2023-2025 procurement requirements must be met through zero-emitting generating capacity that is available 5-10pm daily.

D.22-02-004 adopted a 2021 Preferred System Plan (PSP and certified VCE's 2020 IRP. VCE's next IRP is due November 1, 2022. The 2021 PSP is a statewide resource portfolio that meets a statewide 38 MMT GHG target for the electric sector in 2030. It is derived from an aggregation of individual LSE IRPs with adjustments to extend the timeframe beyond 2030 to 2032 for transmission planning purposes and to add the resources required in D.21-06-035 for mid-term reliability (MTR) purposes. The decision recommends that CAISO use the 38 MMT PSP portfolio as both the reliability base case and the policy-driven base case for study in its 2022-2023 Transmission Planning Process, which is a more aggressive GHG reduction portfolio than the 46 MMT portfolio used in 2020 IRPs. D.22-02-004 also results in the following new resource build by 2032, by technology: Gas: 0 MW; Biomass: 134 MW; Geothermal: 1,160 MW; Wind: 3,531 MW; Wind (New Transmission): 1,500 MW; Offshore Wind: 1,708 MW; Utility-Scale Solar: 17,506 MW; Battery Storage: 13,571 MW; Long-duration Storage: 1,000 MW; Load Shed DR: 441 MW.

Details: A Proposed Decision on the Modified Cost Allocation Mechanism (MCAM) was issued on March 29, 2022, that addresses allocation and recovery of net costs of electric resource procurement for opt-out LSEs (i.e., those LSEs who elected not to self-procure) and backstop procurement obligations.

The Proposed Decision addresses the issue raised by CalCCA (May 14, 2022 Petition for Modification of D.19-11-016) of whether the non-bypassable charge should appear on retail customers' bills or be directly billed to the LSE. The PD would not adopt CalCCA's proposal for the direct billing of the full MCAM costs from the IOU to the non-IOU LSE, and instead cites the Public Utilities Code's express direction that these costs be allocated "on a fully nonbypassable basis" to "customers" (Section 365.1(c)(2)(i)-(iii)).

The PD also addresses how the costs of backstop procurement of associated with D.19-11-016 and D.21-06-035 will be allocated to customers. Due to the short time frame for such procurement, the IOU should either choose a lower NPV bid from an existing solicitation or conduct an entirely new solicitation to procure backstop capacity, depending on the status and quality of existing bids and other market factors. If the IOU chooses the new solicitation option, then all costs will be attributable to the LSE whose procurement was deficient. If a bid from an existing solicitation is selected, then the IOU's administrative costs will be pro-rated between bundled and Deficient LSE customers while the contract costs for the backstop procurement will be fully allocated to the customers of the Deficient LSE. If the PD is approved, customers of the Deficient LSE would pay the above-market costs of the capacity through a non-bypassable charge while the backstop LSE's customers pay their LSE directly for the market price of the capacity and RPS RECs.

Analysis: The Proposed Decision regarding the MCAM would clarify that procurement costs will only be recovered from bundled service customers, Opt-Out LSE customers, and potentially Deficient LSEs rather than all customers in an IOU's service territory. If approved, cost recovery under MCAM will occur through a non-bypassable charge on retail customers' bills. Resource Adequacy benefits would also be allocated on the same basis as costs for purposes of the MCAM. Additionally, if the PD is approved, an LSE may acquire unbundled RECs but the transfer of RECs to LSEs must be accompanied by a forward sale of associated energy.

Next Steps: A Final Decision on the MCAM is expected on or after May 5, 2022, after which the IOUs will file a Tier 2 Advice Letter to implement the MCAM no more than 60 days following the Final Decision. VCE's next IRP is November 1, 2022. The CPUC will issue a Ruling by June 15, 2022, providing additional direction and detail on the requirements for LSE 2022 IRPs.

Additional Information: [Proposed Decision](#) on the Modified Cost Allocation Mechanism (March 29, 2022); [D.22-02-004](#) adopting 2021 Preferred System Plan (December 22, 2021); CCA [Motion](#) for Clarification (December 13, 2021); [D.21-06-035](#) establishing a 11,500 MW by 2026 procurement mandate (June 24, 2021); [D.21-02-028](#) recommending portfolios for CAISO's 2021-2022 TPP (February 17, 2021); [D.20-12-044](#) establishing a backstop procurement process (December 22, 2020); [Scoping Memo and Ruling](#) (September 24, 2020); [Resolution E-5080](#) (August 7, 2020); [Order Instituting Rulemaking](#) (May 14, 2020); Docket No. [R.20-05-003](#).

RPS Rulemaking

On March 10, 2022, the Joint IOUs filed a Motion requesting authorization to submit their proposed modifications to the Market Offer Process via Tier 3 Advice Letter on April 28, 2022. The proposed modifications would allow implementation of Market Offer REC transactions to coincide with the start of Voluntary Allocation deliveries and provide cost savings.

Background: This proceeding addresses ongoing RPS issues. VCE submitted its Final 2020 RPS Procurement Plan on February 19, 2021, and its 2020 RPS Compliance Report on August 2, 2021.

D.22-01-004 directed VCE to include in its Final 2021 RPS Procurement Plan due February 17, 2022, a discussion "explain[ing] how mid-term reliability procurement obligations impact RPS compliance requirements and how they are included in the quantitative assessment" and update its Project Development Status section to provide additional narrative description of project status. In addition to receiving praise for its sections on portfolio diversity and reliability, VCE is identified as falling under the category of having its current contracts forecasted to meet its 65% long-term contract requirement in contrast to numerous other CCAs and ESPs. D.22-01-004 declined a request by CCAs to allow party comments early in the process on the timing and structure of RPS Procurement Plan filings, finding that the CPUC "do[es] not expect any substantial new filing requirements" and that the requirements have been well established by now. D.22-01-004 also approved a request by several CCAs and directed Energy Division to set a process whereby they inform a retail seller that its Final RPS Plan met the expectations of the Commission.

A pending Joint Motion by IOUs dated December 8, 2021 requests that the CPUC (1) expand the scope of this proceeding to address whether RECs retain their original PCC classification upon allocation under the Voluntary Allocation process; (2) issue guidance on the issue of the PCC classification of allocated RECs before LSEs are required to decide whether to accept allocations on May 1, 2022; and (3) clarify that pro forma Allocation Contracts will be reviewed in early 2022 via Tier 2 advice letter and that only Allocation Contracts materially deviating from the pro forma would be subject to further review through a Tier 1 Advice Letter.

Details: The Joint IOUs March 10, 2022, Motion seeks authorization for review via Tier 3 Advice Letter submission of their proposed modifications to the Market Offer Process. The proposed modifications would allow implementation of Market Offer transactions on January 1, 2023, to coincide with delivery of Voluntary Allocations, thereby generating revenue from the sale of RECs and reducing above-market costs "to benefit bundled service and departing load customers by optimizing the IOU's PCIA portfolios."

In D.22-01-025, the CPUC found that Gexa, an ESP that is currently not serving any load, met its procurement quantity requirement for the Compliance Period 2014-2016 and retired sufficient RECs. The decision found, however, that by excluding certain non-modifiable standard terms and conditions in a RPS procurement contract with NextEra Energy Marketing, LLC, Gexa was out of compliance with the requirements in D.08-04-009, D.10-03-021, D.11-01-025, and D.13-11-024. The non-modifiable standard terms and conditions relate to transfer of RECs, tracking of RECs in WREGIS and compliance with applicable law. Gexa retroactively added the non-modifiable and certain modifiable standard terms and conditions to its contract after the Compliance Period had closed.

Despite this, the CPUC imposed a fine of \$352,500 for the period that the REC Agreement underlying Gexa's Compliance Report was out of compliance with the applicable RPS program rules.

Analysis: VCE has now met its 2021 RPS Procurement Plan requirements. D.22-01-025 provides another example of how the CPUC has strictly interpreted RPS compliance requirements and issued sizeable penalties in cases of non-compliance. The Commission refused to permit retroactive RPS procurement contract amendment to comply with the requirement to include the nonmodifiable terms and conditions. In addition, the Commission's finding that Gexa complied with the long-term contract requirement warned was limited to the decision, and provided "in the future, we shall not accept any long-term contract that fails to demonstrate the required term of at least ten years."

Next Steps: VCE's draft 2022 RPS Procurement Plan will be due in late spring or summer 2022 (exact date to be determined), and its RPS Compliance Report will be due August 1, 2022. R.18-07-003 is expected to close in September 2022, with a new proceeding to be opened to address RPS issues going forward.

If authorized, the Joint IOUs will seek review of the Market Offer Process through a Tier 3 Advice Letter submitted **April 28, 2022**.

Additional Information: [Joint Motion](#) by IOUs Concerning Review of Market Offer Process (March 10, 2022); [VCE's Final 2021 RPS Procurement Plan](#) (February 17, 2022); [D.22-01-025](#) fining Gexa for RPS non-compliance (February 1, 2022); [D.22-01-004](#) on draft 2021 RPS Procurement Plans (January 18, 2022); [D.21-12-032](#) modifying the ReMAT tariff (December 16, 2021); [D.21-11-029](#) amending RPS confidentiality rules (November 19, 2021); [Petition for Modification](#) of D.20-10-005 on ReMAT pricing (October 8, 2021); [Ruling](#) aligning IOU RPS Procurement Plan requirements with PCIA decision (May 26, 2021); [Ruling](#) establishing issues and schedule for 2021 RPS Procurement Plans (March 30, 2021); [D.21-01-005](#) directing retail sellers to file final 2020 RPS Procurement Plans (January 20, 2021); [Ruling](#) on [Staff proposal](#) aligning RPS/IRP filings (September 18, 2020); [Scoping Ruling](#) (November 9, 2018); Docket No. [R.18-07-003](#).

PCIA Rulemaking

On April 4, 2022, PG&E submitted Tier 2 advice letter proposing its pro forma Market Offer Contract, and requested proposed contract become effective on **May 4, 2022**, with protests/responses due **April 25, 2022**. On February 28, 2022, PG&E submitted Tier 2 advice letter proposing its pro forma Voluntary Allocation Contract and providing an updated timeline. Additionally, on March 8, 2022, Rulemaking 17-06-026 was reassigned from Commissioner Martha Guzman Aceves to Commissioner John R.D. Reynolds.

Background: D.18-10-019 was issued on October 19, 2018, in Phase 1 of this proceeding and left the current PCIA in place, maintained the current brown power index, and adopted revised inputs to the benchmarks used to calculate the PCIA for energy RPS-eligible resources and resource adequacy capacity. Phase 2 relied primarily on a working group process to further develop a number of PCIA-related proposals. Three workgroups examined three issues: (1) issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues; (2) issues to be resolved in early 2020: Prepayment; and (3) issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

D.20-08-004, in response to the recommendations of Working Group 2, (1) adopted the consensus framework of PCIA prepayment agreements; (2) adopted the consensus guiding principles, except for one principle regarding partial payments; (3) adopted evaluation criteria for prepayment agreements; (4) did not adopt any proposed prepayment concepts; and (5) clarified that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two.

The Phase 2 Decision, D.21-05-030, addressed the recommendations of PCIA Working Group 3 and removed the cap and trigger for PCIA rate increases, authorized new Voluntary Allocation, Market Offer, and Request for Information processes for RPS contracts subject to the PCIA, and approved a process for increasing transparency of IOU RA resources. However, it did not provide unbundled customers proportional access to system and flexible RA products through the RA voluntary allocation and market offer process proposed by PCIA Working Group 3. Likewise, it declined to provide unbundled customers any access to GHG-Free energy on a permanent basis.

The CCA Parties' Application for Rehearing of D.21-05-030 challenges the Decision's rejection of the RA voluntary allocation and market offer and GHG-free energy allocation. It argues that D.21-05-030 violates Public Utilities Code Section 366.2(g), which guarantees CCA customers the full benefit of the resources for which they bear cost responsibility through the PCIA charge. While CCA customers pay for the RA and GHG-Free products in the PCIA portfolio, the Phase 2 Decision, provides only bundled customers preferential access to RA products and no access to GHG-Free energy on a long-term basis. The CCA Parties argue that since D.21-05-030 effectively requires unbundled customers to pay equally for benefits only bundled customers receive, the Phase 2 Decision also violates the Section 365.2 prohibition against cost-shifting among unbundled and bundled customers.

A Staff Proposal on which the August Ruling requested comments would move the Market Price Benchmark calculation date up by one month – from November 1 to October 1 – to allow for a “normal” proceeding schedule and enable flexibility in addressing last-minute issues. Staff's analysis found that the effects of changes in the forecast RPS and RA adders on PCIA rates are relatively small and concluded that the largest driver of changes to PCIA rates would be the energy index.

D.22-01-023 modified the PCIA market price benchmark release date to October 1 and the deadline for ERRA forecast applications to May 15 to enable the Commission to timely issue decisions on ERRA forecast applications. It adopted party proposals to establish a policy for disposition of the year-end balance in the ERRA account and to modify the calculation of the ERRA trigger point and threshold. It also adopted party proposals to support efficient party access to ERRA forecast proceeding data.

It kept the proceeding open to consider additional Phase 2 issues, including:

- Whether greenhouse gas-free resources are under-valued in the PCIA, and if so, whether to adopt an adder or allocation mechanism.
- Whether to adopt a new method to include long-term fixed-price transactions in calculating the Renewables Portfolio Standard adder.
- Whether to modify the calculation of the PCIA energy index market price benchmark.
- Whether to provide CCAs with access to confidential, market sensitive ERRA monthly reports information for the non-proceeding purpose of creating PCIA rate forecasts.

Details: PG&E submitted, in accordance with D.22-01-004, two proposed contracts for PCIA-eligible RPS resources: AL 6517-E (February 28, 2022) proposing a Voluntary Allocation Contract and AL 6551-E (April 4, 2022) proposing a Market Offer Contract.

AL 6517-E Voluntary Allocation Contract proposal

Since PG&E's Voluntary Allocation Contract is a confirmation to PG&E's Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (Master Agreement), similar to the existing confirmation used in PG&E's bundled RPS energy sales, Voluntary Allocation participants will need a Master Agreement in place with PG&E prior to execution of the Voluntary Allocation Contract.

The terms of the proposed Voluntary Allocation Contract include:

- LSE's are allowed to make a short-term or long-term allocation election for a "slice" of the PCIA-eligible RPS portfolio in proportion to the LSE's vintaged allocation share, which is based on the LSE's forecasted annual load share.
- Allocation elections must be made in 10% increments of the LSE's forecasted annual load share, and LSE's will pay the applicable year's market price benchmark (MPB) for RPS attributes received.
- Long-term allocations are fixed over the delivery period of the Voluntary Allocation Contract and once accepted may not be declined in future years.
- A long-term allocation election is set as a fixed percentage of the LSE's forecasted annual load share, and both the forecasted annual load share and the RPS energy delivery amounts will change from year-to-year based on updated forecasts of annual loads.
- LSEs are able to resell their Voluntary Allocation shares of RPS energy, subject to the same RPS compliance requirements as IOU sales, and LSE reporting requirements will be established in the RPS proceeding.

No protests were filed, and PG&E's requested effective date was March 30, 2022.

AL 6551-E Market Offer Contract proposal

PG&E submitted the Tier 2 Advice Letter 6551-E requesting approval of a pro forma Market Offer Contract for Power Charge Indifference Adjustment (PCIA)-eligible Renewables Portfolio Standard (RPS) resources, on April 4, 2022, as required by D.22-01-004. PG&E requests this Tier 2 AL submittal become effective on **May 4, 2022**. Protests/responses are due **April 25, 2022**.

This proposed Market Offer Contract is specific to the requirement of D.21-05-030 that all PCIA-eligible RPS energy remaining after a Voluntary Allocation be offered for sale in the Market Offer. The other two requirements of D.21-05-030 – that the Market Offer process 1) be based upon existing processes, rules, oversight requirements, and reporting requirements for REC solicitations previously approved in the Commission's RPS proceeding; and 2) include rules for utility participation in utility-administered solicitations – were addressed in the IOU's Joint Motion in R.18-07-003 (filed March 10, 2022).

Since PG&E's Market Offer Contract is a confirmation to PG&E's Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement (Master Agreement), similar to the existing confirmation used in PG&E's bundled RPS energy sales, Market Offer process participants will need a Master Agreement in place with PG&E prior to execution of the Market Offer Contract.

Details of the proposed pro forma Market Offer Contract include:

- A Market Offer participant may bid for all the PCIA-eligible RPS portfolio that remains following Voluntary Allocation.
- PG&E proposes to deliver the PCIA-eligible RPS energy remaining after Voluntary Allocation over the final two years of the current RPS compliance period (i.e., 2023 & 2024) for reasons that include reducing administrative risk, providing flexibility for all LSEs, and enabling reevaluation for future Market Offers.

The proposed contract differs from PG&E's CPUC-approved bundled RPS energy sale contract in the products offered and their delivery periods. The RPS energy sale contract only includes fixed volumes of bundled RECs available for purchase in calendar year 2022, while the proposed contract includes portions of PG&E's PCIA-eligible RPS portfolio that remain unallocated following Voluntary Allocation that will be delivered over 2023 and 2024, like PG&E's existing carbon-free allocation contract.

Analysis: The two proposed contracts for procurement of PCIA-eligible RPS resources provide details of the terms for procurement of PCIA-eligible RPS resources under the Voluntary Allocation and Market Offer processes. Specifically, they address product quantities, delivery periods, and pricing in the case of Voluntary Allocation.

Next Steps: PG&E posted a [webpage](#) with updated timelines for 2022 Voluntary Allocations:

- **April 2022:** PG&E completes initial 2023 load forecasting in line with Meet-and-Confer process within ERRA and/or RA proceedings.
- **May 16, 2022:** PG&E files ERRA Forecast Application and informs LSEs of initial forecast allocation shares for 2023 Voluntary Allocation.
- **May 16 – June 10, 2022:** Voluntary Allocation contracting with LSEs
- **June 10, 2022:** Final day for LSEs to submit Voluntary Allocation elections to PG&E.
- **June 2022:** PG&E completes Voluntary Allocation contracting.
- **Summer 2022:** LSEs file Draft 2022 RPS Plans informed by Voluntary Allocation elections.
- **October 2022:** Each IOU informs LSEs of updated allocation shares for 2023 Voluntary Allocations.

Additional Information: [Market Offer Contract](#) (AL 6551-E) for PCIA-eligible RPS Resources remaining after VA (April 4, 2022); [Voluntary Allocation Contract](#) (Advice 6517-E) for PCIA-eligible RPS Resources (February 28, 2022); [D.22-01-023](#) on Phase 2 (approved January 27, 2021); [Ruling](#) requesting comments on PCIA forecasting data access (November 5, 2021); [Voluntary Allocation Methodology Advice Letter 6305-E](#) (October 25, 2021); [Ruling](#) requesting comments (September 17, 2021); CalCCA [Application for Rehearing](#) of D.21-05-030 (June 23, 2021); [D.21-05-030](#) on PCIA Cap and Portfolio Optimization (May 24, 2021); [D.21-03-051](#) granting petition to modify D.17-08-026 (March 26, 2021); [Amended Scoping Memo and Ruling](#) (December 16, 2020); [Joint IOUs PFM of D.18-10-019](#) (August 7, 2020); [D.20-08-004](#) on Working Group 2 PCIA Prepayment (August 6, 2020); [D.20-06-032](#) denying PFM of D.18-07-009 (July 3, 2020); [D.20-03-019](#) on departing load forecast and presentation of the PCIA (April 6, 2020); [D.20-01-030](#) denying rehearing of D.18-10-019 as modified (January 21, 2020); [D.19-10-001](#) (October 17, 2019); [D.18-10-019](#) Track 2 Decisions adopting the Alternate Proposed Decision (October 19, 2018); [D.18-09-013](#) Track 1 Decision approving PG&E Settlement Agreement (September 20, 2018); Docket No. [R.17-06-026](#).

NEW PG&E 2021 ERRA Compliance

PG&E filed its 2021 ERRA Compliance application on February 28, 2022, in which it requests the CPUC find that the company complied with its CPUC-approved Bundled Procurement Plan, reasonably managed utility-owned generation facilities, and made other reasonable expenditures and accounting entries consistent with CPUC directives.

Background: N/A

Details: PG&E requests that the CPUC find that during 2021:

- It complied with its CPUC-approved Bundled Procurement Plan (BPP) in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, resource adequacy sales, and least-cost dispatch of electric generation resources.
- It managed its utility-owned generation (UOG) facilities reasonably.

- Its expenditures in the Green Tariff Shared Renewables Memorandum Account (GTSRMA) were reasonable.
- Its entries in the Portfolio Allocation Balancing Account (PABA), Energy Resource Recovery Account (ERRA), Green Tariff Shared Renewables Balancing Account (GTSRBA), Disadvantaged Community – Single-Family Affordable Solar Homes (DAC SASH) balancing account (DACSASHBA), Disadvantaged Community - Green Tariff Balancing Account (DACGTBA), and Community Solar Green Tariff Balancing Account (CSGTBA) were consistent with applicable tariffs and CPUC directives.

PG&E also presents its Central Procurement Entity's administrative costs recorded to the Centralized Local Procurement Sub-Account (CLPSA) in the New System Generation Balancing Account (NSGBA).

PSPS Impacts

PG&E states that since the CPUC is currently considering the utilities' proposed common methodology for calculating unrealized volumetric sales and unrealized revenues resulting from PSPS events in the consolidated Phase II 2019 ERRA Compliance proceeding, it has not included with this 2021 ERRA Compliance application any testimony addressing the calculation of unrealized volumetric sales or unrealized revenues. PG&E plans to send an email to the assigned ALJ requesting direction regarding whether and in what format PSPS information should be presented as part of this Application once the Commission has resolved the issue in the Phase II 2019 ERRA Compliance proceeding.

Testimony

Regulatory case documents are available [here](#) by selecting "ERRA 2021 PGE - Compliance..." from the "Case" drop down. PG&E's testimony is [here](#) (423 pages). It covers:

- Chapter 1 Least-Cost Dispatch and Economically Triggered Demand Response
- Chapter 2 Utility-Owned Generation: Hydroelectric
- Chapter 3 Utility-Owned Generation: Fossil and Other Generation
- Chapter 4 Utility-Owned Generation: Nuclear
- Chapter 5 Review Entries Recorded in the Disadvantaged Community – Green Tariff Balancing Account and the Community Solar Green Tariff Balancing Account
- Chapter 6 Generation Fuel Costs and Electric Portfolio Hedging
- Chapter 7 Greenhouse Gas Compliance Instrument Procurement
- Chapter 8 Resource Adequacy
- Chapter 9 Contract Administration
- Chapter 10 CAISO Settlements and Monitoring
- Chapter 11 Review Recorded in the Green Tariff Shared Renewables Memorandum Account and the Green Tariff Shared Renewables Balancing Account
- Chapter 12 Summary of PABA Entries for the Record Period
- Chapter 13 Summary of ERRA Entries for the Record Period
- Chapter 14 Maximum Potential Disallowance

- Chapter 15 Review Entries Recorded in the Disadvantaged Community – Single-family Affordable Solar Homes Balancing Account and the Disadvantaged Community - Single-family Affordable Solar Homes Memorandum Account
- Chapter 16 Central Procurement Entity – Entries Recorded in the Centralized Local Procurement Sub-Account

Issues

PG&E proposes the following issues be considered in this proceeding:

- Whether PG&E, during the record period, prudently administered and managed the following, in compliance with all applicable rules, regulations, and Commission decisions, including but not limited to Standard of Conduct No. 4 (SOC 4):
 - Utility-Owned Generation Facilities
 - Qualifying Facilities (QF) Contracts and Non-QF Contracts. If not, what adjustments, if any, should be made to account for imprudently managed or administered resources?
- Whether PG&E achieved least-cost dispatch of its energy resources and economically triggered demand response programs pursuant to SOC 4;
- Whether the entries recorded in the Energy Resource Recovery Account and the Portfolio Allocation Balancing Account are reasonable, appropriate, accurate, and in compliance with Commission decisions;
- Whether PG&E's greenhouse gas instrument procurement complied with its Bundled Procurement Plan;
- Whether PG&E administered resource adequacy procurement and sales consistent with its Bundled Procurement Plan;
- Whether the costs incurred and recorded in the following accounts are reasonable and in compliance with the applicable tariffs and Commission directives:
 - Green Tariff Shared Renewables Memorandum Account;
 - Green Tariff Shared Renewables Balancing Account;
 - Disadvantaged Community - Single Family Solar Affordable Homes Balancing Account;
 - Disadvantaged Community - Green Tariff Balancing Account;
 - Community Solar Green Tariff Balancing Account;
 - Centralized Local Procurement Sub-Account.
- Whether there are any safety considerations raised by this Application

Analysis: The proceeding has just begun, and its full scope is yet to be determined. A CPUC determination in the Phase II 2019 ERRR Compliance proceeding on the utilities' proposed common methodology for calculating unrealized volumetric sales and unrealized revenues resulting from PSPS events could expand the scope of this proceeding.

Next Steps: Deadline for filing protest/response ended April 8, 2022.

PG&E has proposed the following timeline:

- **May 11, 2022:** Prehearing Conference
- **July 22, 2022:** Cal Advocates and Intervenor Testimony

- **August 26, 2022:** PG&E Rebuttal Testimony
- **September 2022:** Settlement Discussions
- **September 13-16, 2022:** Evidentiary Hearings
- **October 17, 2022:** Opening Briefs
- **November 4, 2022:** Reply Briefs

Additional Information: PG&E 2021 ERRRA Compliance [Application](#) (February 28, 2022); Docket No. [A.22-02-015](#).

PG&E Phase 2 GRC

The single carryover issue of material fact about the MGCC Property Tax Adder was resolved with issuance of a Final Decision adopting the Joint Stipulation on March 18, 2022. PG&E's MGCC Report was filed March 17, 2022, and PG&E filed its non-NEM export compensation proposal for BEV on March 24, 2022.

Background: PG&E's 2020 Phase 2 General Rate Case (GRC) addresses marginal cost, revenue allocation and rate design issues covering the next three years. D.21-11-016 largely adopted PG&E's proposed marginal costs and methodologies for deriving them but adopted marginal connection equipment costs proposed by the Agricultural Energy Consumers Association and marginal transmission capacity costs proposed by the Solar Energy Industries Association. It also adopted, without modification, several uncontested settlements on rate design issues (residential rate design settlement; settlement on streetlight rate design issues; Economic Development Rate (EDR) settlement; agricultural rate design; C&I rate design) and revenue allocation.

With respect to CCA issues, the adopted EDR settlement noted that PG&E and the Joint CCAs agreed to create a collaborative process "to identify and vet EDR applicants that will make it easier for CCAs to provide a generation rate reduction to CCA customers who qualify for PG&E's EDR." D.21-11-016 also approved the agricultural rate design settlement that proposed that the unbundling of the PCIA from the generation component of bundled rates be designed as a flat PCIA rate, not differentiated by season or TOU period, consistent with the PCIA rate design for DA and CCA customers. The PCIA rate for bundled customers will use the most recent vintage of the PCIA rate. Finally, D.21-11-016 approved the revenue allocation settlement, including its proposal that before allocating generation revenue, instead of including the PCIA revenue in the overall generation revenue requirement, PCIA revenue will be removed from each customer class's revenue at present rates based on the most recent vintage PCIA rates. Then, PG&E will use the adopted allocation for generation to allocate the PCIA revenue requirement to customer classes.

On January 18, 2022, parties filed a Settlement Agreement includes the following terms of the Stage 1 RTP Pilot:

Eligibility: PG&E's bundled customers who are eligible for the B-20, B-6 and E-ELEC rates may participate on an opt-in basis. CCAs will need to affirmatively decide to participate in the Stage 1 Pilots for their customers to be eligible. PG&E agrees to work with its twelve CCAs to seek agreement from one or two of them to participate in the Stage 1 Pilots, if possible.

Duration: Stage 1 Pilots shall have a duration of 24 months, subject to potential extension.

Enrollment: PG&E will make its best efforts to program and make available for enrollment the three Stage 1 RTP rates by October 1, 2023.

Pricing: The RTP element of the Stage 1 Pilot RTP rates will replace the generation component of the customer's otherwise applicable rate schedule. The remaining transmission, distribution, Public

Purpose Program and other charges and taxes remain the same as the otherwise applicable underlying rate. The generation component to be used in the Stage 1 Pilots' RTP rates will include: (1) a Marginal Energy Charge, (2) a Marginal Generation Capacity Cost, and (3) a Revenue Neutral Adder (designed to make the forecasted annual generation revenue collected under the three Stage 1 Pilot RTP rates revenue neutral to the base schedule). Residential customers would have 1 year bill protection. There would be a limited amount of participation incentives as well.

All development, implementation, and operating costs for the Stage 1 Pilots, as well as for the separate Customer Research Study for residential, agricultural, and small commercial customers, will be recovered in distribution rates from all customers.

Details: The Final Decision, D.22-03-012, adopting the Joint Stipulation, or otherwise resolving the single carryover issue of material fact about the MGCC Property Tax Adder, was issued March 18, 2022. This Decision, in accordance with the PG&E/CLECA Joint Stipulation, adopts a property tax factor of 1.25% for the 2021-2026 marginal generation capacity cost (MGCC) for new customer rates effective June 1, 2022. A corrected version of PG&E's MGCC Report was filed on March 17, 2022.

PG&E proposed an export compensation mechanism for non-NEM customers enrolled in the Day-Ahead Hourly Real Time Pricing (DAHRTP) rate. The proposed Business Electric Vehicle (BEV) Pilot will include customers on any BEV rate and not only customers on the DAHRTP Commercial Electric Vehicle (CEV) rate. Compensation for energy will come from the CAISO market participation entity, and to the extent available will include compensation for Resource Adequacy. PG&E has not yet proposed a budget for the Pilot but has proposed a cost-effectiveness evaluation and a report on lessons learned to be issued two years after implementation. The proposal includes a market participation option instead of a tariff rate to allow all BEV customers in the PG&E service territory (including customers of CCAs or direct access providers) to participate without requiring each retail LSE to offer its own tariff rate. Some key considerations that PG&E has requested be addressed through a stakeholder process include interconnection jurisdiction, resource adequacy compensation methodology, and managing and monitoring customer revenue generation.

Analysis: This phase of the proceeding could impact real-time pricing rate design issues for PG&E customers. If the settlement agreement is adopted, VCE could elect to allow its customers to participate in the Stage 1 RTP Pilot. The Settlement Agreement provides that cost recovery of development, implementation, and operating costs for the Stage 1 Pilots, as well as for the separate Customer Research Study, would be recovered in distribution rates that both bundled PG&E and VCE customers pay.

Next Steps: The proceeding remains open to address RTP issues, and PG&E testimony on its RTP Proposal is due April 13, 2022. An Advice Letter outlining pilot details is expected from PG&E, the timing of which will be addressed in the April 13 testimony.

Additional Information: PG&E [Proposal](#) for non-NEM export compensation (March 24, 2022); PG&E [MGCC Report](#) (corrected) (March 17, 2022); [Decision](#) on property tax adder (March 18, 2022); [Ruling](#) on timing to respond to PG&E/CLECA Motion (January 25, 2022); [Motion](#) by PG&E/CLECA to establish a separate expedited schedule (January 21, 2022); PG&E [Motion](#) on MGCC Study (January 18, 2022); PG&E [Motion](#) (January 18, 2022); [Motion](#) to Adopt Settlement Agreement (January 18, 2022); [D.21-11-016](#) on revenue allocation and rate design (November 19, 2021); [Amended Scoping Memo and Ruling](#) (August 25, 2021); [Ruling](#) bifurcating RTP issues into separate track (February 2, 2021); [D.20-09-021](#) on EUS budget (September 28, 2020); [Exhibit \(PG&E-5\)](#) (May 15, 2020); [Scoping Memo and Ruling](#) (February 10, 2020); [Application, Exhibit \(PG&E-1\): Overview and Policy, Exhibit \(PG&E-2\): Cost of Service, Exhibit \(PG&E-3\): Revenue Allocation, Rate Design and Rate Programs, and Exhibit \(PG&E-4\): Appendices](#) (November 22, 2019); RTP Pilot Docket No. [A.20-10-011](#); Phase 2 GRC Docket No. [A.19-11-019](#).

PG&E Phase 1 GRC

PG&E filed an Amended Application and submitted supplemental testimony on wildfire mitigation programs in March 2022. A March 10 ALJ Ruling denied the Motion to Shorten Time filed by TURN, PG&E, and PAO, and suspended the March 30, 2022, deadline for intervenor testimony pending a ruling on their February 16, 2022, Motion to Modify the Schedule. PG&E filed its recorded expense and capital cost data for 2021 on March 9, 2022. Public Participation Hearings were held on three days during March 2022 regarding the February 2022 joint report, submitted by PG&E and Caltrain, on the status of the third-party audit of costs that PG&E will incur to upgrade the East Grand and FMC substations in connection with Caltrain's project to electrify its commuter rail system between San Jose and San Francisco.

Background: Phase 1 GRC applications cover the revenue requirement, including the functionalization of costs into categories such as electric distribution or generation, which impact which customers (bundled, unbundled, or both) pay for the costs through rates. Phase 2 GRC applications cover cost allocation (i.e., assigning costs to customer classes, such as Residential) and rate design issues. PG&E proposes to have a second and third track of this Phase 1 GRC to request reasonableness review of certain memorandum and balancing account costs to be recorded in 2021 and 2022. PG&E will file its next Phase 2 GRC application by September 30, 2021.

On August 25, 2021, the CPUC Executive Director granted PG&E's request to delay filing its next Phase 2 GRC application until September 30, 2024.

In their protest of PG&E's application, the Joint CCA parties identified the following list of preliminary issues they plan to examine or address in this proceeding:

Compliance with the Commission's Cost Allocation Directives in D.20-12-005 (PG&E's most recently decided Phase 1 GRC decision), including PG&E's cost functionalization methodology, wildfire costs, and allocation of Customer Care costs.

Reinvestments in and Recovery of Legacy Owned Generation Costs, including solar contract renewals or the decommissioning of legacy owned assets, which impact Joint CCAs' customers through the PCIA and related vintaging of costs.

Other Issues that May Require Further Investigation and Analysis, including how costs related to PSPS Events should be tracked and allocated; whether and how any funds that PG&E receives as credits (such as Department of Energy settlement funds) should be allocated to departing load customers; and how PG&E's regionalization proposal impacts its relationship and dealings with CCAs and their customers.

The October 1, 2021, Scoping Memo and Ruling divided the proceeding into two tracks. Track 1 will address the majority of matters, including PG&E's requested revenue requirement together with safety and environmental and social justice issues. Track 2 will address 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, also address safety and environmental and social justice.

PG&E's pending November 5, 2021, Motion requests extending the turn-around time for filing rebuttal testimony from 30 days to 45 days; delaying the start of evidentiary hearings by three weeks to accommodate the proposed rebuttal testimony timeline; and requested an earlier resolution that Q4 2022 as indicated in the Scoping Memo and Ruling of PG&E's July 16, 2021, Motion for a January 1, 2023 effective date for its 2023 revenue requirement.

Details: On March 10, 2022, PG&E filed an Amended Application and submitted supplemental testimony on wildfire mitigation programs. Also on March 10, 2022, the ALJ issued a Ruling on the February 25 Motion filed by TURN, PG&E, and PAO denying their request to shorten time for responses to PG&E's amended application and supplementary testimony on wildfire mitigation

programs, and suspending the March 30, 2022, submission date for intervenor testimony pending a ruling on the February 16, 2022, Motion to Modify the Schedule filed by TURN, PG&E, and the PAO.

On March 9, 2022, PG&E submitted its recorded expense and capital data testimony for 2021.

PG&E and Caltrain submitted a joint report on the status of the third-party audit of costs that PG&E will incur to upgrade the East Grand and FMC substations in connection with Caltrain's project to electrify its commuter rail system between San Jose and San Francisco. PG&E and Caltrain also requested to move consideration of PG&E's proposal for cost recovery of Caltrain Project costs from Track 1 to Track 2 of PG&E's 2023 GRC and proposed a schedule for the submission of testimony reporting on the Audit.

Analysis: This proceeding will set the revenue requirement, and thereby ultimately impact PG&E's rates, for 2023-2026. It will establish how the revenue requirement components will be functionalized, which impact whether the ultimately approved costs will be borne by PG&E bundled customers, unbundled customers like VCE customers, or both. It will also address numerous other issues raised in PG&E's application that could impact rates, policies, and programs implemented by PG&E.

Next Steps: The March 30, 2022, deadline for intervenor testimony was suspended pending a ruling on the February 16, 2022, Motion to Modify the Schedule. The next steps in Track 1 are a ruling on the procedural schedule modifications and a PG&E affordability metrics report at least one month before intervenor testimony. Proposed and final decisions are anticipated in Q2 2023.

In Track 2, public participation hearings are scheduled for November 2022, and intervenor testimony is due November 14, 2022. A proposed decision is anticipated in Q2 2023, and a final decision is anticipated in Q3 2023.

Additional Information: ALJ [Ruling](#) denying Motion to Shorten Time, accepting PG&E's Amended Application, and suspending intervenor testimony deadline (March 10, 2022); PG&E's [Amended Application](#) (March 10, 2022); PG&E [Affordability Metrics Report](#) (February 23, 2022); ALJ [Ruling](#) on Public Participation Hearings (February 2, 2022); PG&E/Caltrain Report (February 1, 2022); [Ruling](#) denying PG&E Motion to submit supplemental testimony (November 12, 2021); [Motion](#) of PG&E to modify procedural schedule (November 5, 2021); [Scoping Memo and Ruling](#) (October 1, 2021); [PG&E Application](#) (June 30, 2021); Docket No. [A.21-06-021](#).

RA Rulemaking (2023-2024)

On March 18, 2022, the CPUC issued a Decision on Phase 1 of Implementation Track Modifications that made several changes to the CPE, including changes encouraging LSEs to self-show resources and modifying the timeline of CPE activities. This Decision concludes Phase 1 of the Implementation Track Modifications.

Background: In Track 3B.2 of the 2021-2022 RA Rulemaking (R.19-11-009), D.21-07-014 rejected CalCCA/SCE's proposal for restructuring the RA program, and instead found that PG&E's "slice-of-day" proposal best addresses the identified principles and the concerns with the current RA framework and if is further developed, is best positioned to be implemented in 2023 for the 2024 compliance year. Therefore, it directed parties to collaborate to develop a final restructuring proposal based on PG&E's slice-of-day proposal through a series of workshops.

The December 2, 2021, Scoping Memo and Ruling divided the proceeding into an Implementation Track and Reform Track. The Reform Track encompasses consideration of a final proposed framework and the slice-of-day workshop report.

The Implementation Track is sub-divided into Phases 1, 2, and 3:

- Phase 1 of the Implementation Track considered critical modifications to the CPE structure and concluded in March 2022 with issuance of D.22-03-034.
- Phase 2 consists of the Commission’s consideration of flexible capacity requirements for the following year, local capacity requirements for the next three years, and the highest priority refinements to the RA program, which include: modifications to the Planning Reserve Margin Qualifying Capacity Counting Conventions, which among other proposals will consider the Energy Division’s biennial update to the Effective Load Carrying Capability values for wind and solar resources, including the development of regional values for wind resources. Phase 2 proposals were submitted in January 2022 and this phase is expected to conclude in June 2022. Neither CalCCA nor any CCAs individually filed a Phase 2 proposal.
- Phase 3 will consider the 2024 program year requirements for flexible RA, and the 2024-2026 local RA requirements. Other modifications and refinements to the RA program, as identified in proposals by parties or by Energy Division may also be considered. Phase 3 is expected to conclude by June 2023

Details: The CPUC adopted SCE’s proposal with CalCCA’s modifications to the PD of requirements for non-performance of self-shown local resources such that 1) self-showing LSEs are allowed to provide a substitute resource to replace non-performing self-shown local resources, and 2) LSEs will be allocated, on a load ratio share basis, any backstop procurement costs charged to the CPE in the event the CAISO makes a local CPM designation for an individual deficiency. The CPUC also replaced the previous requirement (Ordering Paragraph 3 in D.20-12-006) that a shown resource must be documented on an agreement as determined by the CPE with new attestation requirements for an LSE electing to self-show a local resource to the CPE, as follows:

- The LSE has the capacity rights to the RA resource for the self-shown period;
- The LSE intends to self-show the RA resource on monthly and annual RA plans to satisfy its system or flexible RA needs; and,
- That compensated self-shown resources under the LCR RCM meet the eligibility requirements under D.20-12-006, if applicable.

Given the shortfalls in the PG&E CPE’s procurement process and the low participation rates in the CPE solicitation process, the CPUC is requiring LSEs that decline to self-show or bid to submit a justification with their year-ahead RA filing explaining their rationale for informational purposes for the Commission. Also, an LSE’s self-shown commitment for years 1 and 2 must be firm, but self-shown local resources for year 3 may be replaced like-for-like with other local resources.

The Decision modified the RA central procurement entity (CPE) selection process by removing the local effectiveness factors as a criterion and clarifying that length of contract term requirements are not authorized by the Commission and that the CPE must consider bids of any contract term length greater than or equal to one month. Additionally, the Decision allows CPEs to procure outside of the annual solicitation process if there are deficiencies following the CPEs’ annual solicitation and only to cover those deficiencies, and CPEs are encouraged to fill those positions to the extent possible before initial RA allocations in July.

The CPUC adopted a modified CPE procurement timeline under which LSEs in the PG&E TAC make self-shown commitment to the CPE for applicable RA years no later than mid-May, LSEs receive initial RA allocations in July and updated CAM credits procured by the CPE in August, LSEs receive final year-ahead system and flexible RA allocations in September, and final LSE showings are made by the end of October.

Analysis: The Decision made several changes to the CPE, including changes encouraging LSEs to self-show resources and modifying the timeline of CPE activities. The results of the LOLE study

could impact the thinking and formation of the slice-of-day reliability framework being developed in the RA Reform Track of this proceeding that seeks to ensure load will be met in all hours of the day, not just during gross peak demand hours and would move RA from a monthly compliance obligation to a seasonal obligation.

Next Steps: The procedural schedule for the ongoing tracks and working groups are as follows:

Phase 1

- Concluded in March 2022 with issuance of D.22-03-034

Phase 2

- CAISO draft 2023 LCR Report: April 15, 2022
- Comments on draft 2023 LCR Report: April 22, 2022
- CAISO final 2023 LCR and FCR Report: April 29, 2022
- Comments on final 2023 LCR and FCR Report: May 6, 2022
- Reply comments on final 2023 LCR and FCR Report: May 13, 2022
- Proposed Decision: May 2022
- Final Decision: June 2022

Reform Track

- BTM Counting Convention Working Group meeting dates (9am-1pm): February 22, 2022 meeting was postponed (new date TBD).

Additional Information: [D.22-03-034](#) on Phase 1 of Implementation Track Modifications (March 18, 2022); [Workshop Report](#) (February 28, 2022); [Ruling](#) modifying Phase 2 schedule and providing LOLE study and CEC Working Group Report (February 18, 2022); [Proposed Decision](#) on CPE revisions (February 10, 2022); [Ruling](#) modifying procedural schedule (December 10, 2022); [Scoping Memo and Ruling](#) (December 2, 2021); [Order Instituting Rulemaking](#) (October 11, 2021); Docket No. [R.21-10-002](#).

RA Rulemaking (2021-2022)

On March 18, 2022, the CPUC issued a Proposed Decision that would deny OhmConnect's September 2021 Petition for Modification of D.20-06-031 to increase the demand response Maximum Cumulative Capacity limit of 8.3% to 11.3%.

Background: This proceeding is divided into 4 tracks, with the focus in 2021 being on Tracks 3 and 4, described in more detail below. Going forward, a workshop process will be used to generate an RA restructuring proposal in Q1 2022, with the goal of implementing more substantial program changes in 2023 for the 2024 RA compliance year.

Track 3A (completed): D.20-12-006, issued December 2020, addressed the issues of the financial credit mechanism and competitive neutrality rules for the CPEs. It approved CalCCA's proposed "Option 2," with modifications, which allows the CPE to evaluate the shown resource alongside bid resources to assess the effectiveness of the portfolio. The financial credit mechanism will apply only to new preferred or energy storage resources (i.e., non-fossil-based resources) with a contract executed on or after June 17, 2020. It also adopted PG&E's competitive neutrality proposal for PG&E's service territory. Finally, D.20-12-006 found that the Local Capacity Requirements Working

Group should continue to discuss recommendations and develop solutions for consideration in CAISO's 2022 LCR process.

Track 3B.1 and Track 4 (completed): D.21-06-029, issued June 2021, adopted local capacity requirements for 2022-2024, flexible capacity requirements for 2022, and refinements to the RA program. It adopted a series of changes to the Maximum Cumulative Capacity (MCC) buckets, which function as limits on the amount of RA that may be procured from resources with different characteristics. It required resources in all MCC buckets to have availability on Saturday for the 2022 RA compliance year. This had the effect of modifying the DR and Categories 1 and 2 buckets to add Saturday. DR contracts with an execution date prior to the effective date of D.21-06-029 will be grandfathered and not subject to the new Saturday availability requirement. It also revised the Category 1 availability criteria (4 consecutive hours of availability from 4-9 p.m. from May-September) to increase the monthly minimum availability from 40 hours to 100 hours (and 96 hours for February) and to require year-round availability. D.21-06-029 requested that the CEC launch a stakeholder working group process as part of the 2021 IEPR and make recommendations on several topics intended to support a comprehensive and consistent DR measurement and verification strategy, to be considered for implementation during the 2023 RA compliance year. Finally, D.21-06-029 added a new RA deficiencies penalty structure to the current penalty structure, layering on a penalty multiplier for repeat RA deficiencies based on a point system beginning in the 2022 RA compliance year.

Track 3B.2 (Ongoing, now in R.21-10-002): D.21-07-014 rejected CalCCA/SCE's proposal for restructuring the RA program, and instead found that PG&E's "slice-of-day" proposal best addresses the identified principles and the concerns with the current RA framework and if is further developed, is best positioned to be implemented in 2023 for the 2024 compliance year. Therefore, it directed parties to collaborate to develop a final restructuring proposal based on PG&E's slice-of-day proposal through a series of workshops. The PG&E Slice of Day Framework will establish RA requirements based on a "slice-of-day" framework, which seeks to ensure load will be met in all hours of the day, not just during gross peak demand hours. The proposal also attempted to ensure there is sufficient energy on the system to charge energy storage resources. The proposed framework would establish RA requirements for multiple slices-of-day across seasons and would establish a counting methodology to reflect an individual resource's ability to produce energy during each respective slice (e.g., six four-hour periods of the day).

Details: OhmConnect's Petition for Modification of D.20-06-031 requested that the CPUC raise the demand response Maximum Cumulative Capacity limit of 8.3% to 11.3%. OhmConnect argued that the change is needed to meet the requirements of the Governor's Emergency Proclamation ordering state energy agencies to expedite and expand DR programs to reduce the likelihood of future rotating power outages, but the Proposed Decision would find that such portion of the Governor's proclamation expired. The Proposed Decision would also find that the PFM was not timely because it was filed in September 2021 (more than 1 year after D.20-06-031).

Analysis: Increasing the demand response cap, as OhmConnect requested and CCAs and others supported, would allow LSEs like VCE to procure a higher percentage of demand response resources to meet RA obligations than is currently allowed under the RA compliance rules. Any future proposals to broadly increase the demand response cap will require consideration of how doing so will affect grid reliability.

Next Steps: Comments on the PD are due April 7, replies are due April 12, and the PD may be adopted, at earliest, at the April 21 CPUC meeting.

Additional Information: [Proposed Decision](#) denying OhmConnect's September 2021 petition; OhmConnect's [Petition for Modification](#) (September 9, 2021); [D.21-07-014](#) on restructuring the RA program with PG&E Slice of Day proposal (July 16, 2021); [D.21-06-029](#) adopting local capacity obligations for 2022-2024, flexible capacity obligations for 2022, and refinements to the RA program (approved June 24, 2021); [2019 Resource Adequacy Report](#) (March 19, 2021); [Scoping Memo and](#)

[Ruling](#) for Track 3B and Track 4 (December 11, 2020); [D.20-12-006](#) on Track 3.A issues (December 4, 2020); [D.20-06-031](#) on local and flexible RA requirements and RA program refinements (June 30, 2020); [Order Instituting Rulemaking](#) (November 13, 2019); Docket No. [R.19-11-009](#).

PG&E 2020 ERRR Compliance

On March 16, 2022, the CPUC issued a Proposed Decision for Phase 1 in which the Settlement Agreement filed by the parties on October 15, 2021, was found to be reasonable and therefore resolves all the disputed issues in this proceeding. Phase 2 of the proceeding, which remains open, will address issues related to unrealized sales and revenues resulting from PG&E's Public Safety Power Shutoff events in 2020.

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

PG&E is requesting that the CPUC find it complied with its Bundled Procurement Plan (BPP) in the areas of fuel procurement, administration of power purchase contracts, greenhouse gas compliance instrument procurement, resource adequacy sales, and least-cost dispatch of electric generation resources for the 2020 calendar year. It also seeks a CPUC finding that it managed its utility-owned generation (UOG) facilities reasonably, although it recommends that CPUC review of outages at Diablo Canyon Power Plant related to the Unit 2 main generator be delayed to the 2021 ERRR Compliance review. Of significance to the PCIA, PG&E is requesting the CPUC find that entries in its Portfolio Allocation Balancing Account (PABA), which trues up the above-market forecast of generation resources recovered through the PCIA with actual recorded costs and revenues, are accurate.

PG&E's procurement costs recorded across the portfolio were \$158.8 million higher than forecasted, allegedly due to higher-than-forecast RPS-eligible contracts, as offset by higher than forecast retained RPS and retained RA, as well as lower than forecast fuel costs for UOG facilities. Activity recorded in the PABA includes the following categories: Revenues from Customers, RPS Activity, RA Activity, Adopted UOG Revenue Requirements, CAISO Related Charges and Revenues, Fuel Costs, Contract Costs, GHG Costs, and Miscellaneous Costs. PG&E has redacted as confidential its 2020 actual and forecast costs for these categories, so it is unclear from the public filing what the magnitude is regarding the difference between actual and forecast costs for each category.

The Scoping Memo and Ruling specifies the proceeding will be divided into two phases. Phase 1 will address whether PG&E (1) prudently administered and managed Utility-Owned Generation facilities and QF and non-QF contracts, (2) achieved least-cost dispatch of energy resources, (3) had reasonable, accurate, and appropriate ERRR and PABA entries, and (4) administered RA procurement and sales consistent with its Bundled Procurement Plan, among other issues. Phase 2 issues may be amended based on the outcome of Phase 2 of PG&E's 2019 ERRR compliance proceeding. The tentative list of issues include whether sales forecasting methods for adjusting revenue requirement under current decoupling policy should be adjusted to account for power not sold or purchased during a Public Safety Power Shutoff (PSPS) event in 2020, whether it is appropriate for PG&E to return the revenue requirement equal to the estimated unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2020, and the appropriate methodology for calculating PG&E's unrealized volumetric sales and unrealized revenues resulting from 2020 PSPS events.

In testimony, Joint CCAs recommended a number of accounting adjustments that would reduce PABA balances by more than \$14.3 million. They also recommend the CPUC acknowledge that PG&E's internal audit of its PABA concluded that the processes and controls governing PABA

accounting are “Not Adequate,” and that PG&E remedy the identified deficiencies. Furthermore, they recommend that the CPUC clarify that future procurement expenses incurred by PG&E acting as the Central Procurement Entity will be reviewable in ERRA Compliance proceedings, and that PG&E should demonstrate the effect of such procurement, if any, on the PABA and ERRA balancing accounts.

PG&E agreed in rebuttal testimony that the accounting for PCIA costs attributed to customers taking service on the GTSR tariff should be adjusted to correctly credit PABA for the 2019 and 2020 record periods, reducing the PABA balance by approximately \$5 million. PG&E also agreed to present testimony in its 2021 ERRA Compliance proceeding addressing actions taken in response to the Internal Audit findings that PABA accounting process and controls were inadequate.

Details: In the Settlement Agreement, PG&E agreed with the Joint CCAs’ position to a disallowance of \$247,500 associated with CAISO penalties for load meter data errors, late submission of Resource Adequacy and Supply Plans and missed deadlines for grid modeling data or telemetry communication for PG&E’s utility owned generation and that any future sanctions for missed deadlines for grid modeling data or telemetry communication for PG&E’s utility-owned generation will not be recovered from customers. Joint CCAs agreed that CAISO sanctions associated with Power Purchase Agreements (contracted generation) were caused by the counterparty and passed through to the counterparty and should not be disallowed.

PG&E agreed that entries to the PABA for costs associated with the Green Tariff Shared Renewables program should be reduced by \$5 million for 2019 and 2020, as Joint CCAs had argued.

PG&E also agreed that certain issues should be in the scope of future ERRA proceedings, resolving the Joint CCA concern regarding its ability to review PG&E’s accounting with respect to transactions with the CPE in future ERRA Compliance proceedings.

Finally, PG&E agreed to transfer from PABA to ERRA 2014 and 2017 Diablo Canyon Seismic Studies Balancing Account recorded costs, whereas the 2018 costs were retained in the PABA, which resolved the Joint CCAs concerns about that cost recovery.

The Proposed Decision requires that PG&E include further testimony in their 2021 Compliance case describing the actions that PG&E has taken to address the deficiencies reported in its Internal Audit Report on the PABA; an internal audit closure document with details of PG&E’s implementation of any action plans to address the deficiencies reported in the Internal Audit Report; testimony from its Chief Regulatory Officer on the actions that PG&E will take or has taken to ensure that there is proper accounting and recording of entries in the various balancing and memorandum accounts review in the ERRA compliance proceedings, including, but not limited to, the PABA.

Analysis: This proceeding addresses PG&E’s balancing accounts, including the PABA, providing a venue for a detailed review of the billed revenues and net CAISO revenues PG&E recorded during 2020. It also determines whether PG&E managed its portfolio of contracts and UOG in a reasonable manner. Both issues could impact the level of the PCIA in 2022 and 2023.

Next Steps: A Final Decision to formally conclude Phase 1, followed by consideration of issues in Phase 2 of the proceeding.

Additional Information: [Proposed Decision](#) (March 16, 2022); [Joint Motion for Adoption of Settlement Agreement](#) (October 15, 2021); [Scoping Memo and Ruling](#) (June 21, 2021); [Application](#) (March 1, 2021); Docket No. [A.21-03-008](#).

Provider of Last Resort Rulemaking

Comments on the March 7, 2022, workshop to discuss the proposed framework for considering the issues and recommendations resulting from the previous Phase 1 workshop were filed March 28, 2022.

Background: A POLR is the utility or other entity that has the obligation to serve all customers (e.g., PG&E is currently the POLR in VCE's territory). In 2019 the Legislature passed SB 520, which defined POLR for the first time in statute, confirmed that each IOU is the POLR in its service territory, and directed the Commission to establish a framework to allow other entities to apply and become the POLR for a specific area (a "Designated POLR"). This rulemaking will implement SB 520.

The Scoping Memo and Ruling issued September 16, 2021, provides that Phase 1 of this OIR 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 decision to set the requirements and application process for other non-IOU entities (i.e., a CCA, Energy Service Provider, or third-party) to be designated as the POLR in place of an existing POLR. Phase 3 will address specific outstanding issues not resolved in Phase 1 and 2 of this proceeding.

On December 17, 2021, parties filed comments in response to the November 23, 2021, ALJ Ruling posing questions addressing: (1) clarity and content of the Workshop 1 notes filed by CalCCA on November 5, 2021, and (2) questions on Workshop 1 and what changes if any are recommended to adequately meet POLR requirements. CalCCA comments included the following recommendations:

- POLR service should be limited to 60 days to allow returned customers to transition from the returning LSE to the customer's chosen LSE, consistent with the existing "safe harbor" provision for DA switching.
- Given the limited term and scope of service and the need to avoid unnecessary costs, the POLR should not engage in advance procurement or hedging.
- RPS and IRP responsibility for returned customers should shift directly from the returning LSE to the customer's new LSE, with a waiver of these obligations for the POLR consistent with the existing waiver for RA obligations adopted in D.20-06-031.
- The CPUC should compare Reentry Fees and actual costs for Western Community Energy's customer return to determine whether the current formulation provides sufficient precision to ensure a reasonable outcome.
- A POLR right of first refusal of procurement contracts held by the returning LSE raises legal and commercial issues and should not be considered.
- To minimize the risk of LSE default by newly launched CCA, Implementation Plan requirements should be modified to incorporate a milestone procedure to be administered by the CCA's governing board, quarterly updates to Energy Division on the status of milestone achievement, transparency through the use of a publicly available information portal available, and feasibility studies provided to the local governing board built on transparent and standardized referents.
- Financial service requirements (FSR) should vary with the financial health of an LSE, limiting FSRs for LSEs maintaining investment-grade credit ratings and LSEs voluntarily providing limited metrics to the CPUC for review; all other LSEs should bear responsibility for the currently formulated FSR.

Details: The recorded proceedings and presentation slides of the March 7, 2022 workshop are available on the CPUC's [Provider of Last Resort webpage](#). Party comments on the workshop were filed on March 28, 2022 (with the exception that PG&E mistakenly filed [comments](#) in the wrong

docket and filed a motion requesting approval to late-file comments). CalCCA's comments on the workshop urged a more pragmatic approach based on recent actual experience of customer returns and an evidence-based examination of the actual risks of customer returns to addressing POLR issues rather than the seeming focus on "Black Swan"-type events. Some of CalCCA's proposals include maintaining the six-month runway to prepare for the return of customers, refining the FSRs to reflect the current MPBs for RA and RPS products, maintaining the existing right to an RA waiver, not requiring resource procurement in advance of customer returns, provide for recovery of financing costs if the POLR must pay for costs prior to receipt of revenues from customer returns, refining the implementation planning process for new CCAs, and implementing a three-tiered reporting rubric calibrated to the operating CCA's circumstances.

PG&E's comments included a proposal for an insurance pool to ensure liquidity equal to about two months incremental energy procurement costs for the POLR with each CCS posting its annual contribution to the insurance pool in the form of either cash or a letter of credit, and a proposed initial set of metrics for monitoring the financial health of CCAs that the company recommended be further developed and refined through a workshop process or with other stakeholder feedback.

Analysis: This proceeding could impact VCE in several ways. First, in establishing rules for existing POLRs, it will address POLR service requirements, cost allocation, and cost recovery issues should a CCA or other LSE discontinue supplying customers resulting in the need for the POLR to step in to serve those customers. Second, in setting the requirements and application process for another entity to be designated as the POLR, it could create a pathway for a CCA or other retail provider to elect to become a POLR for its service area. The preliminary questions (Appendix B to the OIR) suggest these issues will include examining topics such as CCA financial security requirements, portfolio risk and hedging, CCA deregistration, CCA mergers, and CCA insolvency.

Next Steps: A Joint Case Management Statement with request for evidentiary hearings and/or briefs was expected in Q1 2022 according to the September 2021 Scoping Memo, but no additional information regarding scheduling is currently available. Then, if needed, evidentiary hearings in Q2 2022, and opening and closing briefs in Q3 2022.

Additional Information: [Ruling](#) rescheduling second workshop date (February 24, 2022); [Ruling](#) setting second workshop and comment period (December 31, 2021); [Ruling](#) requesting comments (November 23, 2021); Golden State Power Cooperative [Motion](#) to remove cooperatives as respondents (October 28, 2021); [Scoping Memo and Ruling](#) (September 16, 2021); [Ruling](#) scheduling prehearing conference (April 30, 2021); [Order Instituting Rulemaking](#) (March 25, 2021); Docket No. [R.21-03-011](#).

RA Rulemaking (2019-2020)

No updates this month. Rulemaking is effectively closed, except for one outstanding application for rehearing that was filed in August 2020.

Background: This proceeding had three tracks, which have now concluded. [Track 1](#) addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program. D.19-10-020 purported to affirm existing RA rules regarding imports but adopted a distinction in the import RA compliance requirements for resource-specific and non-resource specific contracts and required, for the first time, that non-resource-specific resources self-schedule (i.e., bid as a price taker) in the CAISO energy market. D.20-06-028 adopted revisions to the Resource Adequacy import rules based on Energy Division's proposal, with modifications.

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

The second [Track 2](#) Decision, D.20-06-002, adopted implementation details for the central procurement of multi-year local RA procurement to begin for the 2023 compliance year in the PG&E and SCE (but not SDG&E) distribution service areas, including identifying PG&E and SCE as the central procurement entities for their respective distribution service areas and adopting a hybrid central procurement framework. The Decision rejected a settlement agreement between CalCCA and seven other parties that would have created a residual central buyer structure and a multi-year requirement for system and flexible RA. Under D.20-06-002, if an LSE procures its own local resource, it may (1) sell the capacity to the CPE, (2) utilize the resource for its own system and flexible RA needs (but not for local RA), or (3) voluntarily show the resource to meet its own system and flexible RA needs, and reduce the amount of local RA the CPE will need to procure for the amount of time the LSE has agreed to show the resource. Under option (3), by showing the resource to the CPE, the LSE does not receive one-for-one credit for shown local resources. A competitive solicitation (RFO) process will be used by the CPEs to procure RA products. Costs incurred by the CPE will be allocated ex post based on load share, using the CAM mechanism. D.20-06-002 also established a Working Group (co-led by CalCCA) to address: (a) the development of a local capacity requirements reduction crediting mechanism, (b) existing local capacity resource contracts (including gas), and (c) incorporating qualitative and possible quantitative criteria into the RFO evaluation process to ensure that gas resources are not selected based only on modest cost differences.

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

Details: D.22-02-008 denied WPTF's July 17, 2020, Application for Rehearing of D.20-06-002, the Track 2 Decision creating a multi-year central procurement regime for local RA capacity. WPTF had requested rehearing and reconsideration of the rejected settlement agreement between WPTF, CalCCA, and other parties, arguing that D.20-06-002 will discourage the procurement of local resources by individual LSEs, discriminates against natural gas resources while increasing the need for CAISO backstop procurement, may undermine reliability by making it more difficult to integrate renewables with the larger western grid, and creates a "sale for resale" procurement construct that could place it under FERC's jurisdiction as a wholesale, rather than a retail, transaction. D.22-02-008 found that good cause for rehearing had not been demonstrated.

The only remaining item to be addressed in this proceeding is one outstanding application for rehearing of D.20-06-028 filed by WPTF on August 5, 2020. D.20-06-028 relates to the self-scheduling requirements for non-resource specific RA imports.

Analysis: D.22-02-008 upheld the CPUC's decision, D.20-06-002, which established a CPE. Moving to a CPE beginning for the 2023 RA compliance year impacted VCE's local RA procurement and compliance, including affecting VCE's three-year local RA requirements as part of the transition to the central procurement framework. Eventually, it will eliminate the need for monthly local RA showings and associated penalties and/or waiver requests from individual LSEs, but it also eliminates VCE's autonomy with regard to local RA procurement and places it in the hands of PG&E.

Next Steps: The only item remaining to be addressed in this proceeding is WPTF's remaining outstanding Application for Rehearing. Remaining RA issues will be addressed in the successor RA rulemakings.

Additional Information: [D.22-02-008](#) denying WPTF's Application for Rehearing (February 11, 2022); [D.20-09-003](#) denying PFMs filed by PG&E, CalCCA, and Joint Parties (September 16, 2020); WPTF's [Application for Rehearing](#) of D.20-06-028 (August 5, 2020); WPTF's [Application for](#)

[Rehearing](#) of D.20-06-002 (July 17, 2020); [D.20-06-028](#) on Track 1 RA Imports (approved June 25, 2020); [D.20-06-002](#) establishing a central procurement mechanisms for local RA (June 17, 2020); [D.20-03-016](#) granting limited rehearing of D.19-10-021 (March 12, 2020); [D.20-01-004](#) on qualifying capacity value of hybrid resources (January 17, 2020); [D.19-12-064](#) granting motion for stay of D.19-10-021 (December 23, 2019); [D.19-10-021](#) affirming RA import rules (October 17, 2019); [D.19-06-026](#) adopting local and flexible capacity requirements (July 5, 2019); Docket No. [R.17-09-020](#).

Utility Safety Culture Assessments

A telephonic Prehearing Conference was held on March 30, 2022, to determine the parties, scope, schedule of the proceeding, and other procedural matters.

Background: IOU safety culture assessments are required as part of AB 1054 and SB 901. AB 1054 directed the CPUC's Wildfire Safety Division, now the Office of Energy Infrastructure Safety, to conduct annual safety culture assessments of each electrical corporation, the first of which will be published in fall 2021. The AB 1054 assessments are specific to wildfire safety efforts and include a workforce survey, organizational self-assessment, supporting documentation, and interviews. SB 901 directs the CPUC to establish a safety culture assessment for each electrical corporation, conducted by an independent third-party evaluator. SB 901 requires that the CPUC set a schedule for each assessment, including updates to the assessment, at least every five years, and prohibit the electrical corporations from seeking reimbursement for the costs of the safety culture assessments from ratepayers.

This proceeding will implement the statutory requirements of SB 901 relating to the Commission's assessment of safety culture for regulated utilities. It will examine what methodologies should be employed in the safety culture assessments to ensure results are comparable across IOUs and can measure changes in IOU safety culture over time. It will also consider adopting the process and framework to oversee safety culture assessments of gas utilities and gas storage operators, in addition to electrical corporations as required by SB 901. It will consider requiring that IOUs implement specific safety management practices to improve safety culture through adoption of a Safety Management System standard, consider adopting a maturity model to use in safety culture assessments, and determine accountability metrics.

A [webinar recording](#) of the March 11, 2022, workshop is available, and additional information on the proceeding is posted on the CPUC's [Safety Culture and Governance webpage](#).

Details: The Prehearing Conference discussed the adoption of a definition of "safety culture" by the Commission, the scope and mechanisms that should be adopted in a safety culture assessment framework, the schedule and process to be applied to safety culture assessments, and metrics and methodologies for measuring safety culture change. A [transcript](#) of the March 30 teleconference was filed on April 4, 2022.

Analysis: This rulemaking will assess the safety culture of PG&E and other IOUs in California. While its direct focus is on IOUs like PG&E, it could impact VCE and its customers to the extent it influences PG&E's safety culture and contributes to the safety of VCE customers, as well as the rates VCE customers pay to PG&E to mitigate or address safety issues (e.g., wildfires caused by PG&E transmission equipment; explosions from PG&E natural gas infrastructure, etc.).

Next Steps: A Procedural Order determining issues addressed in the Prehearing Conference is expected; timing TBD.

Additional Information: [Order Instituting Rulemaking](#) (October 7, 2021); Docket No. [R.21-10-001](#).

2022-2023 Wildfire Fund Nonbypassable Charge Rulemaking

No updates this month. On December 6, 2021, the CPUC issued D.21-12-006 adopting a Wildfire Fund NBC of \$0.00652/kWh for January 1, 2022, through December 31, 2022.

Background: This rulemaking continues to implement AB 1054, which extended a non-bypassable charge on ratepayers to fund the Wildfire Fund. The CPUC issued D.20-12-024 in December 2020 that continues the Wildfire Non-Bypassable Charge (NBC) amount of \$0.00580/kWh for January 1, 2021, through December 31, 2021. The NBC amount of 2022 and 2023 will be established in this proceeding.

Details: The 2022 Wildfire Fund Non-Bypassable Charge is \$0.00652/kWh, up from \$0.0058/kWh in 2021. The reason for this increase is that the Department of Water Resources demonstrated a collection shortfall of \$13.0 million for 2021 and \$85.0 million for 2020 (due largely to a lag in initiating and remitting IOU collections for the Wildfire Fund NBC to DWR at the outset of the Wildfire Fund NBC's existence). Therefore, because of this total \$98.0 million under-collection in 2020 and 2021, the 2022 Wildfire Fund NBC is obliged to collect both this 2020-2021 shortfall and the 2022's necessary revenue requirement of \$902.4 million.

Analysis: VCE customers will pay the 2022 and 2023 Wildfire Fund Non-Bypassable Charge amounts established in this proceeding. The charge for 2022 is increasing due to an under-collection of the revenue requirement in 2021 that has been added to the revenue requirement for 2022.

Next Steps: The Department of Water Resources will issue a notice in September 2022 identifying the amount they calculate will need to be the 2023 Wildfire Fund Non-Bypassable Charge.

Additional Information: [D.21-12-006](#) on Wildfire NBC for 2022 (December 6, 2021); [Ruling](#) requesting comments on 2022 Wildfire Fund NBC (September 8, 2021); [Scoping Memo and Ruling](#) (June 8, 2021); [Order Instituting Rulemaking](#) (March 10, 2021); Docket No. [R.21-03-001](#).

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

No updates this month except to note that on March 7, 2022, Investigation 15-08-019 was reassigned from President Marybel Batjer to Commissioner John R.D. Reynolds.

Background: On December 21, 2018, the CPUC issued a Scoping Memo opening the next phase of an ongoing investigation into whether PG&E's organizational culture and governance prioritize safety. This current phase of the proceeding is considering alternatives to current management and operational structures for providing electric and natural gas in Northern California.

A July 2020 ALJ Ruling described the issues that are potentially still in scope for this proceeding, which include a broad array of issues identified in the December 21, 2018, Scoping Memo, as modified by D.20-05-053 approving PG&E's reorganization plan, plus the ongoing work of NorthStar, the consultant monitoring PG&E. However, the Ruling observed that "it is not clear as a practical matter how many of those issues can be or should be addressed at this time," given PG&E is now implementing its reorganization plan and has filed its application for regional restructuring. Party comments did not explicitly raise the issue of CCA proposals to purchase PG&E electric distribution assets.

A September 4, 2020, Ruling determined that I.15-08-019 will remain open as a vehicle to monitor the progress of PG&E in improving its safety culture, and to address any relevant issues that arise, with the consultant NorthStar continuing in its monitoring role of PG&E. The Ruling declined to close the proceeding but also declined to move forward with CCAs' consideration of whether PG&E's holding company structure should be revoked and whether PG&E should be a "wires-only company," as well as developing a plan for service if PG&E's CPCN is revoked in the future.

In April 2021, the CPUC issued Resolution M-4852, placing PG&E into the first of six steps of the Enhanced Oversight and Enforcement process. This six-step process could ultimately result in a revocation of PG&E's certificate of public convenience and necessity if it fails to take sufficient corrective actions. Resolution M-4852 found that PG&E made insufficient progress toward approved safety or risk-driven investments and is not sufficiently prioritizing its Enhanced Vegetation Management (EVM) based on risk. It found that PG&E is not doing the majority of EVM work – or even a significant portion of work – on the highest risk lines.

On August 18, 2021, CPUC President Batjer sent a letter to PG&E stating that she has directed CPUC staff to investigate whether to advance PG&E further within the Enhanced Oversight and Enforcement process. President Batjer's letter to PG&E identified "a pattern of self-reported missed inspections and other self-reported safety incidents," concluding that "this pattern of deficiencies warrants the fact-finding review." PG&E self-reported missed inspections of hydroelectric substations, distribution poles, and transmission lines. PG&E also reported missing internal targets for enhanced vegetation management and failing to identify dry rot in distribution poles treated with Cellon coating. Many of these issues occurred in High Fire Threat District areas.

On October 25, 2021, President Batjer sent a letter to PG&E asserting that PG&E's "execution and communication of its wildfire mitigation device setting known as Fast Trip has been extremely concerning and requires immediate action to better support customers in the event of an outage." It finds that since PG&E initiated the Fast Trip setting practice on 11,500 miles of lines in High Fire Threat Districts in late July, it has caused over 500 unplanned power outages impacting over 560,000 customers. It goes on to say that these Fast Trip-caused outages occur with no notice and can last hours or days. The letter goes on to outline near-term and ongoing transparency and accountability actions, as well as cost tracking

Details: No updates.

Analysis: The August 18, 2021, and October 25, 2021, CPUC letters to PG&E indicate the CPUC has significant concerns with PG&E's outages related to both PSPS events and its implementation of Fast Trip. Unlike a PSPS event, by definition, Fast Trip settings do not allow for advance notice to customers of an outage.

Next Steps: The proceeding remains open, but there is no procedural schedule at this time.

Additional Information: [Letter](#) from President Batjer to PG&E on Fast Trip issues (October 25, 2021); [Letter](#) from President Batjer to PG&E (August 18, 2021); [Resolution M-4852](#) (April 15, 2021); [Letter](#) from President Batjer to PG&E (November 24, 2020); [Ruling](#) updating case status (September 4, 2020); [Ruling](#) on case status (July 15, 2020); [Ruling](#) on proposals to improve PG&E safety culture (June 18, 2019); [D.19-06-008](#) directing PG&E to report on safety experience and qualifications of board members (June 18, 2019); [Scoping Memo](#) (December 21, 2018); Docket No. [I.15-08-019](#).

PG&E Regionalization Plan

No updates this month. The statutory deadline for a final decision was extended to June 30, 2022 in an order issued December 16, 2021.

Background: In D.20-05-051 approving PG&E's reorganization following bankruptcy, PG&E was directed to file a regionalization proposal (Docket No.19-09-016). On June 30, 2020, PG&E filed its regionalization proposal, which describes how it plans to reorganize operations into new regions. PG&E proposes to divide its service area into five new regions. PG&E will appoint a Regional Vice President by June 2021 to lead each region, along with Regional Safety Directors to lead its safety efforts in each region. The new regions would include five functional groups that report to the Regional Vice President encompassing various functions including: (1) Customer Field Operations, (2) Local Electric Maintenance and Construction, (3) Local Gas M&C, (4) Regional Planning and

Coordination, and (5) Community and Customer Engagement. Other functions will remain centralized, such as electric and gas operations, risk management, enterprise health and safety, the majority of existing Customer Care and regulatory and external affairs, supply, power generation, human resources, finance, and general counsel.

In August 2020, parties filed protests and responses to PG&E's application. Of note, South San Joaquin Irrigation District filed a Protest arguing that PG&E's regionalization effort should not create a moratorium or interfere with municipalization efforts. In addition, five CCAs filed responses or protests to PG&E's application, with MCE and EBCE filing protests and City of San Jose, City and County of San Francisco, and Pioneer Community Energy filing responses.

In February 2021, PG&E submitted its updated regionalization proposal ("Updated Proposal"). In response to feedback, PG&E modified its five regions (renamed North Coast, North Valley & Sierra, Bay Area, South Bay & Central Coast, and Central Valley), including moving Yolo County from Region 1 to Region 2 (North Valley & Sierra), where it would be grouped with the following counties: Colusa, El Dorado, Glenn, Lassen, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Solano, Sutter, Tehama, and Yuba. PG&E also provided more information on the new leadership positions that it is creating and its "Lean Operating System" implementation.

Currently, PG&E is in Phase 1 of 3 of its regionalization plan, which is focused on refining regional boundaries, establishing roles and governance for regional leadership, and recruiting and hiring for those positions. In Phase 2 (second half of 2021 through 2022), PG&E will establish and implement the regional boundaries and provide the resources and staffing to support it. In Phase 3 (2023 and after), PG&E will continue to reassess, refine and collaborate with other functional groups to improve efficiencies, safety, reliability and customer service.

On August 31, 2021, PG&E, the California Farm Bureau Federation, the California Large Energy Consumers Association, the Center for Accessible Technology, the Coalition of California Utility Employees, the Public Advocates Office at the California Public Utilities Commission ("Cal Advocates"), the Small Business Utility Advocates, and William B. Abrams filed a motion for approval of their settlement agreement ("Multi-Party Settlement Agreement"). A separate settlement agreement is between the South San Joaquin Irrigation District and PG&E. The Multi-Party Settlement Agreement includes a framework within which PG&E will facilitate a stakeholder engagement process for parties to the Multi-Party Settlement Agreement to provide updates and a non-binding forum for input for stakeholders. The proposed settlement would restrict participation in the Regionalization Stakeholder Group to parties or others who agree to the scope, procedures and protocols of the Regionalization Stakeholder group as outlined in the settlement. PG&E will host two public workshops in 2022 and for each year until the completion of Phase III or its regionalization implementation to provide updates to the public about its regionalization implementation progress.

In the separate PG&E/SSJID Settlement Agreement, PG&E clarified and confirmed that its implementation of regionalization as managed by its Regionalization Program Management Office will not include any work to oppose SSJID's municipalization efforts. However, SSJID also acknowledged that PG&E may continue to respond to SSJID's municipalization efforts in other forums and proceedings separate from the regionalization proceeding and/or implementation of the Updated Regionalization Proposal.

Details: VCE filed comments on the settlement jointly with Pioneer Community Energy that were critical of PG&E's Updated Proposal and the settlement. VCE and Pioneer recommended that the CPUC reject the settlement and require changes to PG&E's Updated Proposal, including alignment with the boundaries of regional councils of governments ("COGs") and requirements to coordinate with COGs, the development of metrics to measure PG&E's progress on key safety and customer relations issues, greater coordination between PG&E and CCAs, and improvements to the Regionalization Stakeholder Group to expand its access and efficacy.

Analysis: The implications of PG&E's regionalization plan on CCA operations, customers, and costs are largely unclear based on the information presented in PG&E's application and updated application. PG&E's regionalization plan could impact PG&E's responsiveness and management of local government relations and local and regional issues, such as safety, that directly impact VCE customers. It could also impact municipalization efforts, although the pending SSJID settlement agreement stated that PG&E's regionalization efforts will not be in opposition to SSJID's municipalization. As part of Region 2, VCE would be grouped with several northern counties in central and eastern California.

Next Steps: A Proposed Decision will be issued next. The current statutory deadline extension expires on June 30, 2022.

Additional Information: [Joint Motion](#) for approval of Settlement Agreements (August 31, 2021); Ruling granting schedule modification (August 20, 2021); [Ruling](#) denying evidentiary hearing (July 28, 2021); PG&E [Joint Case Management Statement](#) (July 20, 2021); [Amended Scoping Memo and Ruling](#) (June 29, 2021); [PG&E Updated Regionalization Proposal](#) (February 26, 2021); [Ruling](#) modifying procedural schedule (December 23, 2020); [Scoping Memo and Ruling](#) (October 2, 2020); [Application](#) (June 30, 2020); [A.20-06-011](#).

PG&E 2022 ERRA Forecast

No updates this month. On February 11, 2022, the CPUC issued D.22-02-002, resolving all issues and closing the proceeding.

Background: Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the PCIA and other non-bypassable charges for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates.

On June 1, 2021, PG&E filed its 2022 ERRA Forecast application, requesting a 2022 ERRA forecast revenue requirement for ratesetting purposes of \$4.736 billion. After accounting for \$2.479 billion of Utility Owned Generation (UOG)-Related Costs and amounts related to capped 2020 departing load PCIA rates addressed in D.20-12-038, PG&E is requesting a revenue requirement request in this application of \$2.263 billion.

PG&E's Fourth Supplemental Testimony included both an "October Update" and a "December Update." A group of CCA parties recommended in comments that the CPUC adopt the proposed forecasted revenue requirements and associated rates from the December Update and requested the rates be implemented by February 1, 2022. The CCA parties said that adopting the December update would reduce likely volatility between 2022 and 2023 rates and that adoption of an October Update would clearly violate State law and Commission precedent. The CCAs noted that PG&E's forecasted costs to serve load in 2022 are 66.5% higher than in 2021.

CalCCA and the Joint CCAs support a 12-month amortization of the revenue requirements presented in the December Update, rather than the 18-month or 24-month scenarios presented by PG&E in its Fifth Supplemental Testimony in late December. PG&E and DACC also support the 12-month amortization, and Public Advocates Office does not oppose it. In contrast, the California Large Energy Consumers Association, Agricultural Energy Consumers Association, and California Farm Bureau Federation advocate for a 24-month amortization period.

Details: D.22-02-002 approves a 2022 forecast of electric sales and energy procurement revenue requirements of \$2.4 billion, effective in rates on March 1, 2022. It finds the December Update, updated again with the actual year end ERRA-main account balance provides the most accurate forecast for 2022 revenue requirements, and approves the 12-month amortization that was supported by CCAs. Under the December Update adopted in D.22-02-002, **the 2022 total PCIA rate for 2017-vintaged customers (i.e., most VCE customers) will fall 59% relative to 2021 to**

\$0.01969/kWh for residential customers and to \$0.01897/kWh on a system-average basis. It also agrees with the Joint CCAs and DACC that all customers who were financially responsible for the ERRA-PCIA Financing Subaccount (ERRA-PFS) balance should be entitled to the appropriate credit and direct PG&E to transfer the \$95 million ERRA-PFS credit for 2022 to the 2020 vintage subaccount. It approves a request by CCAs and directs PG&E to include the confidential workpapers supporting the PCIA rates from the prior year's ERRA Forecast proceeding as part of the Master Data Request it will provide in each subsequent ERRA Forecast proceeding. D.22-02-002 denies without prejudice the CCA's request to direct PG&E to provide data demonstrating its future role as a CPE in future ERRA forecast proceedings.

On March 14, 2022, the California Large Energy Consumers Association and Agricultural Energy Consumers Association filed an Application for Rehearing (AFR) of D.22-02-002. The AFR argues that the Commission should have adopted a 24-month amortization period for the undercollected ERRA balance. PG&E filed its response to the AFR on March 29, 2022, defending the use of a 12-month amortization period. The Commission has not yet acted on the AFR.

Analysis: D.22-02-002 results in a 59% reduction to VCE's PCIA rates in 2022 compared to 2021. While the PCIA rate will fall substantially in 2022 for VCE customers, the non-RPS benchmarks that contributed to the reduction in the PCIA in 2022 could result in the opposite effect in 2023. That is, the same high benchmarks that helped reduce the 2022 year's forecast case may be too high compared to next year's actuals, which would create large PABA undercollection balances for 2023 rates. The change in the PCIA rate from the December Update will help mitigate such a swing in rates in 2023. D.22-02-002 also improves transparency by approving the CCAs' request for PG&E to provide confidential workpapers supporting the PCIA rates from the prior year's ERRA Forecast proceeding as part of the Master Data Request it will provide in each subsequent ERRA Forecast proceeding.

Next Steps: The proceeding is now closed. However, as described above, an application for rehearing is pending.

Additional Information: [D.22-02-002](#) (January 24, 2022); [Ruling](#) modifying procedural schedule (January 14, 2022); [Ruling](#) directing PG&E to provide amortization scenarios (December 17, 2021); [Scoping Memo and Ruling](#) (August 11, 2021); [Notice](#) of Prehearing Conference (July 15, 2021); [Application](#) (June 1, 2021); Docket No. [A.21-06-001](#).

PG&E's 2019 ERRA Compliance

No update this month except to note that Opening Briefs are due May 6, 2022. On March 23, 2022, consolidated Application (A.) 20-02-009, A.20-04-002 and A.20-06-001 was reassigned from Commissioner Martha Guzman Aceves to Commissioner John R.D. Reynolds.

Background: Joint IOU rebuttal testimony was filed February 15, 2022, and a Joint Case Management Statement was submitted February 25, 2022.

Phase 1 has been resolved. The September 7, 2021, Ruling consolidated the Phase 2 ERRA compliance proceedings of PG&E, SCE, and SDG&E. The issues scoped for Phase 2 are:

- What is the appropriate methodology for calculating a utility's unrealized volumetric sales and unrealized revenues resulting from PSPS events in any given record year? Based on this methodology, what are the utilities' (PG&E, SCE, and SDG&E) unrealized volumetric sales and unrealized revenues resulting from 2019 PSPS events?
- Whether it is appropriate for the utilities to return the revenue requirement equal to the unrealized volumetric sales and unrealized revenue resulting from the PSPS events in 2019.

At the October 26, 2021, workshop hosted by Energy Division, the IOUs (PG&E, SCE, and SDG&E) made a joint presentation of their proposal for a methodology to calculate the revenue requirement of the estimated unrealized volumetric sales and unrealized revenue resulting from PSPS events. The Joint IOUs' testimony provided additional information on the common methodology for calculating the potential unrealized sales that may result from a PSPS event to be used in a potential rate disallowance, which relies on the energy-related portion of the CPUC-jurisdictional distribution charge for this purpose. CCA representatives pushed back at the October 26, 2021, workshop that the IOUs had not considered unrealized revenues from utility-owned generation that had not been bid into the CAISO market. The ALJ requested the CCAs make a motion to clarify whether that issue is in scope in the proceeding.

Accordingly, the Joint CCAs filed a motion on November 4, 2021, requesting the CPUC clarify the scope of issues in this proceeding. The November 12, 2021, Ruling clarified the CPUC's intent to consider a range of PSPS methodologies, which may be proposed by both the IOUs and other parties. It provided that parties may conduct additional discovery to support their proposal of a reasonable alternative PSPS methodology. The CPUC will consider a PSPS methodology that includes unrealized generation-related volumetric sales and revenues, along with the joint IOU proposal and potentially other PSPS methodologies

Details: The Joint IOUs' recommendations to adopt their common methodology for calculating unrealized revenue from end-use customers de-energized during PSPS events were determined to be reasonable and approval was recommended in the Joint Case Management Statement.

Previously, the CCA Parties' testimony identified all retail rate components that should be considered to provide a full accounting of the unrealized retail revenue during PSPS events. The testimony also described how, absent a ratemaking remedy, the IOUs will fully recover their authorized revenue requirement from all customers, including those receiving no electricity service during PSPS events, through pre-established balancing account mechanisms. The CCA Parties also explained the potential impact of PSPS events on wholesale generation revenue and the need to account any such reductions if generation resources are forced offline due to PSPS events.

The CCA Parties recommended the following issues which remain in dispute per the Joint Case Management Statement:

- The calculation of unrealized retail revenue during PSPS events should include additional CPUC-jurisdictional rate components tied to balancing accounts that record IOU costs incurred despite lost sales to end use customers.
- Each IOU should make a full accounting of the balancing accounts implicated by the total unrealized retail revenue.
- Unrealized wholesale generation revenue should be quantified if utility-owned generation resources, or contracts with take-or-pay provisions, are forced out of service due to a PSPS event.
- Each IOU should record adjusting entries to affected balancing accounts, equal to the unrealized retail and wholesale generation revenue as applicable, to comply with the Commission's directive to "forgo collection in rates from customers of all authorized revenue requirement equal to estimated unrealized volumetric sales and unrealized revenue resulting from PSPS events."

TURN also filed testimony recommending that all revenue requirements from retail sales be disallowed.

Analysis: Phase 2 of the proceeding is assessing whether PG&E should be required to return its revenue requirement associated with unrealized sales associated with its 2019 PSPS events, and

the methodology and inputs for calculating such disallowance. VCE’s customers could benefit from such a CPUC-determined disallowance, e.g., via a bill credit or reduced PG&E charges.

Next Steps: Opening Briefs are due May 6, 2022, and Reply Briefs are due June 3, 2022.

Additional Information: [Joint Case Management Statement](#) (February 25, 2022); [Order Denying Rehearing of D.21-07-018](#) and PG&E’s application for rehearing of D.21-07-013 (December 3, 2021); [Ruling](#) consolidating ERRA compliance proceedings (September 7, 2021); [PG&E Application for Rehearing](#) of D.21-07-013 (August 16, 2021); [D.21-07-013](#) resolving Phase 1 (July 16, 2021); [Joint Motion to Adopt Settlement Agreement](#) (October 22, 2020); [Amended Scoping Memo and Ruling](#) (August 14, 2020); [Scoping Memo and Ruling](#) (June 19, 2020); PG&E’s [Application](#) and [Testimony](#) (February 28, 2020); Docket No. [A.20-02-009](#).

Direct Access Rulemaking

On March 1, 2022, Rulemaking 19-03-009 was reassigned from Commissioner Martha Guzman Aceves to Commissioner John R.D. Reynolds. On August 13, 2021, CalCCA filed a response to a July application for rehearing filed by a coalition of parties supporting expansion of Direct Access, who challenged a June CPUC decision that recommended against any re-opening of Direct Access. This proceeding is otherwise closed.

Background: In Phase 1 of this proceeding, the CPUC allocated the additional 4,000 GWh of Direct Access load to non-residential customers required by SB 237 (2018, Hertzberg) among the three IOU territories with implementation to begin January 1, 2021.

In Phase 2, the CPUC issued D.21-06-033 recommending against any further Direct Access expansion at this time based primarily on a concern that doing so "would present an unacceptable risk to the state’s long-term reliability goals." It observed that after considering recent reliability events (i.e., the summer 2020 heat storm and resulting rolling blackouts in California and February 2021 outage event and skyrocketing electricity prices in Texas) and IRP forecasts for additional generation, expanded direct access would result in further system fragmentation that raises serious electric system reliability concerns. Further portions of the Decision:

- Observed that Direct Access providers do not have a track record of relying on long-term contracts to meet their energy needs, which could impede the development of new, needed resources.
- Noted that allowing expansion could undermine the long-term contracts that LSEs such as CCAs have already entered (i.e., due to load migration) and make it difficult for them to enter new contracts.
- Stated that currently, the CPUC is not able to ensure that Direct Access expansion would not increase GHG emissions and other pollutants when compared to retaining the current cap, as Direct Access providers have historically relied primarily on unspecified power and lead to a net decline in clean energy procurement.

Details: In their July Application for Rehearing, parties including the Alliance for Retail Energy Markets and the Direct Access Customer Coalition argued that:

- The CPUC broke the law and abused its discretion when it disregarded the express duties imposed on it by SB 237.
- D.21-06-033 ignored the substantial evidence in the record as it pertains to: (1) concerns about electric service provider (ESP) procurement performance and (2) the alleged threat to reliability posed by load migration due to an expansion of Direct Access is inaccurate and discriminatory.

- D.21-06-033 discriminates against non-residential customers and the ESPs that wish to serve them, thereby violating the dormant Commerce Clause of the US Constitution.
- D.21-06-033 relied on "misrepresentations of facts and speculations."

CalCCA's August response argued that:

- The CPUC's interpretation of the statute was consistent with its plain language and legislative history.
- The Decision is supported by the findings required by statute and is also adequately supported by findings based on the entire administrative record.
- The dormant Commerce Clause argument fails because the Decision applies equally to both in-state and out-of-state ESPs, and therefore does not unfairly discriminate against out-of-state interests.
- The argument that the Decision discriminates against both ESPs and their customers and therefore violates their Equal Protection rights fails the "rational basis" test in that the Decision is based on the findings regarding electric grid reliability and environmental concerns.

Analysis: This proceeding determined the CPUC's recommendations to the Legislature regarding the potential future expansion of DA in California. D.21-06-033 recommending against expansion of Direct Access at this time could reduce the risk of load migration from CCAs (or IOUs) to ESPs.

Next Steps: The only remaining item to be addressed in this proceeding is the Application for Rehearing filed by direct access advocates.

Additional Information: [CalCCA Response](#) to Application for Rehearing (August 13, 2021); Application for Rehearing of [D.21-06-033](#) (July 29, 2021); [D.21-06-033](#) recommending against direct access expansion (approved June 24, 2021); [Ruling](#) and [Staff Report](#) (September 28, 2020); [Amended Scoping Memo and Ruling](#) adding issues and a schedule for Phase 2 (December 19, 2019); Docket No. [R.19-03-009](#); see also [SB 237](#).

Glossary of Acronyms

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

CPCN	Certificate of Public Convenience and Necessity
CTC	Competition Transition Charge
DA	Direct Access
DWR	California Department of Water Resources
ELCC	Effective Load Carrying Capacity
ERRA	Energy Resource and Recovery Account
EUS	Essential Usage Study
GRC	General Rate Case
IEPR	Integrated Energy Policy Report
IFOM	In Front of the Meter
IRP	Integrated Resource Plan
IOU	Investor-Owned Utility
ITC	Investment Tax Credit
LSE	Load-Serving Entity
MCC	Maximum Cumulative Capacity
OII	Order Instituting Investigation
OIR	Order Instituting Rulemaking
PABA	Portfolio Allocation Balancing Account
PD	Proposed Decision
PG&E	Pacific Gas & Electric
PFM	Petition for Modification
PCIA	Power Charge Indifference Adjustment
POLR	Provider of Last Resort
PSPS	Public Safety Power Shutoff
PUBA	PCIA Undercollection Balancing Account
PURPA	Public Utility Regulatory Policies Act of 1978 (federal)
QC	Qualifying Capacity
QF	Qualifying Facility under PURPA
RA	Resource Adequacy
RDW	Rate Design Window
ReMAT	Renewable Market Adjusting Tariff
RPS	Renewables Portfolio Standard
SCE	Southern California Edison
SED	Safety and Enforcement Division (CPUC)
SDG&E	San Diego Gas & Electric

TCJA	Tax Cuts and Jobs Act of 2017
TOU	Time of Use
TURN	The Utility Reform Network
UOG	Utility-Owned Generation
WMP	Wildfire Mitigation Plan
WSD	Wildfire Safety Division (CPUC)

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 9**

TO: Board of Directors
FROM: Rebecca Boyles, Director of Customer Care & Marketing
SUBJECT: Customer Enrollment Update (Information)
DATE: April 14, 2022

RECOMMENDATION

Receive and review the attached Customer Enrollment update as of April 6, 2022. Please note that two (2) year's data instead of one (1) year's data is provided. Moving forward, Staff will be providing quarterly Board updates instead of monthly, unless/until VCE is in an active enrollment period, at which point monthly enrollment updates would be provided.

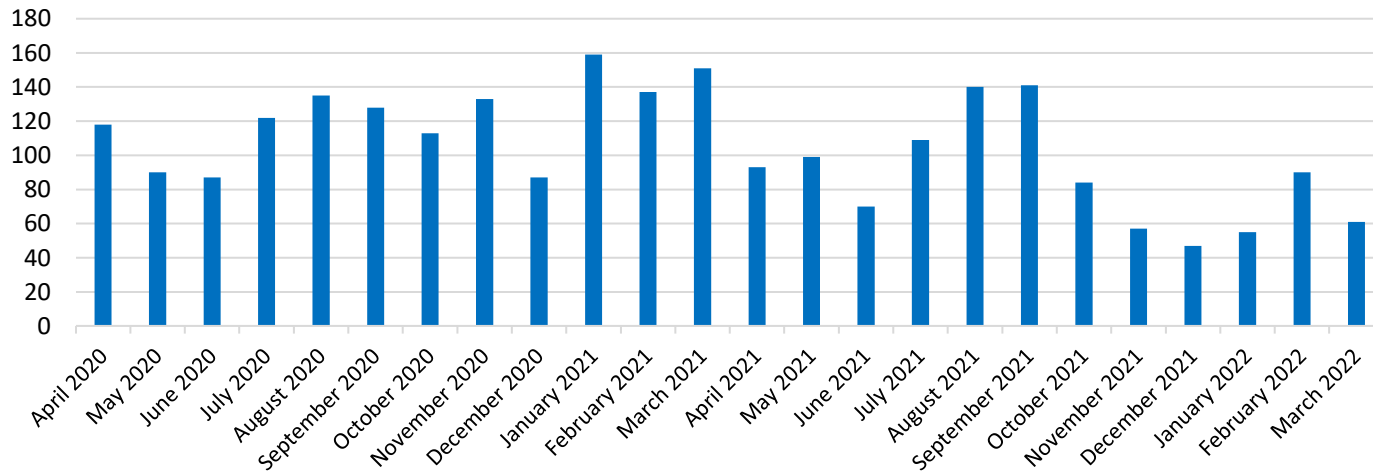
Item 9 - Enrollment Update

	Davis	Woodland	Winters	Yolo Co	Total	Residential	Commercial	Industrial	Ag	NEM	Non-NEM
VCEA customers	1,849	1,453	168	809	4,279	3,932	130	0	213	704	3,575
Eligible customers	1,924	1,647	212	889	4,672	4,285	164	0	218	794	3,878
Participation Rate	96%	88%	79%	91%	92%	92%	79%	0%	98%	89%	92%

% of Load Opted Out

Residential	Commercial	Industrial	Ag	Total
1%	1%	0%	0%	1%

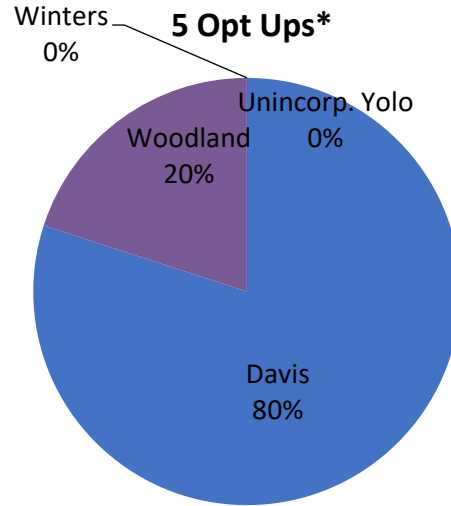
Monthly Opt Outs



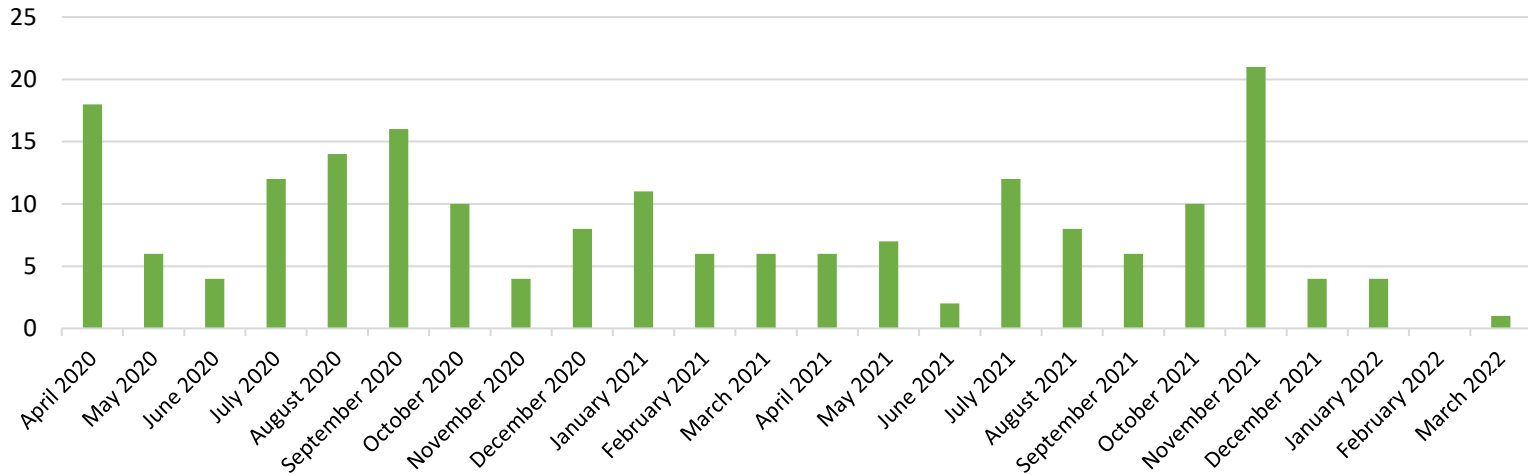
Status Date: 04/6/22



Item 9 - Enrollment Update



Monthly Opt Ups*

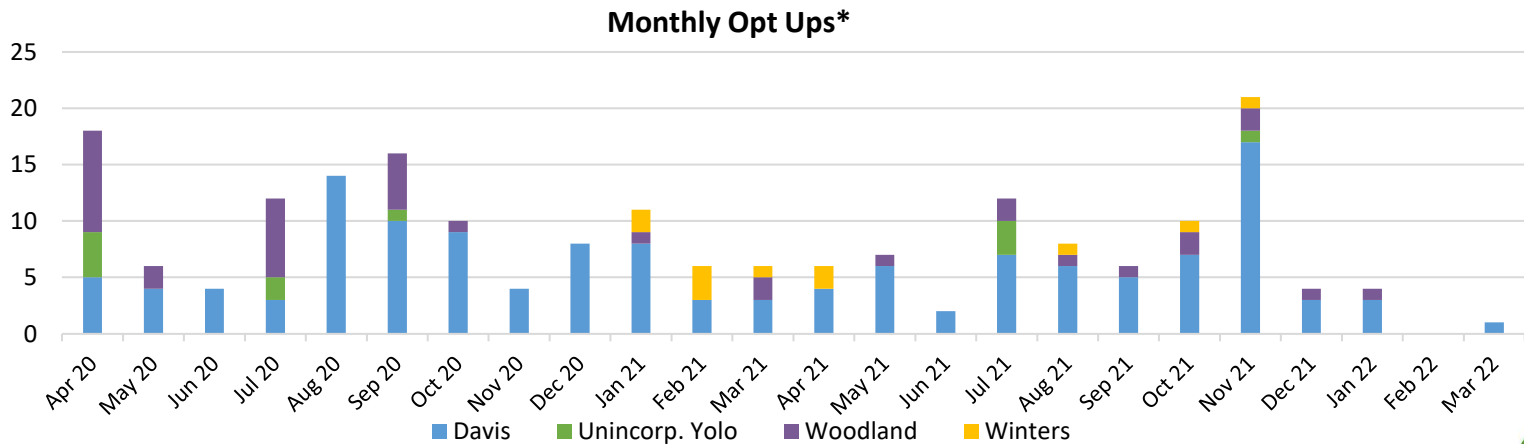
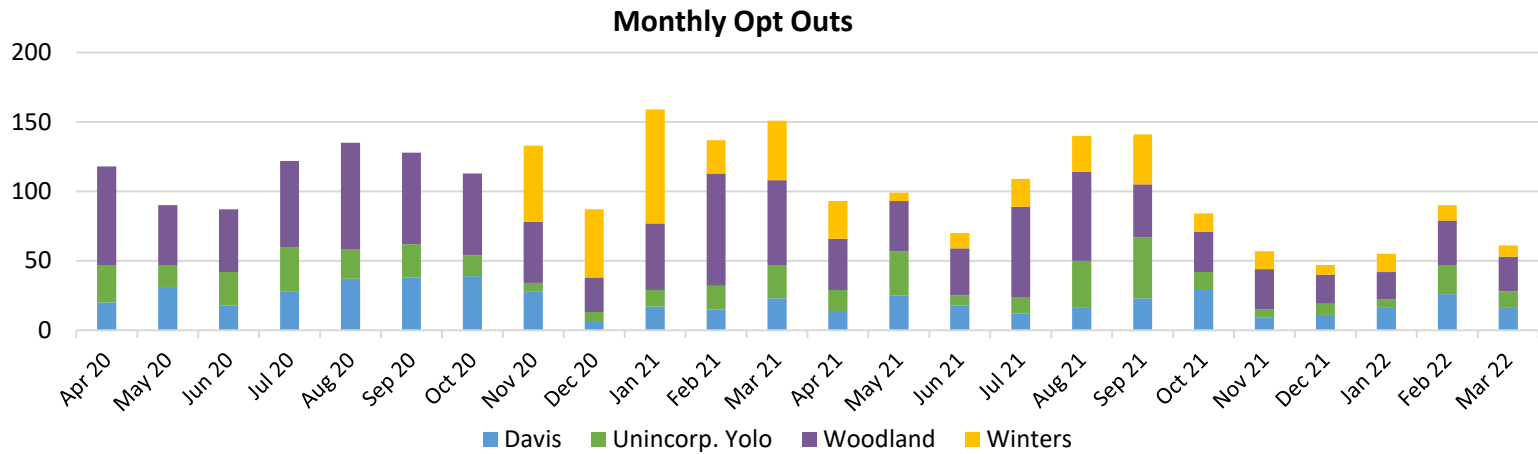


* The numbers in the pie chart represent opt ups for customers who are currently enrolled. The numbers in the bar graph represent opt up actions taken regardless of current enrollment status.



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Item 9 - Enrollment Update



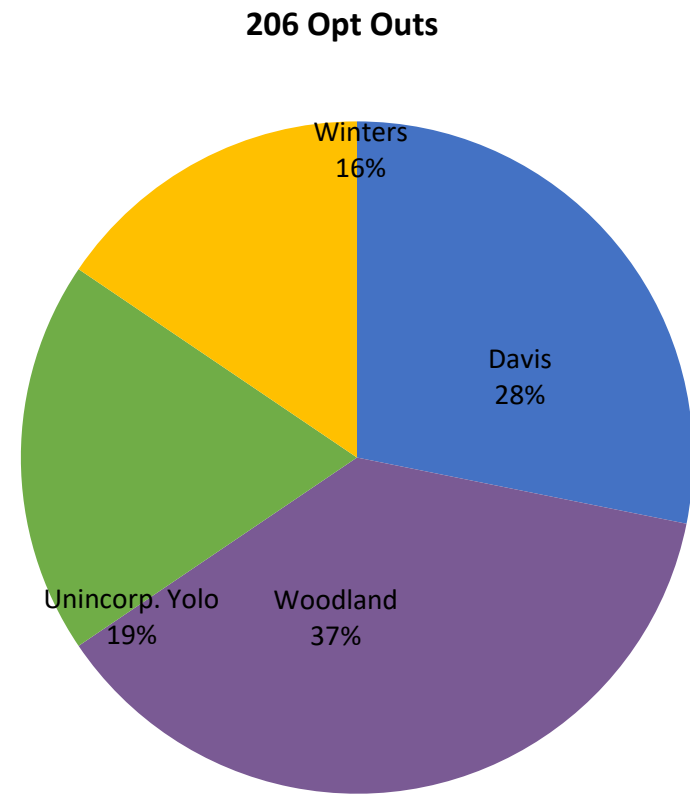
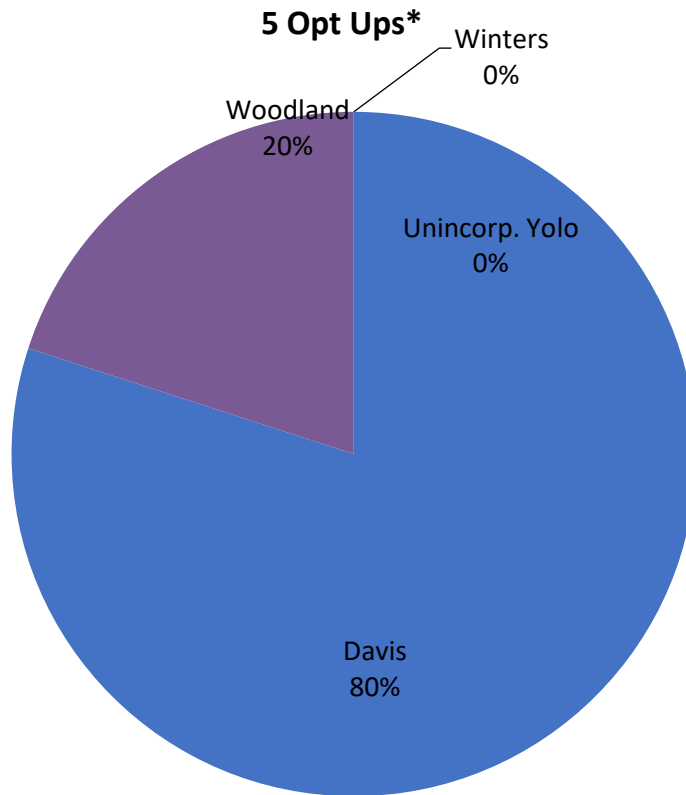
* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

Status Date: 04/6/22



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Item 9 - Enrollment Update



* These numbers represent all opt up actions ever taken regardless of current customer enrollment status.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Community Advisory Committee March 24, 2022 Meeting Summary

DATE: April 14, 2022

This report summarizes the Community Advisory Committee’s meeting held via Zoom webinar on Thursday, March 24, 2022.

- A. **Received update on legislative bills [(AB 2696 (E. Garcia), SB 1174 (Hertzberg), AB 2937 (Calderon), SB 881 (Min))].** Staff provided an update on legislative bills that staff was assessing for a VCE position. CAC Members were informed that due to the fast movement of SB 881, Staff followed VCE’s regulatory and legislative action policy by consulting with the Board chair and VCE’s lobbyist consultant to submit an “oppose unless amended” letter. The CAC had a brief discussion on the best way for Staff to get input from the CAC on bills when timing of the legislative process does not allow the bill to be brought to the CAC for discussion and a recommendation.
- B. **Energy Resiliency Task Group (ERTG) Charge reviewed tasks.** CAC members reviewed and discussed the tasks identified in the draft ERTG Charge. After a brief discussion, the CAC approved the tasks and added the task of holding a public forum on Community Energy Resilience and Staff are to handle the logistics (7-0-0). The Outreach Task Group was asked to assist engaging the community in the public forum.
- C. **California Community Power JPA (“CC Power”) long duration energy storage project: Goal Line.** Staff presented an overview of the Goal Line long duration energy storage project that CC Power is considering. After a brief discussion, the CAC recommended that VCE participate in the California Community Power (CC Power) Goal Line Energy Storage Project (7-0-0).
- D. **Received overview of VCE Forecasting and solicited feedback.** Staff provided a summary on the forecasting process and information that is used in forecasting models and budget. CAC Members asked questions and provided input on what information would be useful in the upcoming forecasting CAC agenda information items. Staff will review external models and forecasts, including load demand and power supply costs at the CAC’s April meeting and revenues and administrative costs, including power charge indifference adjustment (PCIA) costs and rates (revenue model) at the CAC’s May meeting.

- E. **Received presentation on VCE's rates update.** Staff reintroduced the thinking, analysis and conclusions that resulted from the discussion VCE had in the Fall 2021 on expanding the customer rate structure. Staff reviewed the proposed cost-based rate structure that was discussed: three (3) customer rate options, customer distribution, and portfolio/price pertaining to renewable and GHG content. CAC Members asked questions and discussed: renewable power content and portfolio, CARE/FERA default rate and portfolio content, Time of Use (TOU), customer rate options, differentiation between PG&E and VCE, and local project investment.
- F. **Considered Customer program concept (Electric Vehicle Rebates Program).** Staff summarized the Electric Vehicle (EV) Rebates program which is focused on available rebates and tax credits for the consumer with the pilot program designed to stack and demystify the electric vehicle purchase process. CAC Members discussed and provided feedback and suggestions to Staff. Staff will present Phase 1 of the EV Rebates Program to the CAC at their April meeting seeking a recommendation to the Board for their May meeting.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

TO: Board of Directors

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

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

DATE: April 14, 2022

RECOMMENDATIONS

1. Adopt resolution approving services contract with TeMix Inc. for implementation support of the three-year AgFIT (Flexible Irrigation Technology) dynamic pricing pilot in an amount not to exceed \$1.25M.
2. Authorize the Executive Officer and/or his designee to execute and take all actions necessary to implement the services contract substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel, to approve minor changes to the services contract so long as the term and amount are not changed.

BACKGROUND AND ANALYSIS

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

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

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

Pilot Program Consultant Support

The AgFIT pilot is a unique undertaking that requires a combination of technical knowledge, electricity rate structuring that is matched with practical expertise in the agricultural sector that is exceedingly uncommon. TeMix worked with Polaris, which was awarded a grant by the California Energy Commission that is the precursor study for the AgFIT pilot, and provides both organizations with the prerequisite skills and knowledge to support the VCE AgFIT pilot. Additionally, TeMix (and Polaris) sought out VCE based on our proposal submitted to the CPUC in late 2020 to implement a dynamic pricing structure to achieve load shift in the agricultural sector and formed an aligned effort to build the case for the pilot. Due to their unique expertise and experience in this specialized work in the agricultural sector, staff is recommending that the Board approve the services contract with TeMix for pilot implementation support. Note: TeMix's support services will be compensated through the CPUC funded pilot program.

FISCAL IMPACT

VCE will be providing short-term budget support until the CPUC budget process is completed (anticipated in Q2). Following CPUC action, VCE will be reimbursed for short-term budget support expenditures incurred under this and other pilot support services contracts (e.g. Polaris). On January 27, 2022 the VCE Board approved a temporary budget of up to \$200,000 of the program reserve fund that will be covered by future reimbursable revenues to have a net neutral impact on the budget.

The AgFIT program budget is included in the staff recommended 2022 budget (agenda item 18 on the February 10, 2022 Board agenda).

CONCLUSION

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

ATTACHMENTS

1. TeMix AgFIT services contract
2. Resolution

AGREEMENT FOR CONSULTANT SERVICES

This **Agreement** is made and entered into as of _____, 2022 by and between **Valley Clean Energy Alliance**, a Joint Powers Authority organized and operating under the laws of the State of California with its principal place of business at 604 Second Street, Davis, California, 95616 (“VCE”), and **TeMix**, a CORPORATION with its principal place of business at 221 Main St. #360 Los Altos, CA 94023 (hereinafter referred to as “Consultant”). VCE and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

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

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

NOW, THEREFORE, VCE and Consultant agree as follows:

1. SCOPE OF SERVICES AND TERM.

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

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

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

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

2. PROJECT COORDINATION.

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

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

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

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

3. RESPONSIBILITIES OF CONSULTANT.

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

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

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

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

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

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

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

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

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

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

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

3.10 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. FEES AND PAYMENT.

4.1 Compensation. This is a “time and materials” based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in **Exhibit D**. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed One Million, Two-hundred, Fifty Thousand Dollars (\$1,250,000) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

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

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

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

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

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

4.7 Compensation Contingent on Receipt of Funds. Notwithstanding the above and the provisions of Exhibit D, VCE's obligation to compensate Consultant for the Services rendered under this Agreement is contingent on VCE's receipt of the necessary funds for the Project from the California Public Utilities Commission and/or Pacific Gas & Electric (PG&E). Consultant agrees that if VCE does not receive said funds, Consultant shall have no claim for compensation against VCE.

5. SUSPENSION AND TERMINATION.

5.1 Suspension. VCE may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of Consultant to perform any material provision of this Agreement. Consultant will be paid for satisfactory services performed hereunder through the date of temporary suspension pro rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant may terminate this Agreement and collect payment for any satisfactory services provided through the date of temporary suspension pro rating for any payment in connection with the next milestone as described above.

5.2 Termination for Cause.

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

to perform fully any and all of the material agreements herein contained, Consultant shall be in default.

5.2.2 If Consultant fails to cure the default within thirty (30) days after written notice thereof, or if Consultant is not diligently pursuing a cure to VCE's satisfaction within thirty (30) days after written notice of the breach, VCE may, at its sole option, take possession of any documents and data (as more specifically described in Section 6.1) or other materials (in paper and electronic form) prepared for VCE or used by Consultant exclusively in connection with the Project and (1) provide any such work, labor, materials or services as may be necessary to overcome the default and deduct the cost thereof from any money then due or thereafter to become due to Consultant under this Agreement; or (2) terminate Consultant's right to proceed with this Agreement.

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

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

due for services satisfactorily provided to VCE as of the date of Consultant's written notice of default.

5.3 Termination for Convenience.

5.3.1 In addition to the foregoing right to terminate for default, VCE reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the not-to-exceed amount set forth in Section 4.1 which shall be calculated as follows: (1) payment for Services then satisfactorily completed and accepted by VCE pro-rating for any payment in connection with the next milestone based on the work performed towards such milestone as mutually determined by Consultant and VCE working together in good faith, plus (2) payment for Additional Work satisfactorily completed and accepted by VCE, plus (3) reimbursable expenses actually incurred by Consultant, as approved by VCE . The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deduced from the amounts described in (1), (2), and (3) above. Consultant shall not be entitled to any claim or lien against VCE or the Project for any additional compensation or damages in the event of such termination and payment. In addition, VCE's right to withhold funds under Section 4.3 shall be applicable in the event of a termination for convenience.

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

5.3.3 Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without

limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency (a “Force Majeure Event”). The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

6. OTHER PROVISIONS.

6.1 Documents and Data.

6.1.1 Ownership of Documents. VCE shall be the owner of the following items produced exclusively pursuant to this Agreement, whether or not completed: all data collected, all documents prepared, of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether performance under this Agreement has been completed or if this Agreement has been terminated prior to completion. Consultant shall not release any materials under this Section except after prior written approval of VCE. Consultant assumes no liability for VCE’s use of Documents in any manner not contemplated in the scope of the Project.

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

6.1.3 Release of Documents to VCE. Consultant shall deliver to VCE all materials prepared by Consultant exclusively in connection with this Agreement, including all drafts,

memoranda, analyses, and other documents, in paper and electronic form, within five (5) days of receiving a written request from VCE.

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

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

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

6.3 Hold Harmless

a. General Hold Harmless

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

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

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

(C) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of VCE and/or its officers, agents, or employees. However, Consultant's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which VCE has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

b. Intellectual Property Indemnification

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

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

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

The duty of Consultant to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 278 of the California Civil Code. For the avoidance of doubt, Consultant's obligations under this Section are not subject to the Limitation on Liability set forth in Exhibit F.

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

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

6.5 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California and any legal actions concerning this Agreement's validity, interpretation and performance shall be governed by the laws of the State of California. Venue shall be in Yolo County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 *et seq.* prior to filing any lawsuit against VCE. Such Government Code claims, and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by the Parties hereunder. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against VCE.

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

Consultant:	TeMix Inc. ContactTeam@temix.com Attn: Customer Relations
VCE:	Valley Clean Energy Alliance 604 2 ND Street Davis, CA 95616 Attn: Mitch Sears

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

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

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

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

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

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

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

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

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

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

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

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

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

6.19 Authority to Enter Agreement. Each party has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants

that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

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

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

[Signatures on following page]

SIGNATURE PAGE TO CONSULTANT SERVICES AGREEMENT

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

VCE

TeMix Inc.

By: _____
Mitch Sears
Executive Officer

By: _____
Edward Cazalet
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Inder Khalsa
VCE Legal Counsel

EXHIBIT A

SCOPE OF SERVICES

Software Services

Consultant will deploy its Software product known as the TeMix UNIDE/RATES transactive Platform™ (“Platform”), which will perform the experimental tariff pricing calculations, record the retail transactions and meter readings for each pump, and calculate the experimental tariff shadow bills.

Professional Services

Consultant will provide the following professional services:

- 1) Tariff design: Consultant will compute the shadow bill and provide bill data to PG&E and VCE on a monthly basis.
- 2) Interface with PG&E’s circuit data
- 3) Project Management and Planning

Separate Considerations:

Consultant is providing the Services of this Agreement at a highly discounted price that is beneficial to VCE and its customers, and as outlined in the California Public Utilities Commission’s (CPUC) Decision 21-12-015.

The Consultant has full intention to work with VCE to extend the Services of this Agreement with its other products, for long-term use, later to be determined. To achieve this additional Service scope, Consultant and VCE may execute an additional contract.

End User License Agreement: Exhibit F contains the End User License Agreement for the Software which is an element of this contract.

EXHIBIT B

FACILITIES, EQUIPMENT, AND OTHER MATERIALS PROVIDED BY VCE

NOT APPLICABLE

EXHIBIT C

SCHEDULE OF SERVICES

As directed by VCE and in accordance with CPUC Decision 21-12-015. Both parties acknowledge the timeline for this project is fluid and agree to work in good faith to meet all deadlines.

EXHIBIT D

BUDGET, PAYMENT, RATES

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

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of **one million two hundred fifty thousand dollars (\$1,250,000)**, as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to VCE unless previously approved in writing by VCE.

Consultant understands that VCE has submitted to the CPUC a revised allocation of the budget approved for the Project by D.21-12-015. In the event that modifications are made to D.21-12-015, the parties agree to negotiate in good faith as to any amendments that may be necessary to this Exhibit and/or the Agreement.

Software License Fees: Three hundred fifty thousand dollars (\$350,000.00) per year. The first annual license fee shall be due and payable 30 days after receipt of funds to VCE from PG&E; provided, however, that VCE agrees to use best efforts to submit payment to Consultant as soon as reasonably practicable after receipt of such funds. Each subsequent annual license fee shall be due annually, based on the anniversary date of the first annual license fee due date.

Professional Services Fees:

A total of two hundred thousand dollars (\$200,000.00). for the professional services described in Exhibit "A", to be paid in four equal payments of fifty thousand dollars (\$50,000.00). The first payment shall be due and payable 30 days after receipt of funds to VCE from PG&E; provided, however, that VCE agrees to use best efforts to submit payment to Consultant as soon as reasonably practicable after receipt of such funds. Subsequent payments shall be due upon receipt of invoice the first business day of 2023, the first business day of 2024, and at the end of the project, on May 1, 2025.

Additionally, Extra Work requested in writing by VCE will be provided by the Consultant and billed separately at the following rates, paid 30 days after the receipt of the bill:

Software and System Engineers - \$125/hr. US funds

Senior Economists and Engineers - \$200/hr. US funds

Invoices:

In order to request payment, Consultant shall submit invoices to VCE describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, hours worked, task(s) for which work was performed). VCE shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in this Agreement, provided VCE has received funds from the California Public Utilities Commission via PG&E if that is the source of funds for the Extra Work. VCE does not pay interest on past due amounts.

EXHIBIT E

DATA PRIVACY AND INFORMATION SECURITY

- 1.1 Undertaking by Consultant. Without limiting Consultant's obligation of confidentiality as further described in this Agreement, Consultant shall be responsible for establishing, maintaining, and providing a written description to VCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantial similar to the security controls identified in the current version of NIST SP800-53, and that is designed to: (a) ensure the security and confidentiality of the VCE Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the VCE Customer Data; (c) protect against unauthorized disclosure, access to, or use of the VCE Customer Data; (d) ensure the proper disposal of VCE Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Consultant, if any, comply with all of the foregoing. In no case shall the safeguards of Consultant's data privacy and information security program used to protect VCE Customer Data be less stringent than the safeguards used by Consultant for its own data. If the Services include handling credit card information, then the Consultant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). For purposes of this Agreement, "VCE Customer Data" means any personally identifiable information collected, used, processed, stored, or generated as the result of the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, usage information obtained through the use of Advanced Metering Infrastructure or an individual's name in combination with any other of the elements listed herein. "VCE Customer Data" does not include information from which identifying information has been removed such that an individual, family, household or residence, or non-residential customer cannot reasonably be identified, or publicly available information that is lawfully made available to the general public from federal, state, or local government records.
- 1.2 Third-Party Data Security Review. Consultant shall undergo an independent third-party security review as required by PG&E, and shall provide VCE with a copy of any findings from such review.
- 1.3 CPUC Compliance. Consultant shall comply with all applicable consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.

1.4 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of VCE Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Consultant that relate to the protection of the security, confidentiality, or integrity of VCE Customer Data, Consultant shall, as applicable: (a) notify VCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with VCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by VCE; (c) in the case of personal information as defined in California Civil Code Section 2798.2(h), (1) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; and (2) provide third-party credit and identity monitoring services to each of the affected individuals who comprise the personal information for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (d) perform or take any other actions required to comply with applicable law as a result of the occurrence; (e) without limiting VCE's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless VCE for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from VCE in connection with the occurrence; (f) be responsible for recreating lost VCE Customer Data in the manner and on the schedule set by VCE without charge to VCE; (g) provide to VCE a detailed plan within ten (10) calendar days of the occurrence describing the measures Service Provider will undertake to prevent a future occurrence and (h) upon conclusion of the occurrence, or at VCE's request, provide to VCE a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by VCE, which shall be executed by Consultant and may be relied upon by VCE as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Consultant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Consultant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity

monitoring services to be provided by Consultant. This Section shall survive the termination of this Agreement.

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

EXHIBIT F

END USER LICENSE AGREEMENT

END USER LICENSE AGREEMENT FOR TEMIX PLATFORM (“SOFTWARE”)

IMPORTANT – READ THIS AGREEMENT BEFORE USING THE SOFTWARE. USING THE SOFTWARE IN THE CLOUD INDICATES YOU AND ANY ENTITY YOU REPRESENT (“you”) ACCEPT THIS AGREEMENT. If you do not agree to all of the terms of this Agreement, then do not use the Software. By agreeing to this Agreement, you represent that you have full power, capacity and authority to accept the terms of this Agreement. If you are accepting the terms of this Agreement on behalf of an employer or another entity, you and such employer or other entity represent that you have full legal authority to bind such employer or other entity to this Agreement.

This End User License Agreement (“EULA”) is a legal agreement between you and TeMix Inc. (“TeMix”), as the licensor of the Software (except for Excluded Software as defined below) and related materials, including printed or online documentation, updates or upgrades provided by TeMix, and any data or files created by the operation of the software, which shall be collectively referred to as the “Software.”

The Software is that deployed, at the time of registration, on the Microsoft Azure™ cloud environment and all updates or modifications provided by TeMix, but not Excluded Software as defined below, during the term of this EULA. TeMix may add to, change, or remove any part, term, or condition of this EULA, including but not limited to as it applies to the Software at any time without prior notice or liability to you.

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ACCEPTANCE TO PRIVACY POLICY

You agree that TeMix' collection, use and disclosure of information will be in accordance with this Agreement and the TeMix privacy policy available here: www.temix.com/privacy-policy/. To the extent there is a conflict between the TeMix privacy policy and this VCE Consulting Service Agreement, this Agreement shall control.

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~~\$10,000. THIS LIMITATION ON LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTIONS 3.7, 6.1, AND 6.3 OF THIS VCE CONSULTING SERVICE AGREEMENT.~~

Some jurisdictions may not allow exclusions or limitations of incidental or consequential damages, exclusions or limitations of implied warranties, duties, or conditions, or allow limitations on how long an implied warranty, duty or condition lasts, so the above limitations or exclusions may not apply to you.

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The Software and any other software provided on or through the Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software or such other software could lead to death, personal injury, or severe physical or environmental damage (“High Risk Activities”). TEMIX, its DIRECTORS, officers, employees, agents, information providers, licensors and licensees, and successors and assigns, SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY, DUTY OR CONDITION OF FITNESS FOR HIGH-RISK ACTIVITIES. YOU ARE SOLELY RESPONSIBLE FOR ANY AND ALL ACTION, OR LACK OF ACTION, TAKEN TO PRESERVE LIFE OR PROPERTY.

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EQUITABLE REMEDIES

You agree that any violation of or non-compliance with any term or condition this EULA by you will constitute an unlawful and unfair business practice and will cause irreparable harm to TeMix for which monetary damages would be inadequate, and you consent to TeMix obtaining any injunctive or equitable relief that TeMix deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies that may be available to TeMix under contract, at law or in equity.

The failure of TeMix to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision. If any part of this EULA is held invalid, illegal, or unenforceable, that provision shall be enforced to the maximum extent permissible to maintain the intent of this EULA, and the other parts will remain in full force and effect. If you provide any suggestions, ideas, improvements, modifications, feedback, error identifications or other information related to the Software, or any other TeMix products or services (“Feedback”), you hereby grant TeMix a non-exclusive, perpetual, irrevocable, non-terminable, worldwide, royalty-free, fully-paid-up, sublicensable right and license to copy, distribute, display and create derivative works of and otherwise use such Feedback without restriction, including to improve the Software and to develop, market, offer, sell and provide other products and services.

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TERM AND SURVIVAL

This EULA is effective for the duration specified in this Valley Clean Energy Alliance Consulting Service Agreement or until terminated. TeMix may terminate this EULA immediately if you fail to comply with its terms. In addition, upon termination you will have no recourse against TeMix for your inability to use the Software or the accompanying documentation.

In case of such termination, you must cease all use of the Software, and delete all accounts you may have established which are accessible through the Software. Any of your obligations under this EULA which by their nature are intended to survive the termination of this EULA or your use of the Software shall continue to apply to you after the termination of this EULA or you cease to use the Software.

FEEDBACK

Should you have any questions concerning this EULA, you may contact TeMix by writing to TeMix Incorporated at ContactTeams@temix.com Attn.: Customer Relations

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022-____

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

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

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

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

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

1. Authorize the Executive Officer, in consultation with legal counsel, to execute a consulting services agreement with TeMix to provide services necessary to implement the pilot, for an amount not to exceed \$1.25M and to expire March 1, 2025.
2. Authorize the Executive Officer and/or his designee to execute and take all actions necessary to implement the services contract substantially in the form attached hereto on behalf of VCE, and in consultation with legal counsel, to approve minor changes to the services contract so long as the term and amount are not changed.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance held on the _____ day of _____ 2022, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Jesse Loren, VCE Chair

Alisa M. Lembke, VCE Board Secretary
Attachment A: TeMix Incorporated Services Agreement

ATTACHMENT A

TEMIX INCORPORATED SERVICES AGREEMENT

VALLEY CLEAN ENERGY ALLIANCE**Staff Report - Item 12**

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 14, 2022

REQUESTED ACTION

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. Originally, only VCE and the City of Davis were involved, and Woodland, Winters and unincorporated Yolo County joined the project prior to submitting the grant application in August 2018. 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.

UPDATE

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. Staff does note that EV charger installations have been subject to some delays including impacts from the COVID-19 pandemic and staffing shortages.

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.

ATTACHMENTS:

1. **VCE SACOG Progress Report Davis – April 2022**
2. **VCE SACOG Progress Report Winters - April 2022**
3. **VCE SACOG Progress Report Yolo - April 2022**
4. **VCE SACOG Progress Report Woodland – April 2022**

VALLEY CLEAN ENERGY

SACOG GRANT

PROGRESS REPORT – CITY OF DAVIS

1. Project Summary

The City of Davis was apportioned \$1,912,000 of the total award (\$2,912,000) to perform the following:

- *Site, design, permit, construct and install Level 2 Chargers in the project area (3 minimum)*
- *Site, design, permit, construct and install DC Fast Chargers (Level 3) in downtown area within ½ to 5 miles of major freeway corridors (2 minimum)*
- *Purchase Mobile Chargers of the type similar to ‘EV ARC’ solar standalone charging stations (2 minimum)*
- *Purchase or lease electric vehicle(s) to transport 8 or more people (one minimum)*

In discussion of the project, the City has divided the effort into “Phase 1” - the minimum action needed to meet the requirements of the grant award, and “Phase 2” for funds that may remain after the minimums are met, to determine locations for installations based on the siting criteria discussed and approved during “Phase 1” efforts.

2. Project Manager

Stan Gryzcko, Director, Public Works Utilities and Operations

3. Site (s) Description

Internal review and discussions have been ongoing around locations and recommend that were presented to the City’s Natural Resources Commission, however locations have not been formally approved. Further discussions and review have also modified the recommendations for the suggested locations:

Location	Existing	Original Recommendation	Revised Recommendation
City Hall	Two dumb pedestal mount Clipper Creek	Two smart dual-port Level 2 stations and one DCFC	Because this site is getting an entire electrical upgrade, including a back-up generator, installing charging stations will be very low cost. You could put four dual-port stations here.
4 th & G Garage	Two dumb pedestal mount Clipper Creek	Two smart dual-port Level 2 stations (wall mount)	No change
E Street Parking Lot	Two dumb pedestal mount Clipper Creek	Two smart dual-port Level 2 stations or one quad-port station	One smart dual-port Level 2. Conduit won’t support additional wires.

VALLEY CLEAN ENERGY

SACOG GRANT

PROGRESS REPORT – CITY OF DAVIS

Amtrak	Two dumb pedestal mount charging stations	One dual-port DCFC	Two wall-mount dual port Level 2
Olive Drive	Configured for a DCFC	One dual-port DCFC, potentially a high-speed 150kW charger	One dual port DCFC, but in a different location.

4. Site information (Maps, Pictures, Etc.)
N/A at this time

5. Description of any material planned changes to the Project.
N/A at this time - of note the position originally assigned to manage this project remains vacant, however interviews should begin shortly.

6. Table schedule showing progress on achieving each of the Milestones
See below.

7. Summary of activities during the previous calendar quarter or month.
Staff continue to work with the consultant to finalize the lifecycle cost analysis, and review each suggested location in detail. With the site review, modifications were made to the original recommendations on installation that have been reviewed by staff. Billing data from PG&E was finally obtained (after some significant delays) so project work on this phase is nearly complete.

8. Forecast of activities scheduled for the current calendar quarter
Once the City has the final lifecycle cost analysis and recommendations on the installation and management of chargers, staff will return to the Natural Resources Commission with the recommended locations & methods of installation/management, and answers to the Commission questions from November 2021. Discussion from the NRC, along with any support or alternative suggestions then be presented to City Council to begin the implementation portion of the Phase 1 project, with an outline of the recommended process for Phase 2.

9. Written descriptions about the progress relative to Milestones, including whether the milestone has been met or is on target to meet the Milestones
For the purposes of this report, we will not include milestones, other than the first milestone of completing the feasibility study. Once the City has made a determination on how best to move forward with installation/purchase of the required chargers/vehicle, additional milestones will be added to show progress towards those actions.

10. List of issues that are reasonably likely to affect Milestones

VALLEY CLEAN ENERGY
SACOG GRANT
PROGRESS REPORT – CITY OF DAVIS

We continue to have a shortage of staffing resources with current vacancies. Depending on the outcome of upcoming recruitments, we may require additional resourcing to keep the project moving forward.

11. A status report of activities, including a forecast of ongoing activities, information on project performance, and projections for the next twelve (12) months.
In the next year, staff expects completion of the site location report, construction of Phase I installations, completion of Phase II siting (which is partially encompassed in the site location report for Phase I), and prep for construction of Phase II installations.
12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements, and purchase orders showing the start dates, completion dates, and completion percentages.
For the purposes of this portion of the effort, we have a contract with our consultant to complete this Phase 1 study. There are no other responsive documents to this request at this time.
13. Pictures, in sufficient quantity and of appropriate detail, document the Project's progress.
N/A
14. Workforce Development or Supplier Diversity Reporting (if applicable)
N/A
15. Any other documentation to be included for Board Update

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
N/A					

DASHBOARD KEY

Completed	IN PROGRESS	DELAYED	ON HOLD
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TABLE 1

Milestone Description	Status	% Completion	Estimated Completion Date	Notes

VALLEY CLEAN ENERGY
SACOG GRANT
PROGRESS REPORT – CITY OF DAVIS

Feasibility Report and Lifecycle Cost Analysis	Initial draft reviewed by Natural Resources Commission, internal work continues, City awaiting final report draft	80%		
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LINKED: **Natural Resources Commission Meeting Documents**

- [Staff Report](#)

- [Frontier Energy Draft Report](#)



1. Project Summary - **Install car charging stations at Community Center and City parking lot.**
2. Project Manager – **Eric Lucero**
3. Site (s) Description – **Winter Community Center and city parking lot at First and Abbey.**
4. Site information (Maps, Pictures, Etc.) **Attached**
5. Description of any material planned changes to the Project. - **None**
6. Table schedule showing progress on achieving each of the Milestones. – **See below**
7. Summary of activities during the previous calendar quarter or month. - **No activities this quarter**
8. Forecast of activities scheduled for the current calendar quarter. - **No activities planned**
9. Written descriptions about the progress relative to Milestones, including whether the milestone has been met or is on target to meet the Milestones
10. List of issues that are reasonably likely to affect Milestones. – **PG&E Rule 20A utility project**
11. A status report of activities, including a forecast of ongoing activities, information on project performance, and projections for the next twelve (12) months. **Attached**
12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements, and purchase orders showing the start dates, completion dates, and completion percentages. **Attached**

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
Completed	Completed	Completed	In Progress	50%	50%

TABLE 1

Milestone Description	Status	% Completion	Estimated Completion Date	Notes
Community Center charging stations are complete and in operation	Complete	100%	9-23-2021	Chargers have been in operation since September
First & Abbey Street charging stations are on hold waiting for	On Hold	10%	7-21-2022	Chargers and materials have been purchased

318 First Street
Winters, CA 95694
Phone.530.795.4910
Fax. 530.795.4935

COUNCIL MEMBERS

Harold Anderson
Jesse Loren
Pierre Neu

MAYOR

Wade Cowan

MAYOR PRO TEM

Bill Biasi

CITY CLERK

Ashley Bussart

CITY TREASURER

Shelly Gunby

CITY MANAGER

Kathleen Salguero Trepas

PG&E Rule 20A project to underground power.				
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Overview of Charger Locations



Winters Community Center Operational Chargers with permanent aluminum sign and temporary banner

318 First Street
Winters, CA 95694
Phone.530.795.4910
Fax. 530.795.4935

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CITY MANAGER
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Photo of 1st & Abbey Parking Lot Charger Locations

318 First Street
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Shelly Gunby

CITY MANAGER

Kathleen Salguero Tropa

VALLEY CLEAN ENERGY

SACOG GRANT

PROGRESS REPORT – YOLO COUNTY APRIL 2022

1. Project Summary
Install EV charging stations throught Yolo County that are accessible to the pubic
2. Project Manager
Mike Martinez, IT & Projects Manager, County Of Yolo General Services Department
3. Site (s) Description
Various County owned properties in the cities of Woodland, Davis, and Winters
 - Site 1: 137 N Cottonwood St, Woodland, California 95695 Bauer Building 2-Dual Charging Stations
 - Site 2: 25 N. Cottonwood Street Woodland, CA 95695 Gonzalez Building 2-Dual Charging Stations
 - Site 3: 315 E 14th St, Davis, CA 95616 Mary L. Stephens Davis Branch Library 1-Dual Charging Station
4. Summary of activities during the previous calendar quarter or month.
 - Design site walks for Bauer Building, Gonzalez Building, and Davis Branch Library Core Design Team completed on Tuesday, March 15th
 - Design team turn around plans in 4-6 weeks.
 - Meeting with Winters Joint Unified in late March to discuss plans and discuss any questions or concerns.
 - Scheduling pre-permit meeting to discuss process and answer any questions from our contracted vendor.
 - All EV charging equipment for Bauer Building, Gonzalez Building, and Davis Branch Library has been procured and delivered.
 - Scheduled follow-up conversation for 600A site. Met with contractor in March.
5. Forecast of activities scheduled for the current calendar quarter
 - Start conversation with Contractor and Department of Community Services for permitting
 - Follow-up on 600A and Winters Community Library site
6. List of issues that are reasonably likely to affect Milestones
Design and permitting issues may cause delays

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
Completed	Completed – for 3 sites	IN PROGRESS			

DASHBOARD KEY

Completed	IN PROGRESS	DELAYED	ON HOLD
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VALLEY CLEAN ENERGY

SACOG GRANT

APRIL 2022 PROGRESS REPORT FOR CITY OF WOODLAND

1. Project Summary
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.
2. Project Manager
Rosie Ledesma, Environmental Resource Analyst, Community Development Department
3. Site (s) Description
City of Woodland public parking lot near 430-434 College St, Woodland CA 95695.
4. Site information (Maps, Pictures, Etc.)
See site map attached.
5. Description of any material planned changes to the Project.
N/A
6. Table schedule showing progress on achieving each of the Milestones
See Table 1 below.
7. Summary of activities during the previous calendar quarter or month.
Scoped areas within the City for potential station installation. Explored feasibility of installation by Public Works staff. Submitted initial request for PG&E supply upgrade to site. Received estimates for power source materials and charging stations.
8. Forecast of activities scheduled for the current calendar quarter
Re-appropriate funding for grant funds not previously appropriated correctly. Finalize installation plan, location, and budget. Submit formal request for PG&E supply upgrade. Design engineering plan and inquire about permitting requirements. Begin ordering supplies for initial groundwork.
9. Written descriptions about the progress relative to Milestones, including whether the milestone has been met or is on target to meet the Milestones
We are still in the initial planning stages of the project. Site selection and feasibility is still being reviewed, but should make progress in the next quarter.
10. List of issues that are reasonably likely to affect Milestones
Cost of materials continue to increase and may limit proposed implementation plan without potentially securing additional funding sources.

VALLEY CLEAN ENERGY

SACOG GRANT

APRIL 2022 PROGRESS REPORT FOR CITY OF WOODLAND

- 11. A status report of activities, including a forecast of ongoing activities, information on project performance, and projections for the next twelve (12) months.
N/A
- 12. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements, and purchase orders showing the start dates, completion dates, and completion percentages.
N/A
- 13. Pictures, in sufficient quantity and of appropriate detail, document the Project's progress.
N/A
- 14. Workforce Development or Supplier Diversity Reporting (if applicable)
N/A
- 15. Any other documentation to be included for Board Update

Dashboard

Site Selection	Contract Award	Permits	Installation	Testing	Go Live
In progress					

DASHBOARD KEY

Completed	IN PROGRESS	DELAYED	ON HOLD
-----------	-------------	---------	---------

TABLE 1

Milestone Description	Status	% Completion	Estimated Completion Date	Notes
Site selection and feasibility	In progress	50%	April 2022	
Power supply upgrade	In progress	10%	September 2022	

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 13**

TO: Board of Directors

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

SUBJECT: Update to Valley Clean Energy Employee Handbook (April 2022)

DATE: April 14, 2022

Recommendation

1. Adopt a resolution for updates to the VCE Handbook, as highlighted below and detailed in Attachment 1 - Employee Handbook (April 2022) Redline.

Background & Discussion

VCE's Employee Handbook includes policies and guidelines for human resources and benefits offered to employees. The VCE Employee Handbook is maintained to comply with the latest practices and remain competitive with compensation packages provided by other CCAs.

The Board adopted an Employee Handbook in January 2018 with an initial update in January 2019. The Handbook was updated on July 11, 2019, in coordination with legal counsel to maintain consistency with new laws and personnel requirements. Additional updates to the Employee Handbook were made in February 2020 and 2021 to adjust employee medical benefits.

Attachment 1 - Employee Handbook (April 2022) includes the following key updates (shown in redline highlights in the attachment) :

- General update replacing "General Manager" with "Executive Officer."
- Work Schedules (PG 10-11) – This section has been updated to include flexible work schedules and telecommuting agreements.
- Discretionary pay for performance (PG 18) – This section has been added to detail the annual review of merit increases and performance bonuses for superior performance.
- Compensation equity (PG 18-19) – This section has been added to detail conditions for adjusting base pay to remain competitive with labor market conditions and annual inflation conditions.
- Paid Time Off (PTO) Payout (PG 34) grants the Executive Officer the authority to allow employees with excess accumulated balances to cash out a maximum of 60 hours under specific conditions.

- Medical contribution (PG 35-36) amounts to remain competitive and parity to market rates from 1,750.00 to 1,826.00 for insurance benefits and \$500.00 to 550.00 per month in lieu amounts.
- Retirement plan benefits (PG 36) – This addition includes the ability for employees to take loans that are administered under our existing plan.

Discretionary amounts for pay for performance, compensation equity, and PTO payout are subject to be included in the annual budget or a budget amendment and approved by the Board of Directors. These sections are not guaranteed to employees and may not be available due to budget constraints or other business reasons.

Staff requests that the Board approve these changes detailed in the attached Employee Handbook (April 2022) redline to maintain best human resources practices and a competitive benefits package. The 2022 budget included a VCE compensation equity adjustment of 5%, slightly less than the U.S. Bureau of Labor Statistics reported 2021 inflation of 7% and increased medical benefits to maintain employee medical coverage. VCE's legal counsel Richards Watson Gershon has reviewed and approved all changes in the attached updated Employee Handbook.

Attachment

1. Employee Handbook (April 2022) Redline
2. Employee Handbook (April 2022) Clean
3. Resolution



VALLEY
CLEAN ENERGY

Employee Handbook

**Updated in
April 2022**

Table of Contents

Welcome To Valley Clean Energy Alliance	5
Introductory Policies	6
Introduction & Future Revisions.....	6
Our Working Relationship	6
Open Communication Policy	6
Equal Employment Opportunity.....	6
Unlawful Harassment	7
Employment Policies and Practices.....	9
Classification of Employees	9
Rehired/Converted Employees	10
Job Duties	10
Work Schedules	10
Personnel Records.....	11
Inspection of Payroll Records	11
Layoffs and Work Reductions.....	11
Employment Termination.....	11
Employment Verification and References.....	12
Timekeeping and Attendance	13
Punctuality and Attendance	13
Timekeeping Requirements for Non-Exempt Staff	13
Meal and Rest Periods for Non-Exempt Staff.....	14
Overtime Time Provisions for Non-Exempt Staff	14
Make Up Time for Non-Exempt Staff	14
Exempt Employee Time Off.....	14
Lactation Accommodation	14
Payment of Wages.....	15
Advances.....	15
Payroll Deductions, Wage Attachments and Garnishments	15
Reporting Time Pay	15

Payment for Hours Worked During Business Travel for Non-Exempt Staff	15
Pay for Mandatory Meetings for Non-Exempt Staff	16
Standards of Conduct	16
Professional Business Conduct and Ethics	16
Performance Evaluations.....	18
Problem Resolution	19
Alcoholic Beverage Consumption.....	19
Drug and Alcohol Abuse	2019
Customer and Public Relations.....	21
Confidentiality	2221
Conflict of Interest.....	22
Solicitation.....	2322
Media Contact	23
Employment of Friends or Relatives.....	23
Personal Relationships in the Workplace.....	23
Dress Policy.....	24
Day to Day Operations	24
Employer and Employee Property.....	24
Electronic Systems and Privacy	25
Social Media Guidelines	25
Telephone Usage	27
Cell Phone Usage	27
Workplace Monitoring	28
Travel Expense Policy	28
Agency Property and Equipment.....	2928
Personal Use of Agency Property	30
Driving Record and Insurance.....	30
Health and Safety	30
Smoking Policies	31
Security	31
Workplace Violence.....	31
Off-Duty Use of Facilities	32

Parking	32
Employee Suggestion Program.....	32
Employee Benefits.....	32
Benefits.....	32
Official Health Plan Documents.....	32
Paid Time Off (PTO)	33
Holidays	35
Insurance Benefits	35
Domestic Partners	38
Cal-COBRA	38
Recreational Activities and Programs.....	38
Leaves of Absence	3938
Medical Leaves of Absence	39
Bereavement Leave	40
Bone Marrow and Organ Donation Leave.....	40
Civil Air Patrol Leave	4140
Domestic Violence and Sexual Assault Victim Leave.....	4140
Jury Duty or Witness Leave	41
Military Leave	41
Pregnancy Disability Leave	41
Integration With Other Benefits.....	42
Continuation of Medical Benefits.....	42
School Appearance Leave.....	4342
Time Off for Victims of a Violent or Serious Crime	43
Time Off to Vote	43
Volunteer Emergency Duty Leave	43
Workers' Compensation.....	43
Return to Work Policy	4443
Receipt and Acknowledgment of VCEA Employee Handbook	44
Receipt and Acknowledgement of VCEA Handouts	4645

Welcome To Valley Clean Energy Alliance

DATE

Dear VCEA Employee:

INSERT COVER LETTER HERE

Sincerely,

Mitch Sears

~~Interim General Manager~~ Executive Officer

Introductory Policies

Introduction & Future Revisions

We hope you will find your employment with Valley Clean Energy Alliance (“VCEA” or “Agency”) to be both rewarding and challenging. Our staff are key to VCEA’s success and we carefully select our new employees. This handbook is not a contract, express or implied, nor does it guarantee employment for any specific length of time.

The policies included in this handbook are guidelines only and are subject to change as VCEA deems appropriate. From time to time you may receive notice of new or modified policies, procedures, benefits, or programs. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Our Working Relationship

VCEA does not offer tenure or any other form of guaranteed employment. Either VCEA or the employee can terminate the employment relationship at any time, with or without cause, with or without notice. This is called Employment At Will. This employment at will relationship exists regardless of any other written statements or policies contained in this handbook or any other Agency documents or any verbal statement to the contrary.

No one except VCEA’s General Manager/Executive Officer can enter into any kind of employment relationship or agreement that is contrary to the previous statement. To be enforceable, such relationship or agreement must be in writing, signed by the General Manager/Executive Officer, approved by the VCEA Board.

Open Communication Policy

At VCEA, courtesy, tact and consideration should guide each employee in relationships with fellow workers and the public. It is mandatory that each employee show maximum respect to every other person in the organization. The purpose of communication should be to help others and to make our business run as effectively as possible, thereby gaining the respect of our colleagues and customers.

Equal Employment Opportunity

VCEA is an equal opportunity employer and makes employment decisions on the basis of merit and business need. VCEA’s policies prohibit unlawful discrimination based on race, color, religious creed, gender, pregnancy (or related medical condition), genetic information, genetic characteristics, gender identity, gender expression, religion, marital status, military or veteran status, age, national origin or ancestry, physical or mental disability, medical condition, sexual orientation, or any other consideration made unlawful by federal, state or local laws. All such discrimination is contrary to VCEA policy.

Reasonable Accommodation.

When necessary under the California Fair Employment and Housing Act and the Americans with Disabilities Act, VCEA will reasonably accommodate an employee or applicant with a disability if the employee or applicant is otherwise qualified to safely perform all of the essential functions of the position.

We will make reasonable accommodations when requested to comply with applicable laws ensuring equal employment opportunities to qualified individuals with a disability. VCEA will engage in a timely, good-faith, interactive process to determine a reasonable accommodation, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition. VCEA will consider all requests for accommodation, but retains discretion to determine what, if any, accommodation to provide.

Unlawful Harassment

VCEA intends to provide a work environment that is pleasant, professional, and free from intimidation, hostility or other offenses which might interfere with work performance. Harassment of any sort - verbal, physical, or visual - will not be tolerated. This includes both sexual harassment as well as harassment based on an employee's status in a protected class. These classes include, but are not necessarily limited to race, color, religion, age, gender, genetic information, genetic characteristics, gender identity, gender expression, sexual orientation, pregnancy (or related medical condition), national origin or ancestry, disability, medical condition, marital status, veteran status, military status, or any other protected status defined by law. This policy also prohibits unlawful harassment based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. This policy extends to unlawful harassment of VCEA employees by any other VCEA employees, vendors, independent contractors, customers, or others with whom employees may come into contact with during their work for VCEA.

Our workplace is not limited to our facilities, but may also include customer and vendor facilities, as well as anywhere a business-related function, or social function sponsored by VCEA, is taking place.

What Is Workplace Harassment?

Workplace harassment can take many forms. It may be, but is not limited to, words, signs, offensive jokes, cartoons, pictures, posters, e-mail jokes, social media communication, messages or statements, pranks, intimidation, physical assaults or contact, or violence. It may also take the form of other vocal activity including derogatory statements not directed to the targeted individual but taking place within their hearing. Other prohibited conduct includes written material such as notes, photographs, cartoons, articles of a harassing or offensive nature, and taking retaliatory action against an employee for discussing or making a harassment complaint. In addition, this policy protects employees against conduct from all individuals in the workplace, such as fellow employees, supervisors, outside customers, vendors, independent contractors, or other non-employees who conduct business with our agency.

What Is Sexual Harassment?

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal or physical contact of a sexual nature. When this conduct creates an offensive, hostile and intimidating working environment, it may prevent an individual from effectively performing the duties of their position. It also encompasses such conduct when it is made a term or condition of employment or compensation, either implied or stated and when an employment decision is based on an individual's acceptance or rejection of such conduct.

It is important to note that harassment crosses age and gender boundaries and cannot be stereotyped. Among other perceived unconventional situations, sexual harassment may involve two women or two men. Harassment

may exist on a continuum of behavior. For instance, one example of harassment may be that of an employee showing offensive pictures to another employee.

Generally, two categories of harassment exist. The first, "quid pro quo," may be defined as the demand for sexual favors in exchange for improvement or continuance in your working conditions and/or compensation. The second category, "hostile, intimidating, offensive working environment," can be described as a situation in which unwelcome sexual advances, requests for sexual favors, or verbal or other conduct creates an intimidating or offensive environment. Examples of a hostile, intimidating, and offensive working environment include, but are not limited to, pictures, cartoons, symbols, or items found to be offensive. An employee may have a claim of harassment even if he or she has not lost a job or other economic benefit.

Responsibility

All VCEA employees, and particularly supervisors, have a responsibility for keeping our work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being told of it, must report it to their immediate supervisor, the ~~General Manager~~Executive Officer or a management representative with whom they feel comfortable. When supervisors become aware of the existence of conduct that could violate this policy, they are obligated to take prompt and appropriate action, whether or not the recipient of the harassment wants VCEA to do so.

Reporting

If you believe you have been harassed by any agency employee, customer, contractor, or other business contact, you are required to report it to your supervisor or any other member of management. While we encourage you to communicate directly with the alleged harasser, and make it clear that the harasser's behavior is unacceptable, it is not required that you do so. It is essential, however, to notify a member of management immediately even if you are not sure the offending behavior is considered harassment. Any incidents of harassment must be immediately reported. At any time if you feel that you are in immediate harm and do not have time to contact either the ~~General Manager~~Executive Officer or your supervisor, seek assistance from any management representative.

Appropriate investigation and disciplinary action will be taken. All reports will be promptly investigated. However, confidentiality cannot be guaranteed. Any employee found to have harassed any employee will be subject to severe disciplinary action up to and including termination. VCEA will also take any additional action necessary to appropriately remedy the situation. Retaliation of any sort will not be permitted. No adverse employment action will be taken for any employee making a good faith report of alleged harassment.

All employees must report any incidents immediately so that complaints can be quickly and fairly resolved. The California Department of Fair Employment and Housing ("DFEH") investigates and may prosecute complaints of harassment. Whenever an employee thinks he or she has been harassed or that he or she has been retaliated against for resisting or complaining, that employee may file a complaint with the DFEH. The nearest DFEH office is listed in the telephone book or on-line.

Harassment and Retaliation Prohibited

VCEA prohibits any form of harassment on a protected basis that impairs an employee's working ability or emotional well-being at work. VCEA also prohibits any employee from retaliating in any way against anyone

who has raised any concern about harassment or discrimination against another individual. We will investigate any complaint of harassment, discrimination, and retaliation and will take immediate and appropriate disciplinary action if any such conduct has been found within the workplace.

Employment Policies and Practices

Classification of Employees

A new hire will be classified as either “exempt” or “non-exempt.”

Non-exempt employees are entitled to overtime pay for hours worked in excess of forty (40) hours per workweek.

Exempt employees are those employees whose duties and responsibilities allow them to be “exempt” from provisions as provided by the Federal Fair Labor Standards Act (FLSA) and any applicable state laws. If you are an exempt employee, you will be advised that you are in this classification at the time you are hired, transferred, or promoted. Participation in VCEA’s benefits programs may be affected by your employment status or classification.

All employees of VCEA whether exempt, non-exempt, full-time, part-time, or temporary are employed at-will.

1. The EXEMPT status applies to certain administrative, professional, and executive staff. Exempt employees qualify for exemption from overtime regulations under state and federal law and their salaries already take into account that they may work long hours.
2. The NON-EXEMPT status applies to all other regular employees. Non-exempt employees receive extra pay for overtime work (as described in the overtime section of this employee handbook). Employees working in non-exempt positions are compensated for the actual amount of time spent on their job and are entitled to receive time and one-half (1 ½) their regular rate of pay for each hour worked in excess of forty (40) hours in a work week.
3. FULL-TIME employees work on a regular basis for at least 40 hours per week. Full-time employees may or may not be EXEMPT. They are eligible for all benefits available through work at VCEA, so long as they meet the applicable requirements, such as length of service.
4. PART-TIME employees are regularly scheduled to work fewer than 40.0 hours per week. Part-time employees who are regularly scheduled to work a minimum of 30 hours per week are entitled to all benefits as explained later in this employee handbook according to a prorated formula based on their average hours worked compared to a standard 40.0 hour workweek. Part-time employees who are regularly scheduled to work less than 30 hours per week are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the ~~General Manager~~ Executive Officer.
5. TEMPORARY EMPLOYEES are hired with the understanding that their employment will not continue beyond a stated date or beyond completion of a specified project or projects. Temporary employees will generally not be employed for more than 6 months. Temporary employees are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the ~~General Manager~~ Executive Officer.

6. INTERNS are employees who are gaining supervised practical experience in a professional field. Interns may be paid, but are not eligible for any benefits listed in this employee handbook except as required by law.

Recruitment

VCEA will conduct an appropriate recruitment, depending on the needs of the organization and the position involved. Open positions may or may not be posted to solicit outside candidates. If you are aware of a vacancy and are interested in being considered for the position, you should discuss the matter with your current supervisor.

Rehired/Converted Employees

If you meet eligibility requirements for rehire at the time of your separation from VCEA, you may apply for any open position for which you are qualified. Former employees will be considered along with all other applicants, and have no greater chance of being selected for employment than all other applicants.

If you are rehired by VCEA or convert from part-time to full-time status, your length of service with VCEA for all purposes will be calculated from the rehire date or the date of conversion to full-time status.

Employees who are involuntarily terminated for performance reasons or for violation of agency policy are ineligible for rehire. In addition, employees who voluntarily resign may still be ineligible for re-hire if VCEA learns of circumstances that would have justified termination for performance-based reasons regardless of when that information is acquired.

Job Duties

Your supervisor will explain your job responsibilities and the performance standards expected of you. Your job responsibilities may change at any time during your employment; for example you may be asked to work on special projects or to assist with other work necessary or important to the operation of VCEA. It is expected that VCEA will have your cooperation and assistance in performing such additional work.

VCEA also may, at any time, with or without notice, alter or change your job responsibilities, reassign or transfer your position, or assign you additional job responsibilities depending on business needs.

Work Schedules

VCEA's normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Your supervisor will assign your individual work schedule, and you are expected to be ready to perform your work at the start of your scheduled shift. Flexible work schedules and telecommuting may be accommodated with the approval of your supervisor. Alternative work arrangements are not an entitlement or employee benefit. A supervisor may end the arrangement at any time for any reason or without cause. All changes to normal working hours, flexible work schedules, and telecommuting arrangements should be documented with your supervisor and HR representative.

On occasion, work schedules may fluctuate with customer demand and business needs. If a change in your work schedule is required, your supervisor will notify you at the earliest opportunity. You may be required to work

overtime or hours other than those normally scheduled. Exempt employees are required to work as many hours as are necessary to complete the responsibilities of their positions.

Personnel Records

A personnel file will be confidentially maintained for each VCEA employee. You may review your personnel file during regular business hours upon making a request to the [General Manager/Executive Officer](#). An appointment will be made for the purpose of allowing the review.

VCEA will treat your personnel records as confidential and private. However, there are certain times when information may be given to a person outside VCEA. These include:

1. In response to a subpoena, court order, or order of an administrative agency;
2. To a governmental agency as part of an investigation by that agency of VCEA's compliance with applicable law;
3. In a lawsuit, administrative proceeding, grievance, or arbitration in which you and VCEA are parties;
4. In a workers' compensation proceeding;
5. To administer employee health benefit plans;
6. To a health care provider, when necessary;
7. To a first aid or safety personnel, when necessary; and
8. Information will be disclosed to prospective employers in accordance with the section on Employment Verification and References.

Please promptly notify the [General Manager/Executive Officer](#) of any changes in your personal data. Keeping your file up-to-date can be important with regard to pay, deductions, benefits and other matters. Coverage or benefits that you and your family may receive under VCEA's benefits package could be negatively affected if the information in your personnel file is incorrect.

Inspection of Payroll Records

Employees and former employees have the right to inspect and obtain copies of their own payroll records as required by applicable law. All requests must be submitted in writing to VCEA's [General Manager/Executive Officer](#). Responses will be provided as required by law. Individuals who make a request may be asked to provide identification and may be required to pay for the cost of making the copies.

Layoffs and Work Reductions

VCEA may implement layoffs. Employees will be selected for layoff at VCEA's discretion based on a combination of factors, including, but not necessarily limited to: business needs, employee performance and productivity, qualifications, attendance, attitude, ability and willingness to work the required days and hours, and the ability to work cooperatively with others in the affected work unit.

The weight given to the above factors may vary depending upon the particular needs of the affected work unit and VCEA as a whole at the time of the layoff.

Employment Termination

VCEA strives to ensure a smooth transition for employees leaving VCEA.

VCEA and its employees have an employment relationship that is known as “employment at will.” This means that employees are not required to work for VCEA for any set period of time nor is VCEA required to employ individuals for any specific length of time. **The statements made in this policy do not alter, modify or limit the employment at will relationship.** An “at-will” employee is subject to termination of employment at any time VCEA concludes it appropriate to do so.

Involuntary separation from service means that the termination action is being initiated by VCEA, rather than by the employee. In general, employees who are discharged by VCEA are not eligible for rehire. However, employees who are terminated due to layoff or restructuring may be eligible for rehire or recall at VCEA’s discretion.

VCEA will consider you to have voluntarily terminated your employment if you do any of the following:

1. Resign from VCEA;
2. Fail to return from an approved leave of absence on the date specified by VCEA, or;
3. Fail to report to work or call in for 3 consecutive work days

In the event that you resign voluntarily, we ask – but do not require – that you provide two weeks’ notice to allow for a smooth transition and training of any replacement personnel.

All agency property such as office equipment, credit cards, keys, manuals, computer equipment, and cell phones must be returned on or prior to the last day of employment. You should return these items to your immediate supervisor.

Final wages for time worked, plus any pay for unused but accrued PTO, will normally be paid on your last day of employment, but no later than the next regularly scheduled payday.

Employment Verification and References

When VCEA receives a request for references or employment verification, VCEA will disclose only the dates of employment and the title of the last position held. VCEA will provide a prospective employer with your last earned wage or salary only at your written request. VCEA will release additional information only with a signed authorization and waiver of liability in a form acceptable to VCEA.

Only the ~~General Manager~~Executive Officer is authorized to respond to requests for employee references and verification of employment. No other supervisor or employee is authorized to provide references for current or former employees.

As an employee of VCEA, all requests for information regarding another employee must be forwarded to the ~~General Manager~~Executive Officer.

Timekeeping and Attendance

Punctuality and Attendance

Regular attendance and punctuality are “essential functions” of your job. You are expected to maintain regular attendance during all scheduled work hours, report to work on a timely basis, and work through the end of your regularly scheduled workday. Chronic absenteeism or lateness will not be tolerated and will result in discipline, up to and including termination. In the event of an unscheduled absence, please abide by the following:

- You must personally call your supervisor prior to the start of your shift if you are unable to report to work, or will be late to work, on any particular day.
- You are expected to advise another management representative of your absence if you are not able to reach your supervisor and leave a telephone number where you can be reached.
- You may not have a relative or friend call in to report your absence, unless you are unable to call yourself due to a medical or other emergency.
- If you call after the start of your shift you will be considered tardy for that day.
- You are expected to provide your supervisor with explanation of your absence or tardiness and inform your supervisor of the expected duration of the absence. If you are absent for medical reasons, you do not need to disclose the underlying medical condition.
- With the exception of certain extenuating circumstances, you must call in each day you are scheduled to work and will not report to work.

Repeated absenteeism or tardiness (whether excused or not) is not tolerated. Continuing patterns of absences, early departures, or tardiness - regardless of the exact number of days—may warrant disciplinary action, up to and including termination of employment. Emergency or extraordinary circumstances concerning an absence or tardiness will be considered, and we reserve the right to make an exception to this policy if, at our discretion, an exception is warranted. Repeated car failures, missing the bus, consistently failing to arrange back-up childcare or oversleeping do not constitute emergency or extraordinary circumstances. We reserve the right to determine what is considered excessive absenteeism. In all cases, we will make accommodations for qualified employees with disabilities where required by law.

If you fail to report for work for three (3) consecutive days without any notification to your supervisor, we will consider that you have abandoned your employment, and have resigned your position.

Timekeeping Requirements for Non-Exempt Staff

Applicable law requires VCEA to keep an accurate record of time worked. Employee time records are official VCEA records and must be accurately maintained. You must input your own time at the start and at the end of each workday, and at the start and end of each lunch hour. Completing another employee’s time record or intentionally falsifying a time record is a serious violation and may result in immediate termination of employment. If a time record needs to be corrected, both you and your supervisor must initial the change in the time record to verify its accuracy.

Meal and Rest Periods for Non-Exempt Staff

Employees will generally be provided with at least a 30-minute lunch break per day, which can be scheduled by your supervisor to best accommodate the workday.

Overtime Time Provisions for Non-Exempt Staff

As necessary, you may be asked to work overtime. Only actual hours worked in a given workday or workweek will be counted in determining which hours constitute overtime. We will attempt to distribute overtime evenly and accommodate individual schedules. A supervisor must previously authorize all overtime work. Any overtime worked without prior authorization may be grounds for discipline. We provide compensation for all overtime hours worked by non-exempt employees as follows: All hours worked in excess of forty (40) hours in one workweek will be treated as overtime.

Hours worked for purposes of overtime do not include an unpaid meal period, or hours away from work due to PTO, sickness, holiday, jury duty, or other absences from work. No overtime compensation will be paid to exempt employees. Exempt employees may have to work hours beyond their normal schedules, as work demands require.

Make-Up Time for Non-Exempt Staff

Make-Up time is defined as when a non-exempt employee asks his or her supervisor for additional time off to attend to personal matters. If the request is granted, this time off will be without pay. If you wish to make up this missed time, you may submit a "Make-Up Time Request Form" to your supervisor before the make-up time is worked. It is within the supervisor's discretion to grant the request. Make-Up time must be worked in the same workweek as the missed time (including prior to the missed time) in order not to incur overtime. You may not work over forty (40) hours total in the week including make-up time.

Exempt Employee Time Off

Exempt employees of VCEA are paid a salary, which compensates them for working as many hours as required to complete their job duties. Exempt employees do not receive overtime pay. We realize, however, that in instances of extraordinary additional pressure or increased work hours, it may be appropriate for supervisors to recognize the exempt employee's efforts by granting the employee extra time-off separate from and in addition to the employee's accrued PTO time. In order to achieve consistency among supervisors and fairness to the exempt employees, supervisors should use the following guidelines when exercising their discretion to grant additional time off:

1. Limit the amount of additional time-off to no more than two days;
2. Require the employee to take the time-off in the week immediately following the increased hours whenever possible and;
3. Do not allow employees to accumulate any granted but unused time-off

Lactation Accommodation

VCEA will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. VCEA shall provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in

private. If special arrangements are made to provide a non-exempt employee extra time beyond her normal rest period, the time will be unpaid.

Payment of Wages

Paydays are semi-monthly, the 15th and last day of the month. There are 24 pay periods in a year. The workday (a 24-hour, consecutive period) begins at 12:01 a.m. and ends at midnight. The workweek begins on Sunday and ends on Saturday.

If a regular payday falls on a weekend or holiday, you will be paid on the first day of work prior to the regularly scheduled payday. If there is an error on your check, please report it immediately to your supervisor.

For your convenience, we offer a direct deposit option.

Advances

We do not permit advances against paychecks or against unaccrued PTO.

Payroll Deductions, Wage Attachments and Garnishments

VCEA makes certain deductions from every employee's paycheck. Among these are applicable federal, state, and local income taxes, social security and Medicare taxes, state disability insurance contributions, and paid family leave contributions. By law, VCEA is also required to honor legal attachments and garnishments of an employee's wages or salaries. If your wages are attached, we will withhold the specified amount to satisfy the terms of the attachment.

Reporting Time Pay

Reporting time pay will be paid under the following conditions:

1. Reporting time pay to non-exempt is owed when you report to work at your regularly scheduled time, but you are given less than half the usual or scheduled day's work. In this case, you will be paid for at least half of the hours you were scheduled to work, but never less than two hours pay, and never more than four hours pay.
2. Reporting time pay is also owed if you are required to report to work a second time in any one (1) workday and are given less than two (2) hours work on the second reporting. In this case you will receive at least two (2) hours pay for the second appearance.

These provisions do not apply if you are on a paid "standby" or "on call" status. In some instances, you may not receive reporting time pay. Reporting time pay does not apply if public utilities fail, such as water, gas, electricity, or sewer and/or when work is interrupted by an "act of God" or other causes not within VCEA's control.

Payment for Hours Worked During Business Travel for Non-Exempt Staff

Whenever possible, non-exempt employees traveling on agency business are expected to do so during normal working hours. In the very rare instance where your travel time constitutes overtime, you will be paid overtime as required by law. Non-exempt employees will be paid for all hours worked, including out of town travel time, at regular and overtime pay rates according to the law. Pay for travel time may be at a rate of pay that is less than the employee's normal rate of pay.

If you are non-exempt and traveling on business, you will not be paid for time between work assignments; e.g., if you stay the night in a hotel, pay begins when you begin to work, or are in transit. Travel is to be scheduled in advance, in writing by your supervisor, with the knowledge of the ~~General Manager~~Executive Officer.

Non-exempt travel may be approved on an as-needed basis, but only with prior authorization from your supervisor.

Pay for Mandatory Meetings for Non-Exempt Staff

VCEA will pay you for your attendance at meetings, lectures and training programs if all of the following conditions are met:

1. Attendance is mandatory (i.e. required by VCEA).
2. The meeting, course, or lecture is directly related to your job.
3. You are notified of the necessity for such meetings, lectures, or training programs by your supervisor (i.e. pre-approval by management is required)

If you meet the above conditions you will be compensated at your regular rate of pay. If you are required to travel, then travel pay will be provided. You will not receive compensation for voluntary attendance in courses that are conducted outside of normal business hours and/or that are not directly related to your current job.

Standards of Conduct

Professional Business Conduct and Ethics

By accepting employment with VCEA, you have a responsibility to VCEA and to your fellow employees to adhere to certain codes of behavior and conduct. The purpose of these rules is to ensure that you understand what conduct is expected and necessary. When each person is aware that he or she can fully depend upon fellow workers to follow the rules of conduct, then our agency will be a better place for everyone to work.

Generally speaking, we expect you to act in a mature and responsible way at all times. VCEA values honesty in communication and personal responsibility. To avoid any possible confusion, some of the more obvious unacceptable activities are noted below. If you have any questions concerning any work or safety rule, or any of the unacceptable activities listed, please ask for an explanation.

Occurrences of any of the following violations, because of their seriousness, may result in disciplinary action up to and including immediate suspension or termination:

Unacceptable Activities:

1. Generally, conduct which is disloyal, disruptive, or damaging to VCEA.
2. Falsification of timekeeping records.
3. Dishonesty; falsification or misrepresentation on your application for employment or other work records; lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by VCEA; alteration of agency records or other agency documents.
4. Working under the influence of alcohol or illegal drugs, including marijuana.

5. Theft or inappropriate removal or possession of agency property or the property of fellow employees; unauthorized use of agency equipment and/or property for personal reasons.
6. Possession, distribution, solicitation, sale, transfer, or use of alcohol or illegal drugs, including marijuana, in the workplace, while on duty, or while operating agency-owned vehicles or equipment.
7. Fighting, threatening, or coercing fellow employees on agency property or during working hours, for any purpose.
8. Boisterous or disruptive activity in the workplace.
9. Negligence or any careless action leading to damage of agency-owned or customer-owned property or which endangers the life or safety of another person.
10. Obscene or abusive language toward any supervisor, employee or customer; indifference or rudeness towards a customer or fellow employee; any disorderly/antagonistic conduct on agency premises.
11. Insubordination or other disrespectful conduct; refusing to obey instructions properly issued by your supervisor pertaining to your work; refusal to help out on a special assignment.
12. Violation of security or safety rules or failure to observe safety rules and/or practices; failure to wear required safety equipment; tampering with VCEA equipment or safety equipment.
13. Creating or contributing to unsanitary conditions in the workplace.
14. Smoking in prohibited areas.
15. Any act of harassment, sexual, racial or other; telling sexist or racist jokes; making racial or ethnic slurs.
16. Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.
17. Excessive absenteeism; failure to report an absence or late arrival.
18. Unauthorized absence from work station during the workday; sleeping or loitering during working hours.
19. Unauthorized use of telephones, mail system, or other agency-owned equipment.
20. Originating, spreading, or taking part in malicious gossip or rumors about employees of VCEA.
21. Unauthorized disclosure of business "secrets" or confidential information; giving confidential or proprietary information to competitors or other organizations or to unauthorized VCEA employees; breach of confidentiality of personnel or agency information.
22. Violation of agency rules or policies; any action that is detrimental to VCEA's efforts to operate profitably.
23. Unsatisfactory or careless work; failure to meet production or quality standards as explained to you by your supervisor.
24. Soliciting during working hours and/or in working areas; selling merchandise or collecting funds of any kind for charities or others without authorization during business hours, or at a time or place that interferes with the work of another employee on agency premises.
25. Gambling on agency property.
26. Failure to immediately report any damage or accident involving agency equipment or vehicles.
27. Failure or refusal to comply with the work schedule, including mandatory overtime.
28. Using, removing, or borrowing agency equipment or property without prior authorization.
29. The use of abusive or threatening language or actions toward anyone.

This list is not exhaustive. Rather, we ask that you keep in mind at all times the need to conduct yourself with reasonable and proper regard for the welfare and rights of all our employees and for the best interests of the agency. This statement of prohibited conduct does not alter VCEA's policy of at-will employment. Either you or

VCEA remains free to terminate the employment relationship at any time, with or without reason or advance notice.

Performance Evaluations

VCEA encourages an open dialogue between an employee and his or her supervisor on an informal, regular basis. We believe this type of interaction increases job satisfaction for both the employee and VCEA.

Formal performance evaluations will be conducted annually or with frequency dependent on length of service, job position, past performance, changes in job duties, or recurring performance problems. After the review, you will be asked to sign the evaluation report to acknowledge that it has been presented to you and discussed with you by your supervisor, and that you are aware of its contents.

Positive performance evaluations do not guarantee increases in salary, bonuses, or promotions. Salary increases, bonuses, and promotions are solely within the discretion of VCEA, and depend upon many factors in addition to performance. Having your compensation reviewed does not necessarily mean that you will be given an increase.

VCEA uses a discretionary pay-for-performance compensation model to support the highest levels of organizational performance. The intent is to reward individual employee effort and results commensurate with their contributions and impact toward achieving the goals and objectives of the agency. The primary form of a performance reward is a merit increase. These base pay increases move an employee through their salary range and support the agency's retention goals by ensuring employee pay remains competitive with similar roles in the market. Employees who meet or exceed their goals and objectives, as evidenced by the employee receiving an overall rating of 2.0 (Effective) or higher on their year-end Performance Check-in, may be eligible to receive a merit increase (an adjustment in base salary) based on that performance. In limited cases, and with written justification from the supervisor, manager, and Director, an employee with an overall performance rating of less than 2.0 (Effective), may be considered for a reduced base salary.

Performance bonuses also may be used to reward employees when superior performance, as defined below, has been demonstrated in achieving goals and objectives. In most cases, performance bonuses are used to supplement merit increases, or instead of merit increases, when an employee is at or close to the top of their salary range. "Superior performance" is evidenced by an employee receiving a rating of 3.0 (Highly Effective) on one or more goals that, in total, represent at least 25% of the employee's assigned work during the year. "Superior performance" also may be evidenced by an employee receiving an overall rating of 2.5 or higher on their year-end Performance Check-in. Recommendations for performance bonuses must be justified in writing by the supervisor and/or manager and fully describe the efforts put forth by the employee that demonstrates superior performance.

The written justification, and approval of the bonus, are retained. Funding for performance bonuses is included in the annual budget or a budget amendment and approved by the Board of Directors. Performance bonuses are not guaranteed and may not be available due to budget constraints or other business reasons.

Compensation Equity

A pay equity increase may be granted to an employee under certain circumstances, such as the following: a significant lag in salary exists relative to market conditions or between employees with comparable job functions who have similar levels of experience, skills and knowledge, and demonstrated performance; an employee's assigned functions or work tasks increase the scope of the position but do not warrant reclassification; salary compression exists between supervisors and their employees; in order to address retention of employees with highly specialized skills or due to competitive job markets. In addition, a discretionary agency-wide pay equity adjustment for inflation in accordance with the U.S. Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) may be made at the option of the Board of Directors.

Recommendations for pay equity increases are prepared by the Director of Finance and Internal Operations and must be approved by the Executive Officer. Employees approved for a pay equity increase will be notified, and adjustments may be paid retroactively to the first pay period of the current calendar year. Funding for pay equity increases is included in the compensation identified in the annual budget and approved by the Board of Directors. Pay equity increases are discretionary and may not be available due to budget constraints or other business reasons

Problem Resolution

At some time, you may have a complaint or question about your job, your working conditions, or the treatment you are receiving. Your good-faith complaints and questions are of concern to us. We ask that you take your concerns first to your supervisor, following these steps:

1. Bring the situation to the attention of your immediate supervisor who will then review your concern and provide a solution or explanation.
2. If the problem remains unresolved, you may present it in writing to the ~~General Manager~~Executive Officer who will work towards a resolution.

This procedure, which we believe is important for both you and us, cannot result in every problem being resolved to your satisfaction. However, we value your input and you should feel free to raise issues of concern, in good faith, without the fear of retaliation.

Alcoholic Beverage Consumption

Due to the high risk and liability involved, VCEA will not provide alcoholic beverages at social gatherings to VCEA employees. This policy applies to the following:

1. Birthday parties;
2. Office parties;
3. Office picnics; and
4. Recreational activities (i.e. organized team sports)

Drug and Alcohol Abuse and Testing

VCEA is concerned about the use of alcohol, illegal drugs, or controlled substances as it affects the workplace. We comply with state and federal drug abuse regulations, including the Drug-Free Workplace Act of 1988. Use of these illegal substances (whether illegal under California or federal law) whether on or off the job can adversely affect your work performance, efficiency, and safety and health. The use or possession of these substances on the job constitutes a potential danger to the welfare and safety of other employees, and exposes VCEA to the risks of property loss or damage, or injury to other persons. Furthermore, the use of prescription drugs and/or over-the-counter drugs also may affect your job performance and seriously impair your value to us. Any employee who is using prescription or over-the-counter drugs that may impair your ability to safely perform the job, or affect the safety or well-being of others, must notify a supervisor of such use immediately before starting or resuming work. All precautions necessary to preserve your privacy will be taken. You must adhere to the rules stated in this policy as a condition of employment. Failure to comply with this policy may result in discipline, including termination. The ~~General Manager~~Executive Officer has been designated to administer this policy, monitor the program and make reports as required by law.

If there is ever a reasonable basis to suspect you of violating the drug and alcohol policy and being under the influence during working hours, you will be requested to immediately submit to a drug and/or alcohol test. Suspicion will be based on objective symptoms, such as factors related to your appearance, behavior and speech. A reasonable basis may also exist if you are found to be in possession of illegal drugs, alcohol or paraphernalia connected with the use of an illegal drug. Possession of illegal drugs or alcohol is prohibited even if you have not used these substances.

The following rules and standards of conduct apply to all employees either on agency property, or during the workday (including meals and rest periods). The following are strictly prohibited by VCEA:

1. Possession or use of alcohol or illegal drugs, including marijuana, or being under the influence of alcohol or illegal drugs while on agency premises or at any time on duty.
2. Driving an agency vehicle or driving for agency business in a private vehicle while under the influence of alcohol or illegal drugs, including marijuana.
3. Distribution, sale, or purchase of an illegal or controlled substance while on agency premises or at any time on duty.
4. Possession or use of an illegal or controlled substance, or being under the influence of an illegal or controlled substance while on agency premises or at any time while working.
5. Any drug or alcohol statute conviction. You must notify VCEA within 5 days of such conviction.

In order to enforce this policy, we reserve the right to conduct searches of agency property and to implement measures necessary to deter and detect abuse of this policy.

In the event of suspicion of use in connection with an on the job accident, you may be asked to provide body substance samples (such as urine and/or blood) to determine the illicit or illegal use of drugs and alcohol. VCEA will test for alcohol, cannabinoids, (THC), Opiates, i.e. codeine and morphine, Cocaine metabolites, Amphetamines, i.e. amphetamine and metamorphines, adulterants low creatine levels and Phencyclidine. VCEA

assures that any information concerning your drug and/or alcohol use will remain confidential. Refusal to submit to drug testing may result in disciplinary action, up to and including termination of employment.

If the results of your drug and/or alcohol test are positive, VCEA will take disciplinary action which may include suspension or immediate termination. The disciplinary action will be based on the seriousness of the offense and your past performance. If you return to work after testing positive for drugs and/or alcohol, you may be required to consent to unannounced tests for drugs and/or alcohol for a specified period as a condition of continued employment. In the event that you test positive, you may request a second test to be performed by a reliable drug testing agency, at your expense.

Any conviction you receive on a charge of illegal sale or possession of any controlled substance will not be tolerated. In addition, we must keep people who use, sell, or possess controlled substances off VCEA's premises in order to keep the controlled substances themselves off the premises.

Violation of the above rules and standards of conduct will not be tolerated. VCEA may bring the matter to the attention of appropriate law enforcement authorities.

VCEA's policy on drug and alcohol in no way limits or alters the at-will employment relationship.

Customer and Public Relations

The success of VCEA depends upon the quality of the relationships between VCEA, our employees, and our customers, suppliers and the general public. Our customers' impression of VCEA and their interest and willingness to do business with us are formed by how you serve them.

The opinions and attitudes that customers have toward our agency can be affected for a long period of time by the actions of just one employee. It is sometimes easy to take a customer for granted, but when we do, we run the risk of not only losing that customer, but their associates, friends or family who also may be customers or prospective customers.

Here are several things you can do to help give customers a good impression of VCEA:

1. Customers are to be treated courteously and given proper attention at all times. Never regard a customer's questions or concerns as an interruption or an annoyance. Customer inquiries, whether in person or by telephone, must be addressed promptly and professionally.
2. Never place a telephone caller on hold for an extended period of time. Direct incoming calls to the appropriate person and make sure that the call is answered.
3. Act competently and deal with customers in a courteous and respectful manner. Through your conduct, show your desire to assist the customer in obtaining the help that he or she needs. If you are unable to help a customer, find someone who can.
4. All correspondence and documents, whether to customers or others, must be neatly prepared and error-free. Attention to accuracy and detail in all paperwork demonstrates your commitment to those with whom we do business.
5. Never argue with a customer. If a problem develops or if a customer remains dissatisfied, ask your supervisor to intervene.

6. Communicate pleasantly and respectfully with other employees at all times.

These are the building blocks for your and VCEA's continued success.

Confidentiality

It is your responsibility to safeguard confidential information obtained during your employment with us, including financial information obtained from customers and private information about other employees.

You may in no way reveal or divulge any such information unless it is necessary for you to do so in the performance of your duties. Access to confidential information should be on a "need-to-know" basis and must be authorized by your supervisor.

If you are questioned by someone outside VCEA or your department and you are concerned about the appropriateness of giving them certain information, you are not required to answer. Instead, as politely as possible, refer the request to your supervisor or the ~~General Manager~~[Executive Officer](#).

It is also important to remember that you may not disclose or use proprietary or confidential information except as your job requires. You may not keep or retain any originals or copies of reports, notes, proposals, customer lists or other confidential and proprietary documents, equipment, supplies, or property belonging to VCEA. Any and all copies or originals of reports, and notes belong to VCEA and must be turned over to VCEA within twenty-four (24) hours of termination of employment.

You are not permitted to remove or make copies of any VCEA records, reports or documents without prior management approval. Do not post confidential information about VCEA, customers, employees, or affiliates on any social media. Disclosure of confidential information could lead to termination, as well as other possible legal action.

Conflict of Interest

As an employee of VCEA, you must avoid actual or potential conflicts of interest with VCEA. If you are found to have a conflict of interest, you may be subject to discipline, including termination. You should contact your supervisor with any questions about this policy. Prohibited activities include, but are not limited to:

1. Having a direct or indirect financial relationship with a VCEA customer, vendor, or supplier; however, no conflict will exist in the case of ownership of less than 1 percent of a publicly traded corporation.
2. Engaging in any other employment or personal activity during work hours, or using VCEA's name, logo, equipment or property, including stationery, office supplies, computers, telephones, fax machines, postage, and office machines, for personal purposes.
3. Soliciting agency employees, suppliers, or customers to purchase goods or services of any kind for non-agency purposes, or to make contributions to any organizations or in support of any causes.
4. Soliciting or entering into any business or financial transaction with another employee whom the soliciting employee supervises, either directly or indirectly, such as hiring the employee to perform personal services or soliciting the employee to enter into an investment.

Solicitation

You are not permitted to solicit or distribute literature during working time. Working time includes both your working time and the working time of the employee to whom the solicitation or distribution is directed. Similarly, distribution of written solicitation material in working areas is prohibited at all times. If you wish to distribute fundraising items such as cookies, candy, and coupon books for sale, you may place them without solicitation in your workstation or VCEA break rooms.

Media Contact

If you are contacted by a news organization regarding VCEA business, please direct all media inquiries to your supervisor, the ~~General Manager~~Executive Officer, or the Director of Marketing.

Employment of Friends or Relatives

The employment of friends and relatives in the same area of an organization may cause conflicts of interest and appearances of impropriety. In addition, personal conflicts may impact the working relationship of the parties. Although VCEA does not prohibit the hiring of friends and relatives of existing employees, VCEA is committed to monitoring situations in which friends or relatives work in the same area. In the event of an actual or potential problem, VCEA's response may include reassignment or termination of one or both of the individuals involved. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with an employee is similar to that of persons who are related by blood or marriage, or one who is a domestic partner.

Personal Relationships in the Workplace

VCEA desires to avoid misunderstandings, complaints of favoritism, claims of sexual harassment, and employee dissension that may result from personal or social relationships amongst employees. Therefore, VCEA asks that if you become romantically involved with another employee that you disclose your relationship to a supervisor with whom you feel comfortable. This information will be kept as confidential as possible. For purposes of this provision, "romantically involved" will be interpreted broadly. VCEA reserves the right to take necessary and appropriate action to resolve any potential conflict of interest arising out of romantic involvement among employees. Depending on the facts of the situation, such action may include reassignment or termination of one or both of the employees involved.

VCEA is committed to maintaining a professional work environment where supervisors treat all employees fairly and impartially. Accordingly, supervisors are not allowed to date, or become romantically or intimately involved with, employees who report to them directly or indirectly. Also, spouses and immediate family members are prohibited from working in positions where they directly report to, or are reported to, by their spouses or family members. Personal relationships very often cause problems in the workplace, such as a lack of objectivity towards the subordinate's job performance, the perception of favoritism by other employees (whether justified or not), and potential sexual harassment complaints.

For purposes of this policy, "immediate family" includes significant others (such as unmarried couples who live together), domestic partners, step-parent and step-child relationships, in-law relationships, grandparents and cousins (including analogous relationships with the parents and children of an employee's significant other). This policy covers all family-like relationships, regardless of blood or legal relationships.

Employees who are currently dating one another, or employees who are married or related and report to or supervise each other, may request to be transferred in order to comply with this policy. When possible, VCEA will attempt to accommodate such requests. Please understand, however, that VCEA reserves the right not to transfer employees based on conflicting business considerations.

Unprofessional behavior in the workplace, such as sexually related conversations, inappropriate touching (i.e., kissing, hugging, massaging, sitting on laps) another employee, and any other behavior of a sexual nature, is prohibited.

If two employees marry or become related, causing actual or potential problems such as those described, only one of the employees will be retained with VCEA unless reasonable accommodations can be made to eliminate the actual or potential conflict. The employees will have 30 days to decide which relative will stay with VCEA. If this decision is not made in the time allowed the ~~General Manager~~Executive Officer will make the decision, taking the employment history and job performance of both employees as well as the business needs of VCEA into account. Supervisors who have any questions about the application of this policy to an employee or applicant should contact the ~~General Manager~~Executive Officer.

Dress Policy

You are expected to dress and groom yourself in accordance with accepted social and business standards, particularly if your job involves dealing with customers or visitors in person. A neat, tasteful appearance contributes to the positive impression you make on our customers.

Business casual dress is generally expected which should include nice shoes, slacks, pantsuits, dresses, skirts, and shirts (and possibly suits and ties when appropriate). Violating dress code standards may subject you to appropriate disciplinary action.

Day-to-Day Operations

Employer and Employee Property

Routine inspections of agency property might result in the discovery of an employee's personal possessions. You are encouraged not to bring into the workplace any item of personal property which you do not want to reveal to VCEA.

All desks, lockers, offices, work spaces, credenzas, cabinets, electronic mail (e-mail), telephone systems, office systems, computer systems, any and all electronically issued technology, agency vehicles and other areas or items belonging to VCEA are open to VCEA and its employees. **YOU SHOULD HAVE NO EXPECTATION OF PRIVACY IN ANY OF THESE AREAS.** Personal items and messages or information that you consider private should not be placed or kept in any of these places or areas belonging to VCEA.

Storage areas, work areas, file cabinets, credenzas, computer systems and software, office telephones, cellular telephones, any and all electronically issued technology, modems, facsimile machines, copy and scanner machines, tools, equipment, desks, voice mail, and electronic mail are the property of VCEA, and need to be maintained according to agency rules and regulations.

Desks and work areas must be kept clean, and are to be used for work-related purposes. VCEA's property is subject to inspection at any time, with or without prior notice. Prior authorization must be obtained before any of VCEA's property may be removed from the premises.

For security reasons, you should not leave personal belongings of value in the workplace. Personal items, lockers and desks are subject to inspection and search, with or without notice, and with or without your prior consent.

Terminated employees should remove any personal items at the time of separation. Personal items left in the workplace by previous employees are subject to disposal if not claimed at the time of your termination.

Electronic Systems and Privacy

Access to VCEA's electronic systems is provided for work-related purposes. There should be NO expectation of privacy in connection with the use of electronic systems, including stored e-mail/voice mail/text messages or any messages sent electronically. All messages created, sent, received or stored in these systems are and remain the property of VCEA. VCEA reserves the right to retrieve and review any message composed, sent or received via the system. Please note that even when a message is deleted or erased, it is still possible to recreate the message; therefore, the ultimate privacy of messages cannot be ensured to anyone.

To safeguard and protect the proprietary, confidential and business-sensitive information of VCEA, and to ensure that the use of all electronic systems and equipment is consistent with VCEA's legitimate business interests, authorized representatives of VCEA may monitor the use of such systems from time to time without notice, which may include printing and reading materials, files on the system, list servers, and equipment.

You should be aware that e-mail messages, like VCEA correspondence, and any and all messages sent electronically may be read by other VCEA employees and outsiders under certain circumstances. While it is impossible to list all of the circumstances, some examples are the following: (1) during system maintenance of the e-mail system, (2) when VCEA has business needs to access the employee's mailbox, (3) when VCEA receives a legal request that requires disclosure of e-mail messages, or (4) when VCEA has reason to believe the employee is using e-mail in violation of VCEA policies.

Social Media Guidelines

VCEA understands that various forms of communication occur through social media, such as Facebook, Twitter, LinkedIn, blogs, and multimedia host sites such as YouTube. Such communications occur in social networking, blogs, and video sharing and similar media. It should be remembered that social media sites do not provide a private setting. Employees who communicate information through social media therefore should not expect that such information is private

Employees must remember that all existing policies apply to information disseminated through social media. These guidelines are intended to help employees understand some of the unintended outcomes of sharing information through social media.

Application of Policies

The employer's policies and standards apply to conduct that occurs in the workplace and while employees are on duty, wherever they happen to be. They also apply to activities that occur during an employee's own time,

outside of work, if the activities have an actual or potential impact on the employee's performance, the performance of coworkers, or the employer. Employees should therefore understand that they are responsible for certain activities that occur off the employer's premises or on their own time both to the employer and third parties. Nothing in this policy prevents employees from exercising their broad rights to discuss the terms and conditions of employment with others, to take action with others to improve your working conditions, or to otherwise exercise their rights to engage in protected concerted activity.

General Policies

VCEA's policies regarding workplace conduct and interpersonal interactions are embodied in a number of policies, including policies that protect VCEA's legal interests and confidential information.

The policies also prohibit unlawful harassment and discrimination and require employees to use work time in an appropriate manner.

The principles set forth in VCEA's policies apply equally to social media, even when the policies do not refer specifically to social media. Violations of any policy through social media or networking will be appropriately addressed when brought to management's attention.

Illustrations of some of the relevant policies and how they may apply to social media are provided below. The following guidelines apply to all employees when they are at work and away from work.

General expectations

- Employees may not post or transmit any material or information that includes confidential, proprietary or trade secret information, or information that is untrue, defamatory, obscene, profane, threatening, harassing, abusive, hateful or humiliating to another person or entity. This includes, but is not limited to, comments regarding VCEA or its employees or customers. Employees should ask their supervisors and refer to agency policies if they have any questions about what is appropriate to include in communications involving social media.

Harassment

- VCEA will not tolerate intimidation, bullying or threats of violence among co-workers and such acts, even if occurring outside of work, will result in serious consequences, including termination.
- VCEA maintains a strict policy prohibiting harassment of any kind. Harassment is inappropriate and contrary to VCEA policy if it is based upon any legally protected characteristic. It includes unwelcome verbal, physical, or visual conduct that creates an intimidating, offensive, or hostile work environment or unreasonably interferes with work performance.

Reputation

- Employees should act responsibly and remember that untrue or defamatory postings can have serious consequences. Do not create fake blogs or false reviews of VCEA or its customers.

Acceptable Use Guidelines

- E-mail and Internet access is provided to support VCEA's business operations. Incidental use of e-mail and internet for personal reasons is permissible during non-working periods during the workday,

provided it is not excessive and provided it does not interfere with VCEA business. Any use that includes tapping into electronic social media should be consistent with VCEA's values, policies and applicable laws.

- Participation in social media sites should be limited during work time; incidental use during break time is not prohibited by this policy. Under no circumstances may employees access social media sites while performing safety-sensitive functions such as driving.

Opinions

- Employees should not speak on behalf of VCEA without proper authorization to do so. Employees should at all times make it clear that their opinions do not represent those of VCEA. They should include disclaimers in online communications advising that they are not speaking officially or unofficially on behalf of the organization.
- Employees may not use VCEA's logo or proprietary graphics to imply that you are speaking on behalf of VCEA.

Questions

- Employees who have concerns regarding workplace conduct or inappropriate behavior or comments are encouraged to contact the [General Manager/Executive Officer](#) for further guidance.

Additional Guidance and Information

While VCEA's policies offer very clear direction on some issues, there are other areas where common sense must prevail. When in doubt about posting, employees should consider the following:

- There is no expectation of privacy when engaging in social media networking activities. You may know everyone in the room when you have a conversation in person. This will not apply with social networking applications. You may not have full control over how your comments are perceived or shared.
- These are public forums. As a practical matter, it may be impossible to delete information that is shared. Comments may be publicly available for years.
- Even when you do not identify your employer by name in the communication or posting, some readers are likely to know where you work. Keep this in mind when you consider posting or transmitting comments that may be work-related. This should also be considered when creating your profile.
- Do not state or imply that the opinions you express are those of VCEA, its management, or other employees. Include a disclaimer to this effect.

Telephone Usage

You may use agency telephones for local or personal calls within reason. You are not to charge long distance personal telephone calls to VCEA. You are expected to limit personal calls so they do not become excessive or disruptive to your work or work area.

Cell Phone Usage

VCEA realizes that in our fast-paced business environment, meeting our goals and staying in touch with our customers and co-workers is a necessary process in working efficiently. But, first and foremost, we want to

preserve the safety of our employees and those in the community. California law limits the use of cell phones while driving to those having hands-free operation.

This law provides that, it is illegal to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving.

Additionally, writing, sending, or reading text-based communications on your cell phone while driving is also prohibited under California law. This includes text messaging, instant messaging, and e-mail. You will be responsible for any tickets you receive if you violate this law.

Use of a hands-free cell phone is required while driving for agency business. An option is that you pull over while driving to place or receive calls on your cellular phones. There is a great potential for harm to you and to others if this policy is violated.

Personal cell phone use is not needed or required for work purposes and should not be used for work.

Workplace Monitoring

Workplace monitoring, both human and electronic, may be conducted by VCEA to ensure quality control, employee safety, compliance with VCEA policies, security, and customer satisfaction.

Customer sites may also utilize video surveillance of non-private workplace areas. Video monitoring is used to identify safety concerns, maintain quality control, detect theft and misconduct, and discourage or prevent acts of harassment and workplace violence.

Because VCEA is sensitive to your legitimate privacy rights, every effort will be made to see that workplace monitoring is done in an ethical and respectful manner.

Travel Expense Policy

VCEA will reimburse you for work-related travel expenses such as transportation, overnight accommodations and meals. You should have your supervisor's approval before incurring travel expenses. All requests for reimbursement must be submitted to the ~~General Manager~~Executive Officer for approval along with supporting documents or original invoices.

Non-exempt employees will be paid for time spent traveling and in conference sessions. If you are required to use your personal automobile on work-related business, VCEA will reimburse you for mileage at the current IRS reimbursement rate and for parking expenses. You should submit the appropriate expense form to the ~~General Manager~~Executive Officer for approval and then forward it to accounting for payment once per month. If you use your personal vehicle for work-related travel you are expected to maintain at least the minimum insurance required by law.

Agency Property and Equipment

Equipment essential to accomplishing job duties is often expensive and may be difficult to replace. When using agency property, you are expected to exercise care, arrange for required maintenance, and follow all operating instructions, safety standards, and guidelines.

VCEA requires that all equipment be in proper working order and safe to work with at all times. If any equipment appears to be damaged, defective, or in need of repair, do not use it until a qualified technician certifies that it is repaired and safe. Never try to fix broken equipment yourself. Please notify your supervisor of any equipment breakdown as soon as it happens. If the breakdown requires emergency repairs, your supervisor will help you deal with the emergency situation as soon as possible. Prompt reporting of damages, defects, and the need for repairs could prevent possible personal injury and deterioration of equipment. Please ask your supervisor if you have any questions about your responsibility for maintenance and care of equipment used on the job.

If you are authorized to operate an agency vehicle in the course of your assigned work, or if you operate your own vehicle in performing your job, you must adhere to the following rules:

1. You must be a licensed California driver and must maintain at least the minimum insurance required by law.
2. You must maintain weekly mileage reports.
3. You are responsible for following all the manufacturer's recommended maintenance schedules so as to maintain valid warranties, and for following the manufacturer's recommended oil change schedule.
4. VCEA provides insurance on agency vehicles. However, you will be considered completely responsible for any accidents, fines, moving or parking violations.
5. If involved in an accident do not admit fault, only provide required insurance and personal DMV information.
6. You must keep VCEA vehicle clean at all times.
7. Persons not authorized or employed by VCEA cannot operate or ride in an agency vehicle.
8. Prior to operation of any agency vehicle, your supervisor will train you on the appropriate steps to take if you are involved in an accident, such as filling out the accident report, getting names and phone numbers of witnesses and so on.

If you are required to drive an agency vehicle or your own vehicle for agency business, you will also be required to show proof of a current, valid driver's license and current effective auto insurance coverage prior to the first day of employment.

If you drive your own vehicles on agency business you will be reimbursed at the current IRS reimbursement rate.

You are responsible for all agency property, materials, or written information issued to you or in your possession. You may be asked to sign an acknowledgment of receipt of agency property issued to you. All agency property must be returned on or before your last day of work. You may be responsible for the replacement cost of agency property not returned.

Agency cars are for agency business only, and only authorized employees may drive agency cars. Employee spouses, children, friends or anyone other than the employee may not operate these vehicles, unless an emergency arises. A violation of these rules, or excessive or avoidable traffic and parking violations may result in disciplinary action, up to and including termination.

Personal Use of Agency Property

You are not allowed to use agency owned property for personal use. The definition of “agency owned” assets includes, but is not limited to, facilities, computers, and their related equipment, labelers, copy machines, postage meter, any type of supplies including office supplies, tools, vehicles, credit cards, etc. These assets are provided to you for agency related business only.

Please also remember that all desks, lockers, cabinets, computers and vehicles that belong to VCEA will be open to all agency employees. Personal items, messages or information that you consider private should not be placed or kept in telephone systems, office systems, agency computer systems, office work spaces, desks, and credenzas or file cabinets.

If you are issued an agency credit card you are responsible for the use of that card. Under no circumstances will VCEA allow you to sign an agency credit card unless the card being signed is issued in your name. Signing another employee’s credit card will result in liability for the expense and may subject you to immediate termination. If you hold an agency credit card you may only give permission to another employee to make an authorized business purchase or reservation using your card with prior approval from the ~~General~~ **Executive Officer** of VCEA. Any holders of agency credit cards or authorized users who transact a non-business related charge may be subject to immediate termination. Receipts for all credit card transactions must be given to the Finance Director along with an explanation of the purchase.

Driving Record and Insurance

As a condition of employment, we require you to maintain an acceptable driving record if you drive for agency business. Any accidents or traffic violations must be reported to a supervisor immediately if they occur during the course of your duties. You will be responsible for any tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle. Failure to report an on-the-job motor vehicle accident, no matter how minor, will lead to disciplinary action, up to and including termination. Additionally, you are required to maintain the level of insurance required by the state of California. A copy of your insurance card must be on file before you will be allowed to drive for agency business.

Health and Safety

Safety is everybody's business. Safety is to be given primary importance in every aspect of planning and performing all VCEA activities. We want to protect you against injury and illness, as well as minimize the potential loss of production. To achieve our goal of maintaining a safe workplace, everyone must be safety conscious at all times. In compliance with California law, and to promote the concept of a safe workplace, we maintain an Injury and Illness Prevention Plan (IIPP). The IIPP is available for your review from the Director of Finance & Internal Operations. The Director of Finance & Internal Operations has responsibility for implementing, administering, monitoring, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.

You will receive a copy of VCEA's general safety rules and will receive health and safety training as part of this program. A complete copy of the Safety Program is kept by the ~~General Manager~~Executive Officer and is available for your review.

Smoking Policies

Smoking, use of e-cigarettes or vapor products is not allowed in any enclosed area of the building, or within 25 feet of any entrance of the building or in any agency vehicle. In fairness to those who do not smoke, smoking is allowed only during breaks and lunch and only outside of the office or building.

Security

To provide for the safety and security of you, our customers and our facilities, only authorized visitors are allowed in the work areas. To ensure the safety of our guests, we encourage family and friends to check in when visiting you at the workplace.

The following security procedures should always be followed to ensure your safety and the safety of your fellow employees, and to ensure the confidentiality of VCEA's information. At no time should unauthorized persons be allowed to roam unescorted through VCEA's office. It is a matter of courtesy to accompany customers and guests to and from the exits and other office to which they may be destined. If strangers are encountered in our office who do not satisfactorily identify themselves or the person with whom they will be meeting, escort them to the front of the office. If they resist, contact your supervisor immediately.

Be aware of persons loitering for no apparent reason in other non-office areas (e.g., in parking areas, walkways, entrances/exits and service areas). Report any suspicious persons or activities to your supervisor. Secure your desk at the end of the day or when called away from your work area for an extended length of time and do not leave valuable and/or personal articles in or around your workstation that may be accessible. Please report any lost facility keys to your supervisor immediately.

Workplace Violence

VCEA recognizes that violence in the workplace is a growing nationwide problem necessitating a firm, careful response by all employers. The costs of workplace violence are great, both in human and financial terms.

VCEA has adopted the following policies to ensure the safety of its employees and to provide guidance on dealing with violence in the workplace. If qualified, you may provide first aid to injured persons. You are required to:

1. Immediately report all indirect and direct threats of violence to a supervisor.
2. Immediately report all suspicious individuals or activities to a supervisor.
3. Never put yourself or others in peril.
4. Immediately call 911 and seek shelter if you hear a violent commotion near your workstation.
5. Cooperate fully with security, law enforcement, and medical personnel who respond to a call for help.
6. Direct all inquiries from the media about violence on VCEA premises to your supervisor or the ~~General Manager~~Executive Officer.

The ~~General Manager~~Executive Officer of VCEA will make the sole determination of whether, and to what extent, threats or acts of violence will be acted upon by the agency. In making this determination, we may undertake a case-by-case analysis in order to ascertain whether there is a reasonable basis to believe that workplace violence has occurred. No provision of this policy shall alter the at-will nature of employment at VCEA.

Off-Duty Use of Facilities

You are prohibited from being on agency premises, or making use of agency facilities, while not on duty. You are expressly prohibited from using agency facilities, agency property or agency equipment for personal use.

Parking

You are encouraged to use the parking areas designated for our employees. Remember to lock your car every day and park within the specified areas.

Courtesy and common sense in parking will help eliminate accidents, personal injuries, and damage to your vehicle and to the vehicles of other employees. If you should damage another car while parking or leaving, immediately report the incident, along with the license numbers of both vehicles and any other pertinent information you may have, to your supervisor. VCEA cannot be and is not responsible for any loss, theft or damage to your vehicle or any of its contents. You will be responsible for any parking tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle.

Employee Suggestion Program

We encourage you to bring forward your suggestions and good ideas about how our agency can be made a better place to work and our service to customers enhanced. When you see an opportunity for improvement, please talk it over with your supervisors. All suggestions are valued and listened to.

Employee Benefits

Benefits

VCEA has developed and invested in an employee benefit program to supplement your regular wages. VCEA will continue these benefits as agency resources allow; however, we reserve the right to change or eliminate any benefit program at any time (including increasing the employee's share of the cost).

Our benefit program consists of programs which may include health, dental, and vision coverage, life insurance, paid time off (PTO) and holiday pay. In addition, there are a number of programs available to employees through other sources such as State Disability, Paid Family Leave, Unemployment Insurance, Social Security and Workers' Compensation. Eligibility to participate in some of these programs is determined by your employee classification and length of continued service with VCEA.

Official Health Plan Documents

The employee handbook contains a number of brief summaries of the benefit programs that the employer provides for eligible employees. The purpose of these summaries is simply to acquaint you with the general

provisions of the applicable plans; they do not contain full statements of all of the terms, conditions, and limitations of the plans. If there are any real or apparent conflicts between the brief information in the handbook and the terms, conditions and limitations of the official plan documents, the provisions of the official plan documents will be considered accurate. You are encouraged to review all plan documents carefully to familiarize yourself with all of the provisions of the plans.

Paid Time Off (PTO)

Eligibility

Paid Time Off (PTO) is an all purpose time-off policy for eligible employees to use for the following: vacation; the diagnosis, care, treatment of an existing health condition; preventative care of an employee or family member; for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance; illness or injury; and personal business. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, in-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status). Personal business also includes time spent for jury duty, bereavement, and time off to vote. Regular full-time employees are eligible to earn and use PTO as described in this policy.

PTO begins accruing upon your date of hire. Employees may begin using PTO upon your 90th day of employment. At that time, you can request the use of earned PTO including that accrued during the waiting period.

Accrual

Regular, full-time employees accrue 6.67 hours of PTO per pay period (24 pay periods per year) in your first year of eligibility – 160 hours. After your first anniversary, and thereafter, you will receive an additional eight (8) hours per year, which will accrue at an additional rate of .34 hours per pay period. Once you have worked for the agency for ten (10) years, you will not accrue any additional PTO.

The length of eligible service is calculated on the basis of a "benefit year." This is the 12-month period that begins when you start to earn PTO. You will not earn PTO while you are out on an unpaid leave of absence. Therefore, your benefit year may be extended if you go out on a leave of absence other than a military leave of absence. Military leave has no effect on this calculation. (See individual leave of absence policies for more information.)

Scheduling PTO

PTO can be used in minimum increments of one (1) hour for non-exempt employees. Exempt employees may use PTO in ½ day or 1 full day increments. If you have an unexpected need to be absent from work you should notify your direct supervisor before the scheduled start of your workday, if possible. Your direct supervisor must also be contacted on each additional day of unexpected absence.

To schedule planned PTO, you need to request advance approval from your supervisor. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

PTO is paid at your base pay rate at the time of absence. It does not include overtime or any special forms of compensation such as incentives, commissions, bonuses, or shift differentials.

PTO will be used to supplement any payments that you are eligible to receive from state disability insurance, or workers' compensation. The combination of any such disability payments and PTO cannot exceed your normal weekly earnings.

PTO Payout

The Executive Officer may, in his or her sole discretion, authorize a cash payout of up to 60 hours of PTO annually to an employee who meets the following criteria: (a) the employee used an equal or greater amount of hours in the preceding 12 months; and (b) the employee will maintain a minimum PTO balance of 120 hours after the payout. Such requests will be granted at the sole discretion of the Executive Officer in the interest of work program effectiveness and subject to VCEA's fiscal capability.

PTO Caps

Employee can accumulate PTO up to a balance of twice the annual PTO for which they are entitled. Once that limit is reached, employee will no longer accrue PTO until time is taken, and the employee's accrual falls below the cap.

Upon termination of employment, you will be paid for unused PTO that has been earned through your last day of work.

Sick Leave

Employees who are not eligible for the PTO policy as outlined above will earn sick leave in accordance with this policy.

Sick leave is a form of insurance that is accumulated in order to provide a cushion for incapacitation due to illness. It is to be used only for the diagnosis, care, treatment of an existing health condition or preventative care of an employee, family member or for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, in-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status).

On the employee's hire date, eligible employees will receive 24 hours of paid sick leave. At the end of each year of employment (i.e., on the employee's anniversary date), unused sick leave will be removed from the employee's leave bank. All eligible employees will be credited with 24 hours of paid sick leave at the commencement of the next employment year. Any unused sick leave is not paid out on separation of employment.

Employees may begin using sick leave upon their 90th day of employment.

When wishing to use sick leave, you should personally call your supervisor prior to the start of your shift on the day you are scheduled to work. Sick leave is not to be taken in less than two (2) hour increments and does not accrue when you are out on sick leave.

A paid absence is not counted as a basis for computing overtime.

If you are receiving State Disability Insurance (SDI) or Workers' Compensation payments, then you can integrate sick pay (meaning that you can supplement your wage replacement benefits with a portion of your sick leave to equal your full wage). Under no circumstances can you receive more than your customary wage.

Sick leave is not granted for the purpose of accompanying or taking pets to procure medical attention.

Unused sick leave has no cash value and will not be paid at termination.

Holidays

We observe the following paid holidays for full-time employees:

- New Year's Day
- Martin Luther King Jr.'s Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving
- Day after Thanksgiving
- Christmas Day

Eligibility for holiday pay begins upon date of hire. You must also be regularly scheduled to work on the day on which the holiday is observed, and must work your regularly scheduled working days immediately preceding and immediately following the holiday, unless an absence on either day is approved in advance by your supervisor.

When a holiday falls on a Saturday or Sunday, it is usually observed on the preceding Friday or the following Monday. Holiday observance will be announced in advance.

If you are on a paid absence due to PTO when a holiday occurs, you will receive holiday pay. Non-exempt employees who work on holidays, due to customer job requirements, will receive regular earned wages. Part-time employees and interns are not eligible for holiday pay.

Insurance Benefits

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

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

Full-time employees and part-time employees who are regularly scheduled to work a minimum of 30 hours per week are eligible for VCEA's medical, dental, and vision insurance coverage. Each employee becomes eligible on the first of the month after the employee has started employment with VCEA. VCEA will contribute up to ~~\$1,750~~ ~~826~~ per month per employee towards VCEA's medical, dental and vision insurance for a full-time employee and dependents coverage. VCEA will contribute a prorated amount for part-time employees based on the average hours worked (for example, if the part-time employee is regularly scheduled to work 30 hours per week, VCEA's contribution toward the cost of VCEA's medical, dental and vision insurance coverage for the part time employee and his/her eligible dependents would be prorated to 75% of the full-time equivalent, i.e., ~~\$1,312.50~~~~365.50~~). The employee is responsible for any premiums due for VCEA coverage(s) that are in excess of the VCEA contribution amount. Deductions from the employee's paycheck will be made to cover this cost. Information describing medical, dental and vision insurance benefits will be given to you when you become eligible to participate in the program. Eligible employees who elect not to receive medical insurance coverage from VCEA must provide proof of adequate medical coverage from an alternate source within 30 days of becoming eligible through VCEA for the benefit. Such election will be effective as of the employee's eligibility date and will remain in effect until the start of the next open enrollment period. Employees who have declined VCEA medical insurance coverage and want to continue to decline coverage must provide proof of adequate medical coverage once per year, no later than 30 days prior to VCEA's open enrollment period. Full time employees who decline to accept VCEA medical, dental, and vision insurance benefits shall receive a payment of ~~\$550~~ per month in lieu of coverage; part-time employees who are eligible for VCEA ~~medical~~~~medical~~, dental and vision insurance and decline to accept VCEA medical, dental, and vision insurance shall receive a prorated payout based on the employee's regularly scheduled hours (i.e., an employee who is regularly scheduled to work 30 hours per week will receive 75% of the full-time equivalent, or ~~\$375~~~~412.5~~.)

During any leave of absence such as personal leave, Workers' Compensation leave or other disability leave, VCEA-provided health benefits will continue through the end of the month during which leave commenced. At that point, the employee will be provided with the option to continue coverage at the employee's own expense pursuant to Cal-COBRA. For the duration of any pregnancy disability leave of absence, health and life insurance benefits will be continued for the duration of your approved pregnancy disability leave as required by applicable law.

Please direct any questions you have regarding your medical, dental and/or vision insurance to the ~~General Manager~~~~Executive Officer~~.

Retirement Plan: We provide a 401(A) and 457B defined contribution retirement plans for eligible employees in order to assist in planning for your retirement. Eligible employees may enroll following 6 months of employment. [Retirement plan participants can participate in loan programs permitted under the plan guidelines.](#) For more information regarding eligibility, contributions, benefits and tax status, contact the ~~General Manager~~~~Executive Officer~~. All eligible participants will receive a summary plan description.

Disability Insurance: VCEA furnishes private long-term disability policies. For more information, contact the ~~General Manager~~[Executive Officer](#).

Life and Accidental Death and Dismemberment Insurance: If you are a regular full time employee of VCEA, you will be provided our group life insurance coverage paid for by the organization. This insurance is payable in the event of your death, in accordance with the policy, while you are insured. You may change your beneficiary whenever you wish by submitting the appropriate documents to the Human Resources Consultant. Refer to the literature provided by our insurance agency for details on your life insurance coverage.

Paid Family Leave (PFL) Insurance: All employees who take time off to care for a seriously ill family member (child, parent, grandparent, grandchildren, in-laws, spouse or registered domestic partner) or bond with a new child may be eligible to receive replacement wages for up to six weeks during any 12-month period, under California's Paid Family Leave program. This program is funded with employee contributions through the State Disability Insurance (SDI) Program. Such contributions are deducted from each employee's paycheck. Even though employees may be eligible to receive Paid Family Leave insurance benefits, a leave of absence must still be requested and approved as defined in our leave policies. Please understand that this leave does not mandate any guarantee that your job will be available when you are ready to return.

State Disability Insurance: If you are unable to work due to a non-work related medical condition or injury you may be entitled to State Disability Insurance (SDI). SDI benefits are paid by the state and are financed from mandatory payroll tax deductions from all employees' wages. Questions regarding SDI benefits should be directed to the ~~General Manager~~[Executive Officer](#) or the state's Employment Development Department.

Unemployment Compensation: We contribute each year to the California Unemployment Insurance Fund on behalf of our employees.

Social Security: Social Security is an important part of every employee's retirement benefit. We pay a matching contribution to each employee's Social Security taxes.

Workers' Compensation: VCEA purchases a workers' compensation insurance policy to protect you while you are employed by us. The policy covers you in case of occupational injury or illness. It is your responsibility to notify a member of management immediately if injured. Please refer to the Workers' Compensation policy for additional information.

We provide workers' compensation insurance for our employees as required by state law. The insurance provides important protection for employees who suffer a work-related injury. We encourage you to report all workplace injuries immediately and to take advantage of the benefits provided by our workers' compensation insurance if you are injured on the job.

Workers' compensation insurance provides important protection for employees who suffer an injury at work. Unfortunately, we understand that some employees are encouraged to file fraudulent workers' compensation claims. For your own protection, you should know that the California Insurance Frauds Protection Act provides that it is unlawful for any person to:

"Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining . . . compensation . . . and shall be punished by imprisonment in county jail for one year, or in the state prison for two, three or five years, or by a fine not exceeding Fifty Thousand Dollars (\$50,000.00) . . . or by both imprisonment and fine."

Our policy is to investigate all questionable workers' compensation claims. If they appear to be fraudulent, they are referred to the Bureau of Fraudulent Claims and the District Attorney's office.

Section 125 (Cafeteria Plan): Through the flexible spending account or the health savings account, you may designate an annual dollar amount of your before-tax income to pay for certain eligible expenses. Particular care should be taken to assure that the funds required in the flexible spending account are not over estimated as unused funds cannot be returned to the participant at the end of the plan year. Please refer to the booklets for information about the program. If you need additional information or change forms, please speak with the ~~General Manager~~[Executive Officer](#).

Domestic Partners

VCEA believes that basic medical/dental/vision coverage should be available to employees and their dependents. To recognize non-traditional family arrangements and to demonstrate our commitment to our community of employees and their families, VCEA has instituted a Domestic Partners Policy. This policy gives you the opportunity to cover a long-term, significant same sex partner under our benefits plans, as well as opposite sex partners for employees over 62 years of age. VCEA wishes to make it clear that it cannot guarantee confidentiality of the relationship once a domestic partner is covered under our policy. See the ~~General Manager~~[Executive Officer](#) for more information.

Cal-COBRA

The California Continuation Benefits Replacement Act (Cal-COBRA) gives qualified employees and their dependents the opportunity to continue health insurance coverage under VCEA's health plan when a "qualifying event" would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee's hours or a leave of absence; an employee's divorce or legal separation; and a dependent child no longer meeting eligibility requirements. Under Cal-COBRA, you or the beneficiary pays the full cost of coverage at VCEA's group rates. In addition, you or the beneficiary may be required to pay an administration fee. Our plan administrator will provide you with a written notice describing rights granted under Cal-COBRA when you become eligible for coverage under our plan. The notice contains important information about your rights and obligations.

Recreational Activities and Programs

VCEA or its insurer will not be liable for payment of workers' compensation benefits for any injury that arises out of your voluntary participation in any off-duty recreational, social, or athletic activity that is not part of your work related duties.

Leaves of Absence

Occasionally, for medical, personal, or other reasons, you may need to be temporarily released from the duties of your job with VCEA. It is the policy of VCEA to allow its eligible employees to apply for and be considered for certain specific leaves of absence.

All requests for leaves of absence shall be submitted in writing to your supervisor. Each request shall provide sufficient detail such as the reason for the leave, the expected duration of the leave, and the relationship of family members, if applicable. When you become aware of your need for leave, requests should be provided at least 30 days in advance. If your need for leave is not foreseeable, you should follow VCEA's customary notice and procedural requirements for requesting leave. Failure to return to work as scheduled from an approved leave of absence or to inform your supervisor of an acceptable reason for not returning as scheduled will be considered a voluntary resignation of employment. While on a leave of absence you may not obtain other employment or apply for unemployment insurance. If either of these instances occurs, you may be viewed as having voluntarily resigned from VCEA.

You will not accrue PTO while you are on an unpaid leave of absence. There are several types of leaves for which you may be eligible.

Medical Leaves of Absence

A medical leave of absence may be granted for non-work related temporary medical disabilities (other than pregnancy, childbirth and related medical conditions) until the end of the month in which the leave began with a doctor's written certificate of disability (unless leave of a longer duration is required by law). Requests for leave should be made in writing as far in advance as possible, but, requests should be provided at least 30 days in advance. If your need for leave is not foreseeable, you should follow VCEA's customary notice and procedural requirements for requesting leave. If you are granted a medical leave, you are required to use any accrued sick pay. You also may use any PTO previously accrued.

A medical leave begins on the first day your doctor certifies that you are unable to work and ends when your doctor certifies that you are able to return to work. Your supervisor will supply you with a form for your doctor to complete, showing the date you were disabled and the estimated date you will be able to return to work. Upon your return, you must present a doctor's certificate showing fitness to return to work. If you need a medical-related leave longer than VCEA can, consistent with business necessity and reasonable accommodation, approve, you will be advised.

For the duration of any leave of absence, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued until the last day of the month in which the leave begins. For the duration of a pregnancy disability leave, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

If you wish to continue these benefits you may do so by electing to continue the benefit through the CAL-COBRA provisions, and by paying the applicable premiums.

You will not accrue PTO while you are on an unpaid medical leave of absence.

If returning from a non-work related medical leave, you will be offered the same position held at the time of leaving, if available. However, we cannot guarantee that your job or a similar job will be available upon your return. If VCEA is unable to provide a job for you at the end of your leave, we will end your employment, but you will be eligible to apply for any opening that may arise for which you are qualified.

Bereavement Leave

VCEA provides regular full-time and regular part-time employees up to three (3) days' paid bereavement leave in the event of a death in your immediate family. For purposes of this policy, "immediate family" includes your spouse, parent, child, sibling; your spouse's parent, child, or sibling; your long-time companion or domestic partner; and your grandparents or grandchildren. If you need to take time off due to the death of an immediate family member you should contact your supervisor. Your supervisor may approve additional unpaid time off.

Bone Marrow and Organ Donation Leave

Employees who are donating an organ to another person may take a leave of absence not exceeding 30 business days (and which may be taken in one or more periods) in any one-year. Employees who are donating their bone marrow to another person may take a leave of absence not exceeding 5 business days (and which may be taken in one or more periods) in any one year.

Requests for leave should be made in writing as far in advance as possible. You must provide a written medical certification from your health care provider to VCEA that shows that you are a bone marrow or organ donor and that there is a medical necessity for the donation.

Bone Marrow and Organ Donation leave is a paid leave, however you are required to use up to 5 days of accrued but unused sick or PTO leave for bone marrow donation, and up to 2 weeks of accrued but unused sick or PTO leave for organ donation.

For the duration of a Bone Marrow or Organ Donation leave of absence, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued until the last day of the month in which the leave begins. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

When you are ready to return to work after a Bone Marrow or Organ Donation leave, you must provide certification from your medical care provider that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. Except as otherwise allowed by law, you are entitled, upon return from leave, to be reinstated in the position you held before the Bone Marrow or Organ Donation leave, or to be placed in a comparable position with comparable benefits, pay, and terms and conditions of employment.

Civil Air Patrol Leave

Employees who volunteer for the California Wing of the Civil Air Patrol are allowed up to ten days of unpaid leave each year. This leave covers employees who are needed to respond to an emergency operational mission who have been employed by VCEA for at least 90 days immediately preceding the requested leave. VCEA reserves the right to verify the need for the leave with the Air Patrol.

Domestic Violence and Sexual Assault Victim Leave

VCEA takes threats and actions of domestic abuse and sexual assault against our employees very seriously, and wants employees to feel free to obtain services to keep themselves and their dependents safe.

If at any time you need to be absent from work because you have been a victim of domestic violence or sexual assault, and you need to take time off to ensure your safety, seek medical treatment, or receive counseling as a result of domestic violence or sexual assault, please let your supervisor or the [General Manager/Executive Officer](#) know immediately. Your privacy will be protected to the greatest extent possible. You may use accrued PTO or sick leave in lieu of unpaid time off for these purposes.

Jury Duty or Witness Leave

You may want to fulfill your civic responsibilities by serving on a jury or as a witness as required by law. You may request unpaid leave for the length of absence, unless the leave of absence is taken as PTO. We will comply with federal and state requirements on pay for exempt employees. You may be requested to provide written verification from the court clerk of having served.

You must show the jury duty or witness summons to your supervisor as soon as possible so that arrangements can be made to cover your absence. Of course, you are expected to report for work whenever the court schedule permits. If you are called for jury duty during a particularly busy time, we may ask you to request the court to postpone the mandatory jury duty to a more convenient time for us. You retain all fees paid for appearing, plus transportation reimbursements received, if any.

Military Leave

If you wish to serve in the military and take military leave you should contact the [General Manager/Executive Officer](#) for information about your rights before and after such leave. You are entitled to reinstatement upon completion of military service provided you return or apply for reinstatement within the time allowed by law.

Pregnancy Disability Leave

Eligibility and Terms of Leave

Female employees are entitled to an unpaid Pregnancy Disability Leave (PDL) during the time they are disabled due to pregnancy, childbirth, or related medical conditions. This leave will be for the period of disability, up to four months or 17 1/3 workweeks. You are “disabled by pregnancy” if you are unable because of pregnancy to work at all, are unable to perform the essential functions of your job, or to perform these functions without undue risk to successful completion of your pregnancy, or to other persons.

Leave may be taken intermittently or on a reduced work schedule when medically advisable, as determined by your medical care provider. Medical certification is required, and the length of Pregnancy Disability Leave will depend on the medical necessity for the leave. If you need intermittent leave or leave on a reduced schedule, VCEA may require you to transfer, during the period of the intermittent or reduced schedule leave, to an available alternative position for which you are qualified and which better accommodates your recurring periods of leave. Transfer to an alternative position may include altering an existing job to better accommodate your need for intermittent leave or a reduced work schedule.

Applying For Leave

If possible, you should give at least 30 days' notice requesting a pregnancy-related leave. This notice must provide and include the expected date on which the leave will begin, written certification from your medical care provider stating the anticipated delivery date and the duration of the leave.

Return to Work

Before returning to work, you must provide a release from your medical care provider certifying that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. VCEA will reinstate you to your position unless:

1. Your job has ceased to exist for legitimate business reasons;
2. Your job could not be kept open or filled by a temporary employee without substantially undermining VCEA's ability to operate safely and efficiently;
3. You have directly or indirectly indicated your intention not to return;
4. You are no longer able to perform the essential functions of the job with or without reasonable accommodation;
5. You have exceeded the length of the approved leave; or
6. You are no longer qualified for the job.

If VCEA cannot reinstate you to the position you held before the pregnancy disability leave began, VCEA will offer you a comparable position, provided that a comparable position exists and is available, and provided that filling the available position would not substantially undermine VCEA's ability to operate safely and efficiently.

Integration With Other Benefits

A pregnancy disability leave is unpaid, but you are required to use your accrued sick leave during the leave. In addition, you may elect to use accrued PTO during the leave. Sick leave and PTO will supplement any State Disability Insurance benefits. VCEA will maintain group medical benefits during a pregnancy disability leave as required by law. No additional PTO, sick leave or holiday pay will accrue during the leave (except during the time period you are using sick leave or PTO). You may also, however, be eligible for short term disability benefits.

Continuation of Medical Benefits

For the duration of your PDL leave of absence, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the

dependent coverage you have elected. If you fail to return to work at the conclusion of PDL leave and wish to continue these benefits, you may do so by electing to continue the benefit through the Cal-COBRA provisions, and by paying the applicable premiums.

School Appearance Leave

If you are the parent or guardian of a child who has been suspended from school and you receive a notice from your child's school requesting that you attend a portion of a school day in the child's classroom, you may take unpaid time to appear at the school, unless you use accrued PTO. Before your planned absence, you must give reasonable notice to your supervisor that you have been requested to appear by your child's school.

Time Off for Victims of a Violent or Serious Crime

Under certain circumstances, employees who are victims of serious crimes may take time off work to participate in judicial proceedings. Qualified family members of such crime victims may also be eligible to take time off from work to participate in judicial proceedings. The law defines a serious crime to include violent or serious felonies, such as felonies involving theft or embezzlement, crimes involving vehicular manslaughter while intoxicated, child abuse, physical abuse of an elder or dependent adult, stalking, solicitation for murder, hit-and-run causing death or injury, driving under the influence causing injury, and sexual assault. When possible, you must provide us with advance notice of the need for the time off. Your privacy will be protected to the greatest extent possible. Time away from work for non-exempt employees will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

Time Off To Vote

If you do not have sufficient time outside of working hours to vote in a statewide election, you may, without loss of pay, take off up to two hours of working time to vote. Such time must be at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from working, unless otherwise mutually agreed. You must notify us at least two working days in advance to arrange a voting time.

Volunteer Emergency Duty Leave

VCEA will allow unpaid time off to employees who perform emergency duty as a volunteer firefighter, reserve peace officer, emergency rescue personnel, an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. If you are a volunteer firefighter, or perform other emergency personnel duties, please alert your supervisor so that he or she may be aware of the fact that you may have to take time off for emergency duty. When possible, you must provide us with advance notice of the need for the time off. Time away from work will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

Workers' Compensation

We, in accordance with state law, provide insurance coverage for employees in case of a work related injury. To ensure that you receive any workers' compensation benefits to which you may be entitled, you will need to:

1. Immediately report any work-related injury to your supervisor.
2. Seek medical treatment and follow-up care if required.
3. Complete a written Employee's Claim Form (DWC Form 1) and return it to your supervisor.

Provide us with certification from your health care provider regarding the need for workers' compensation disability leave and your ability to return to work from the leave.

Return to Work Policy

VCEA is committed to returning injured employees to modified or alternative work as soon after a work related injury as possible. Temporarily modifying your job or providing you with an alternative position will do this. Your medical condition along with any limitations or restrictions given by the attending physician will be considered as a priority when identifying the modified/alternative position.

The program is intended to provide our employees with an opportunity to continue as valuable members of our team while recovering from a work related injury. We want to minimize any adverse effects of an ongoing disability on our employees. This program is intended to promote speedy recovery, while keeping the employees' work patterns and income consistent. At the same time, we benefit from having our employees providing a service and contributing to the overall productivity of our business. VCEA retains discretion to decide whether to provide modified duty.

Receipt and Acknowledgment of VCEA Employee Handbook

I have received my copy of VCEA's employee handbook. I understand and agree that it is my responsibility to read and familiarize myself with the policies and procedures contained in the handbook.

At-Will Employment

I further understand that my employment is at-will, and neither VCEA nor I have entered into a contract regarding the duration of my employment. I am free to terminate my employment with VCEA at any time, with or without cause. Likewise, VCEA has the right to terminate my employment with or without cause, at the discretion of VCEA. No employee of VCEA can enter into an employment contract for a specified period of time, or make any agreement contrary to this policy without the written approval from the [General Manager/Executive Officer](#).

Future Revisions

We reserve the right to revise, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this employee handbook or in any other document, except for the policy of at-will employment. Any written changes to this employee handbook will be distributed to all employees so that you will be aware of the new policies or procedures. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Receipt and Acknowledgement of VCEA Handouts

Illness and Injury Prevention Plan

I acknowledge that I have read and understand the VCEA's Illness & Injury Prevention Plan and that I agree to abide by these policies.

Drug and Alcohol Abuse Policy

I certify that I have read VCEA's Drug and Alcohol Abuse Policy and agree to abide fully by its terms. I understand

that as a condition of my employment, I may be subjected to drug testing and that my privacy rights are thereby limited. I also understand that I must notify VCEA of any conviction for a drug violation that occurs within five days after such a conviction. I understand that any violation of the policy may result in serious disciplinary action, including immediate termination.

Employee's Printed Name _____ Position _____

Employee's Signature _____ Date _____

Receipt and Acknowledgement of VCEA Handouts

Sexual Harassment Prevention Handout

I acknowledge that I have read and understand the enclosed pamphlet on sexual harassment prevention in the workplace and reporting procedures in the event that harassment occurs.

State Disability Insurance, Paid Family Leave and Unemployment Handouts

I acknowledge that I have received the enclosed pamphlets on state disability insurance, paid family leave and unemployment insurance as provided by the Employment Development Department.

Workers' Compensation Handout

I acknowledge that I have received the enclosed pamphlet on workers' compensation benefits as provided by the California Chamber of Commerce.

Employee's Printed Name _____

Position _____

Employee's Signature _____

Date _____



VALLEY
CLEAN ENERGY

Employee Handbook

**Updated in
April 2022**

Table of Contents

Welcome To Valley Clean Energy Alliance	5
Introductory Policies	6
Introduction & Future Revisions.....	6
Our Working Relationship	6
Open Communication Policy	6
Equal Employment Opportunity.....	6
Unlawful Harassment	7
Employment Policies and Practices.....	9
Classification of Employees	9
Rehired/Converted Employees	10
Job Duties	10
Work Schedules	10
Personnel Records.....	11
Inspection of Payroll Records	11
Layoffs and Work Reductions.....	11
Employment Termination.....	11
Employment Verification and References.....	12
Timekeeping and Attendance	13
Punctuality and Attendance	13
Timekeeping Requirements for Non-Exempt Staff	13
Meal and Rest Periods for Non-Exempt Staff.....	14
Overtime Time Provisions for Non-Exempt Staff	14
Make Up Time for Non-Exempt Staff	14
Exempt Employee Time Off.....	14
Lactation Accommodation	14
Payment of Wages.....	15
Advances.....	15
Payroll Deductions, Wage Attachments and Garnishments	15
Reporting Time Pay	15

Payment for Hours Worked During Business Travel for Non-Exempt Staff	15
Pay for Mandatory Meetings for Non-Exempt Staff	16
Standards of Conduct	16
Professional Business Conduct and Ethics	16
Performance Evaluations.....	18
Problem Resolution	19
Alcoholic Beverage Consumption.....	19
Drug and Alcohol Abuse	20
Customer and Public Relations.....	21
Confidentiality	22
Conflict of Interest.....	22
Solicitation.....	23
Media Contact	23
Employment of Friends or Relatives.....	23
Personal Relationships in the Workplace.....	23
Dress Policy.....	24
Day to Day Operations	24
Employer and Employee Property.....	24
Electronic Systems and Privacy	25
Social Media Guidelines	25
Telephone Usage	27
Cell Phone Usage	27
Workplace Monitoring	28
Travel Expense Policy	28
Agency Property and Equipment.....	29
Personal Use of Agency Property	30
Driving Record and Insurance.....	30
Health and Safety	30
Smoking Policies	31
Security	31
Workplace Violence.....	31
Off-Duty Use of Facilities	32

Parking	32
Employee Suggestion Program.....	32
Employee Benefits.....	32
Benefits.....	32
Official Health Plan Documents.....	32
Paid Time Off (PTO)	33
Holidays	35
Insurance Benefits	35
Domestic Partners	38
Cal-COBRA	38
Recreational Activities and Programs.....	38
Leaves of Absence	38
Medical Leaves of Absence	39
Bereavement Leave	40
Bone Marrow and Organ Donation Leave.....	40
Civil Air Patrol Leave	40
Domestic Violence and Sexual Assault Victim Leave.....	41
Jury Duty or Witness Leave	41
Military Leave	41
Pregnancy Disability Leave	41
Integration With Other Benefits.....	42
Continuation of Medical Benefits.....	42
School Appearance Leave.....	43
Time Off for Victims of a Violent or Serious Crime	43
Time Off to Vote	43
Volunteer Emergency Duty Leave	43
Workers' Compensation.....	43
Return to Work Policy	44
Receipt and Acknowledgment of VCEA Employee Handbook	44
Receipt and Acknowledgement of VCEA Handouts	46

Welcome To Valley Clean Energy Alliance

DATE

Dear VCEA Employee:

INSERT COVER LETTER HERE

Sincerely,

Mitch Sears
Executive Officer

Introductory Policies

Introduction & Future Revisions

We hope you will find your employment with Valley Clean Energy Alliance (“VCEA” or “Agency”) to be both rewarding and challenging. Our staff are key to VCEA’s success and we carefully select our new employees. This handbook is not a contract, express or implied, nor does it guarantee employment for any specific length of time.

The policies included in this handbook are guidelines only and are subject to change as VCEA deems appropriate. From time to time you may receive notice of new or modified policies, procedures, benefits, or programs. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Our Working Relationship

VCEA does not offer tenure or any other form of guaranteed employment. Either VCEA or the employee can terminate the employment relationship at any time, with or without cause, with or without notice. This is called Employment At Will. This employment at will relationship exists regardless of any other written statements or policies contained in this handbook or any other Agency documents or any verbal statement to the contrary.

No one except VCEA’s Executive Officer can enter into any kind of employment relationship or agreement that is contrary to the previous statement. To be enforceable, such relationship or agreement must be in writing, signed by the Executive Officer, approved by the VCEA Board.

Open Communication Policy

At VCEA, courtesy, tact and consideration should guide each employee in relationships with fellow workers and the public. It is mandatory that each employee show maximum respect to every other person in the organization. The purpose of communication should be to help others and to make our business run as effectively as possible, thereby gaining the respect of our colleagues and customers.

Equal Employment Opportunity

VCEA is an equal opportunity employer and makes employment decisions on the basis of merit and business need. VCEA’s policies prohibit unlawful discrimination based on race, color, religious creed, gender, pregnancy (or related medical condition), genetic information, genetic characteristics, gender identity, gender expression, religion, marital status, military or veteran status, age, national origin or ancestry, physical or mental disability, medical condition, sexual orientation, or any other consideration made unlawful by federal, state or local laws. All such discrimination is contrary to VCEA policy.

Reasonable Accommodation.

When necessary under the California Fair Employment and Housing Act and the Americans with Disabilities Act, VCEA will reasonably accommodate an employee or applicant with a disability if the employee or applicant is otherwise qualified to safely perform all of the essential functions of the position.

We will make reasonable accommodations when requested to comply with applicable laws ensuring equal employment opportunities to qualified individuals with a disability. VCEA will engage in a timely, good-faith, interactive process to determine a reasonable accommodation, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition. VCEA will consider all requests for accommodation, but retains discretion to determine what, if any, accommodation to provide.

Unlawful Harassment

VCEA intends to provide a work environment that is pleasant, professional, and free from intimidation, hostility or other offenses which might interfere with work performance. Harassment of any sort - verbal, physical, or visual - will not be tolerated. This includes both sexual harassment as well as harassment based on an employee's status in a protected class. These classes include, but are not necessarily limited to race, color, religion, age, gender, genetic information, genetic characteristics, gender identity, gender expression, sexual orientation, pregnancy (or related medical condition), national origin or ancestry, disability, medical condition, marital status, veteran status, military status, or any other protected status defined by law. This policy also prohibits unlawful harassment based on the perception that anyone has any of those characteristics, or is associated with a person who has or is perceived as having any of those characteristics. This policy extends to unlawful harassment of VCEA employees by any other VCEA employees, vendors, independent contractors, customers, or others with whom employees may come into contact with during their work for VCEA.

Our workplace is not limited to our facilities, but may also include customer and vendor facilities, as well as anywhere a business-related function, or social function sponsored by VCEA, is taking place.

What Is Workplace Harassment?

Workplace harassment can take many forms. It may be, but is not limited to, words, signs, offensive jokes, cartoons, pictures, posters, e-mail jokes, social media communication, messages or statements, pranks, intimidation, physical assaults or contact, or violence. It may also take the form of other vocal activity including derogatory statements not directed to the targeted individual but taking place within their hearing. Other prohibited conduct includes written material such as notes, photographs, cartoons, articles of a harassing or offensive nature, and taking retaliatory action against an employee for discussing or making a harassment complaint. In addition, this policy protects employees against conduct from all individuals in the workplace, such as fellow employees, supervisors, outside customers, vendors, independent contractors, or other non-employees who conduct business with our agency.

What Is Sexual Harassment?

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal or physical contact of a sexual nature. When this conduct creates an offensive, hostile and intimidating working environment, it may prevent an individual from effectively performing the duties of their position. It also encompasses such conduct when it is made a term or condition of employment or compensation, either implied or stated and when an employment decision is based on an individual's acceptance or rejection of such conduct.

It is important to note that harassment crosses age and gender boundaries and cannot be stereotyped. Among other perceived unconventional situations, sexual harassment may involve two women or two men. Harassment

may exist on a continuum of behavior. For instance, one example of harassment may be that of an employee showing offensive pictures to another employee.

Generally, two categories of harassment exist. The first, "quid pro quo," may be defined as the demand for sexual favors in exchange for improvement or continuance in your working conditions and/or compensation. The second category, "hostile, intimidating, offensive working environment," can be described as a situation in which unwelcome sexual advances, requests for sexual favors, or verbal or other conduct creates an intimidating or offensive environment. Examples of a hostile, intimidating, and offensive working environment include, but are not limited to, pictures, cartoons, symbols, or items found to be offensive. An employee may have a claim of harassment even if he or she has not lost a job or other economic benefit.

Responsibility

All VCEA employees, and particularly supervisors, have a responsibility for keeping our work environment free of harassment. Any employee who becomes aware of an incident of harassment, whether by witnessing the incident or being told of it, must report it to their immediate supervisor, the Executive Officer or a management representative with whom they feel comfortable. When supervisors become aware of the existence of conduct that could violate this policy, they are obligated to take prompt and appropriate action, whether or not the recipient of the harassment wants VCEA to do so.

Reporting

If you believe you have been harassed by any agency employee, customer, contractor, or other business contact, you are required to report it to your supervisor or any other member of management. While we encourage you to communicate directly with the alleged harasser, and make it clear that the harasser's behavior is unacceptable, it is not required that you do so. It is essential, however, to notify a member of management immediately even if you are not sure the offending behavior is considered harassment. Any incidents of harassment must be immediately reported. At any time if you feel that you are in immediate harm and do not have time to contact either the Executive Officer or your supervisor, seek assistance from any management representative.

Appropriate investigation and disciplinary action will be taken. All reports will be promptly investigated. However, confidentiality cannot be guaranteed. Any employee found to have harassed any employee will be subject to severe disciplinary action up to and including termination. VCEA will also take any additional action necessary to appropriately remedy the situation. Retaliation of any sort will not be permitted. No adverse employment action will be taken for any employee making a good faith report of alleged harassment.

All employees must report any incidents immediately so that complaints can be quickly and fairly resolved. The California Department of Fair Employment and Housing ("DFEH") investigates and may prosecute complaints of harassment. Whenever an employee thinks he or she has been harassed or that he or she has been retaliated against for resisting or complaining, that employee may file a complaint with the DFEH. The nearest DFEH office is listed in the telephone book or on-line.

Harassment and Retaliation Prohibited

VCEA prohibits any form of harassment on a protected basis that impairs an employee's working ability or emotional well-being at work. VCEA also prohibits any employee from retaliating in any way against anyone

who has raised any concern about harassment or discrimination against another individual. We will investigate any complaint of harassment, discrimination, and retaliation and will take immediate and appropriate disciplinary action if any such conduct has been found within the workplace.

Employment Policies and Practices

Classification of Employees

A new hire will be classified as either “exempt” or “non-exempt.”

Non-exempt employees are entitled to overtime pay for hours worked in excess of forty (40) hours per workweek.

Exempt employees are those employees whose duties and responsibilities allow them to be “exempt” from provisions as provided by the Federal Fair Labor Standards Act (FLSA) and any applicable state laws. If you are an exempt employee, you will be advised that you are in this classification at the time you are hired, transferred, or promoted. Participation in VCEA’s benefits programs may be affected by your employment status or classification.

All employees of VCEA whether exempt, non-exempt, full-time, part-time, or temporary are employed at-will.

1. The EXEMPT status applies to certain administrative, professional, and executive staff. Exempt employees qualify for exemption from overtime regulations under state and federal law and their salaries already take into account that they may work long hours.
2. The NON-EXEMPT status applies to all other regular employees. Non-exempt employees receive extra pay for overtime work (as described in the overtime section of this employee handbook). Employees working in non-exempt positions are compensated for the actual amount of time spent on their job and are entitled to receive time and one-half (1 ½) their regular rate of pay for each hour worked in excess of forty (40) hours in a work week.
3. FULL-TIME employees work on a regular basis for at least 40 hours per week. Full-time employees may or may not be EXEMPT. They are eligible for all benefits available through work at VCEA, so long as they meet the applicable requirements, such as length of service.
4. PART-TIME employees are regularly scheduled to work fewer than 40.0 hours per week. Part-time employees who are regularly scheduled to work a minimum of 30 hours per week are entitled to all benefits as explained later in this employee handbook according to a prorated formula based on their average hours worked compared to a standard 40.0 hour workweek. Part-time employees who are regularly scheduled to work less than 30 hours per week are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the Executive Officer.
5. TEMPORARY EMPLOYEES are hired with the understanding that their employment will not continue beyond a stated date or beyond completion of a specified project or projects. Temporary employees will generally not be employed for more than 6 months. Temporary employees are not eligible for benefits covered in this employee handbook, other than those required by law or as stipulated in writing signed by the Executive Officer.

6. INTERNS are employees who are gaining supervised practical experience in a professional field. Interns may be paid, but are not eligible for any benefits listed in this employee handbook except as required by law.

Recruitment

VCEA will conduct an appropriate recruitment, depending on the needs of the organization and the position involved. Open positions may or may not be posted to solicit outside candidates. If you are aware of a vacancy and are interested in being considered for the position, you should discuss the matter with your current supervisor.

Rehired/Converted Employees

If you meet eligibility requirements for rehire at the time of your separation from VCEA, you may apply for any open position for which you are qualified. Former employees will be considered along with all other applicants, and have no greater chance of being selected for employment than all other applicants.

If you are rehired by VCEA or convert from part-time to full-time status, your length of service with VCEA for all purposes will be calculated from the rehire date or the date of conversion to full-time status.

Employees who are involuntarily terminated for performance reasons or for violation of agency policy are ineligible for rehire. In addition, employees who voluntarily resign may still be ineligible for re-hire if VCEA learns of circumstances that would have justified termination for performance-based reasons regardless of when that information is acquired.

Job Duties

Your supervisor will explain your job responsibilities and the performance standards expected of you. Your job responsibilities may change at any time during your employment; for example you may be asked to work on special projects or to assist with other work necessary or important to the operation of VCEA. It is expected that VCEA will have your cooperation and assistance in performing such additional work.

VCEA also may, at any time, with or without notice, alter or change your job responsibilities, reassign or transfer your position, or assign you additional job responsibilities depending on business needs.

Work Schedules

VCEA's normal business hours are 8:00 a.m. through 5:00 p.m., Monday through Friday. Your supervisor will assign your individual work schedule, and you are expected to be ready to perform your work at the start of your scheduled shift. Flexible work schedules and telecommuting may be accommodated with the approval of your supervisor. Alternative work arrangements are not an entitlement or employee benefit. A supervisor may end the arrangement at any time for any reason or without cause. All changes to normal working hours, flexible work schedules, and telecommuting arrangements should be documented with your supervisor and HR representative.

On occasion, work schedules may fluctuate with customer demand and business needs. If a change in your work schedule is required, your supervisor will notify you at the earliest opportunity. You may be required to work

overtime or hours other than those normally scheduled. Exempt employees are required to work as many hours as are necessary to complete the responsibilities of their positions.

Personnel Records

A personnel file will be confidentially maintained for each VCEA employee. You may review your personnel file during regular business hours upon making a request to the Executive Officer. An appointment will be made for the purpose of allowing the review.

VCEA will treat your personnel records as confidential and private. However, there are certain times when information may be given to a person outside VCEA. These include:

1. In response to a subpoena, court order, or order of an administrative agency;
2. To a governmental agency as part of an investigation by that agency of VCEA's compliance with applicable law;
3. In a lawsuit, administrative proceeding, grievance, or arbitration in which you and VCEA are parties;
4. In a workers' compensation proceeding;
5. To administer employee health benefit plans;
6. To a health care provider, when necessary;
7. To a first aid or safety personnel, when necessary; and
8. Information will be disclosed to prospective employers in accordance with the section on Employment Verification and References.

Please promptly notify the Executive Officer of any changes in your personal data. Keeping your file up-to-date can be important with regard to pay, deductions, benefits and other matters. Coverage or benefits that you and your family may receive under VCEA's benefits package could be negatively affected if the information in your personnel file is incorrect.

Inspection of Payroll Records

Employees and former employees have the right to inspect and obtain copies of their own payroll records as required by applicable law. All requests must be submitted in writing to VCEA's Executive Officer. Responses will be provided as required by law. Individuals who make a request may be asked to provide identification and may be required to pay for the cost of making the copies.

Layoffs and Work Reductions

VCEA may implement layoffs. Employees will be selected for layoff at VCEA's discretion based on a combination of factors, including, but not necessarily limited to: business needs, employee performance and productivity, qualifications, attendance, attitude, ability and willingness to work the required days and hours, and the ability to work cooperatively with others in the affected work unit.

The weight given to the above factors may vary depending upon the particular needs of the affected work unit and VCEA as a whole at the time of the layoff.

Employment Termination

VCEA strives to ensure a smooth transition for employees leaving VCEA.

VCEA and its employees have an employment relationship that is known as “employment at will.” This means that employees are not required to work for VCEA for any set period of time nor is VCEA required to employ individuals for any specific length of time. **The statements made in this policy do not alter, modify or limit the employment at will relationship.** An “at-will” employee is subject to termination of employment at any time VCEA concludes it appropriate to do so.

Involuntary separation from service means that the termination action is being initiated by VCEA, rather than by the employee. In general, employees who are discharged by VCEA are not eligible for rehire. However, employees who are terminated due to layoff or restructuring may be eligible for rehire or recall at VCEA’s discretion.

VCEA will consider you to have voluntarily terminated your employment if you do any of the following:

1. Resign from VCEA;
2. Fail to return from an approved leave of absence on the date specified by VCEA, or;
3. Fail to report to work or call in for 3 consecutive work days

In the event that you resign voluntarily, we ask – but do not require – that you provide two weeks’ notice to allow for a smooth transition and training of any replacement personnel.

All agency property such as office equipment, credit cards, keys, manuals, computer equipment, and cell phones must be returned on or prior to the last day of employment. You should return these items to your immediate supervisor.

Final wages for time worked, plus any pay for unused but accrued PTO, will normally be paid on your last day of employment, but no later than the next regularly scheduled payday.

Employment Verification and References

When VCEA receives a request for references or employment verification, VCEA will disclose only the dates of employment and the title of the last position held. VCEA will provide a prospective employer with your last earned wage or salary only at your written request. VCEA will release additional information only with a signed authorization and waiver of liability in a form acceptable to VCEA.

Only the Executive Officer is authorized to respond to requests for employee references and verification of employment. No other supervisor or employee is authorized to provide references for current or former employees.

As an employee of VCEA, all requests for information regarding another employee must be forwarded to the Executive Officer.

Timekeeping and Attendance

Punctuality and Attendance

Regular attendance and punctuality are “essential functions” of your job. You are expected to maintain regular attendance during all scheduled work hours, report to work on a timely basis, and work through the end of your regularly scheduled workday. Chronic absenteeism or lateness will not be tolerated and will result in discipline, up to and including termination. In the event of an unscheduled absence, please abide by the following:

- You must personally call your supervisor prior to the start of your shift if you are unable to report to work, or will be late to work, on any particular day.
- You are expected to advise another management representative of your absence if you are not able to reach your supervisor and leave a telephone number where you can be reached.
- You may not have a relative or friend call in to report your absence, unless you are unable to call yourself due to a medical or other emergency.
- If you call after the start of your shift you will be considered tardy for that day.
- You are expected to provide your supervisor with explanation of your absence or tardiness and inform your supervisor of the expected duration of the absence. If you are absent for medical reasons, you do not need to disclose the underlying medical condition.
- With the exception of certain extenuating circumstances, you must call in each day you are scheduled to work and will not report to work.

Repeated absenteeism or tardiness (whether excused or not) is not tolerated. Continuing patterns of absences, early departures, or tardiness - regardless of the exact number of days—may warrant disciplinary action, up to and including termination of employment. Emergency or extraordinary circumstances concerning an absence or tardiness will be considered, and we reserve the right to make an exception to this policy if, at our discretion, an exception is warranted. Repeated car failures, missing the bus, consistently failing to arrange back-up childcare or oversleeping do not constitute emergency or extraordinary circumstances. We reserve the right to determine what is considered excessive absenteeism. In all cases, we will make accommodations for qualified employees with disabilities where required by law.

If you fail to report for work for three (3) consecutive days without any notification to your supervisor, we will consider that you have abandoned your employment, and have resigned your position.

Timekeeping Requirements for Non-Exempt Staff

Applicable law requires VCEA to keep an accurate record of time worked. Employee time records are official VCEA records and must be accurately maintained. You must input your own time at the start and at the end of each workday, and at the start and end of each lunch hour. Completing another employee’s time record or intentionally falsifying a time record is a serious violation and may result in immediate termination of employment. If a time record needs to be corrected, both you and your supervisor must initial the change in the time record to verify its accuracy.

Meal and Rest Periods for Non-Exempt Staff

Employees will generally be provided with at least a 30-minute lunch break per day, which can be scheduled by your supervisor to best accommodate the workday.

Overtime Time Provisions for Non-Exempt Staff

As necessary, you may be asked to work overtime. Only actual hours worked in a given workday or workweek will be counted in determining which hours constitute overtime. We will attempt to distribute overtime evenly and accommodate individual schedules. A supervisor must previously authorize all overtime work. Any overtime worked without prior authorization may be grounds for discipline. We provide compensation for all overtime hours worked by non-exempt employees as follows: All hours worked in excess of forty (40) hours in one workweek will be treated as overtime.

Hours worked for purposes of overtime do not include an unpaid meal period, or hours away from work due to PTO, sickness, holiday, jury duty, or other absences from work. No overtime compensation will be paid to exempt employees. Exempt employees may have to work hours beyond their normal schedules, as work demands require.

Make-Up Time for Non-Exempt Staff

Make-Up time is defined as when a non-exempt employee asks his or her supervisor for additional time off to attend to personal matters. If the request is granted, this time off will be without pay. If you wish to make up this missed time, you may submit a "Make-Up Time Request Form" to your supervisor before the make-up time is worked. It is within the supervisor's discretion to grant the request. Make-Up time must be worked in the same workweek as the missed time (including prior to the missed time) in order not to incur overtime. You may not work over forty (40) hours total in the week including make-up time.

Exempt Employee Time Off

Exempt employees of VCEA are paid a salary, which compensates them for working as many hours as required to complete their job duties. Exempt employees do not receive overtime pay. We realize, however, that in instances of extraordinary additional pressure or increased work hours, it may be appropriate for supervisors to recognize the exempt employee's efforts by granting the employee extra time-off separate from and in addition to the employee's accrued PTO time. In order to achieve consistency among supervisors and fairness to the exempt employees, supervisors should use the following guidelines when exercising their discretion to grant additional time off:

1. Limit the amount of additional time-off to no more than two days;
2. Require the employee to take the time-off in the week immediately following the increased hours whenever possible and;
3. Do not allow employees to accumulate any granted but unused time-off

Lactation Accommodation

VCEA will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. VCEA shall provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in

private. If special arrangements are made to provide a non-exempt employee extra time beyond her normal rest period, the time will be unpaid.

Payment of Wages

Paydays are semi-monthly, the 15th and last day of the month. There are 24 pay periods in a year. The workday (a 24-hour, consecutive period) begins at 12:01 a.m. and ends at midnight. The workweek begins on Sunday and ends on Saturday.

If a regular payday falls on a weekend or holiday, you will be paid on the first day of work prior to the regularly scheduled payday. If there is an error on your check, please report it immediately to your supervisor.

For your convenience, we offer a direct deposit option.

Advances

We do not permit advances against paychecks or against unaccrued PTO.

Payroll Deductions, Wage Attachments and Garnishments

VCEA makes certain deductions from every employee's paycheck. Among these are applicable federal, state, and local income taxes, social security and Medicare taxes, state disability insurance contributions, and paid family leave contributions. By law, VCEA is also required to honor legal attachments and garnishments of an employee's wages or salaries. If your wages are attached, we will withhold the specified amount to satisfy the terms of the attachment.

Reporting Time Pay

Reporting time pay will be paid under the following conditions:

1. Reporting time pay to non-exempt is owed when you report to work at your regularly scheduled time, but you are given less than half the usual or scheduled day's work. In this case, you will be paid for at least half of the hours you were scheduled to work, but never less than two hours pay, and never more than four hours pay.
2. Reporting time pay is also owed if you are required to report to work a second time in any one (1) workday and are given less than two (2) hours work on the second reporting. In this case you will receive at least two (2) hours pay for the second appearance.

These provisions do not apply if you are on a paid "standby" or "on call" status. In some instances, you may not receive reporting time pay. Reporting time pay does not apply if public utilities fail, such as water, gas, electricity, or sewer and/or when work is interrupted by an "act of God" or other causes not within VCEA's control.

Payment for Hours Worked During Business Travel for Non-Exempt Staff

Whenever possible, non-exempt employees traveling on agency business are expected to do so during normal working hours. In the very rare instance where your travel time constitutes overtime, you will be paid overtime as required by law. Non-exempt employees will be paid for all hours worked, including out of town travel time, at regular and overtime pay rates according to the law. Pay for travel time may be at a rate of pay that is less than the employee's normal rate of pay.

If you are non-exempt and traveling on business, you will not be paid for time between work assignments; e.g., if you stay the night in a hotel, pay begins when you begin to work, or are in transit. Travel is to be scheduled in advance, in writing by your supervisor, with the knowledge of the Executive Officer.

Non-exempt travel may be approved on an as-needed basis, but only with prior authorization from your supervisor.

Pay for Mandatory Meetings for Non-Exempt Staff

VCEA will pay you for your attendance at meetings, lectures and training programs if all of the following conditions are met:

1. Attendance is mandatory (i.e. required by VCEA).
2. The meeting, course, or lecture is directly related to your job.
3. You are notified of the necessity for such meetings, lectures, or training programs by your supervisor (i.e. pre-approval by management is required)

If you meet the above conditions you will be compensated at your regular rate of pay. If you are required to travel, then travel pay will be provided. You will not receive compensation for voluntary attendance in courses that are conducted outside of normal business hours and/or that are not directly related to your current job.

Standards of Conduct

Professional Business Conduct and Ethics

By accepting employment with VCEA, you have a responsibility to VCEA and to your fellow employees to adhere to certain codes of behavior and conduct. The purpose of these rules is to ensure that you understand what conduct is expected and necessary. When each person is aware that he or she can fully depend upon fellow workers to follow the rules of conduct, then our agency will be a better place for everyone to work.

Generally speaking, we expect you to act in a mature and responsible way at all times. VCEA values honesty in communication and personal responsibility. To avoid any possible confusion, some of the more obvious unacceptable activities are noted below. If you have any questions concerning any work or safety rule, or any of the unacceptable activities listed, please ask for an explanation.

Occurrences of any of the following violations, because of their seriousness, may result in disciplinary action up to and including immediate suspension or termination:

Unacceptable Activities:

1. Generally, conduct which is disloyal, disruptive, or damaging to VCEA.
2. Falsification of timekeeping records.
3. Dishonesty; falsification or misrepresentation on your application for employment or other work records; lying about sick or personal leave; falsifying reason for a leave of absence or other data requested by VCEA; alteration of agency records or other agency documents.
4. Working under the influence of alcohol or illegal drugs, including marijuana.

5. Theft or inappropriate removal or possession of agency property or the property of fellow employees; unauthorized use of agency equipment and/or property for personal reasons.
6. Possession, distribution, solicitation, sale, transfer, or use of alcohol or illegal drugs, including marijuana, in the workplace, while on duty, or while operating agency-owned vehicles or equipment.
7. Fighting, threatening, or coercing fellow employees on agency property or during working hours, for any purpose.
8. Boisterous or disruptive activity in the workplace.
9. Negligence or any careless action leading to damage of agency-owned or customer-owned property or which endangers the life or safety of another person.
10. Obscene or abusive language toward any supervisor, employee or customer; indifference or rudeness towards a customer or fellow employee; any disorderly/antagonistic conduct on agency premises.
11. Insubordination or other disrespectful conduct; refusing to obey instructions properly issued by your supervisor pertaining to your work; refusal to help out on a special assignment.
12. Violation of security or safety rules or failure to observe safety rules and/or practices; failure to wear required safety equipment; tampering with VCEA equipment or safety equipment.
13. Creating or contributing to unsanitary conditions in the workplace.
14. Smoking in prohibited areas.
15. Any act of harassment, sexual, racial or other; telling sexist or racist jokes; making racial or ethnic slurs.
16. Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.
17. Excessive absenteeism; failure to report an absence or late arrival.
18. Unauthorized absence from work station during the workday; sleeping or loitering during working hours.
19. Unauthorized use of telephones, mail system, or other agency-owned equipment.
20. Originating, spreading, or taking part in malicious gossip or rumors about employees of VCEA.
21. Unauthorized disclosure of business "secrets" or confidential information; giving confidential or proprietary information to competitors or other organizations or to unauthorized VCEA employees; breach of confidentiality of personnel or agency information.
22. Violation of agency rules or policies; any action that is detrimental to VCEA's efforts to operate profitably.
23. Unsatisfactory or careless work; failure to meet production or quality standards as explained to you by your supervisor.
24. Soliciting during working hours and/or in working areas; selling merchandise or collecting funds of any kind for charities or others without authorization during business hours, or at a time or place that interferes with the work of another employee on agency premises.
25. Gambling on agency property.
26. Failure to immediately report any damage or accident involving agency equipment or vehicles.
27. Failure or refusal to comply with the work schedule, including mandatory overtime.
28. Using, removing, or borrowing agency equipment or property without prior authorization.
29. The use of abusive or threatening language or actions toward anyone.

This list is not exhaustive. Rather, we ask that you keep in mind at all times the need to conduct yourself with reasonable and proper regard for the welfare and rights of all our employees and for the best interests of the agency. This statement of prohibited conduct does not alter VCEA's policy of at-will employment. Either you or

VCEA remains free to terminate the employment relationship at any time, with or without reason or advance notice.

Performance Evaluations

VCEA encourages an open dialogue between an employee and his or her supervisor on an informal, regular basis. We believe this type of interaction increases job satisfaction for both the employee and VCEA.

Formal performance evaluations will be conducted annually or with frequency dependent on length of service, job position, past performance, changes in job duties, or recurring performance problems. After the review, you will be asked to sign the evaluation report to acknowledge that it has been presented to you and discussed with you by your supervisor, and that you are aware of its contents.

Positive performance evaluations do not guarantee increases in salary, bonuses, or promotions. Salary increases, bonuses, and promotions are solely within the discretion of VCEA, and depend upon many factors in addition to performance. Having your compensation reviewed does not necessarily mean that you will be given an increase.

VCEA uses a discretionary pay-for-performance compensation model to support the highest levels of organizational performance. The intent is to reward individual employee effort and results commensurate with their contributions and impact toward achieving the goals and objectives of the agency. The primary form of a performance reward is a merit increase. These base pay increases move an employee through their salary range and support the agency's retention goals by ensuring employee pay remains competitive with similar roles in the market. Employees who meet or exceed their goals and objectives, as evidenced by the employee receiving an overall rating of 2.0 (Effective) or higher on their year-end Performance Check-in, may be eligible to receive a merit increase (an adjustment in base salary) based on that performance. In limited cases, and with written justification from the supervisor, manager, and Director, an employee with an overall performance rating of less than 2.0 (Effective), may be considered for a reduced base salary.

Performance bonuses also may be used to reward employees when superior performance, as defined below, has been demonstrated in achieving goals and objectives. In most cases, performance bonuses are used to supplement merit increases, or instead of merit increases, when an employee is at or close to the top of their salary range. "Superior performance" is evidenced by an employee receiving a rating of 3.0 (Highly Effective) on one or more goals that, in total, represent at least 25% of the employee's assigned work during the year. "Superior performance" also may be evidenced by an employee receiving an overall rating of 2.5 or higher on their year-end Performance Check-in. Recommendations for performance bonuses must be justified in writing by the supervisor and/or manager and fully describe the efforts put forth by the employee that demonstrates superior performance.

The written justification, and approval of the bonus, are retained. Funding for performance bonuses is included in the annual budget or a budget amendment and approved by the Board of Directors. Performance bonuses are not guaranteed and may not be available due to budget constraints or other business reasons.

Compensation Equity

A pay equity increase may be granted to an employee under certain circumstances, such as the following: a significant lag in salary exists relative to market conditions or between employees with comparable job functions who have similar levels of experience, skills and knowledge, and demonstrated performance; an employee's assigned functions or work tasks increase the scope of the position but do not warrant reclassification; salary compression exists between supervisors and their employees; in order to address retention of employees with highly specialized skills or due to competitive job markets. In addition, a discretionary agency-wide pay equity adjustment for inflation in accordance with the U.S. Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) may be made at the option of the Board of Directors.

Recommendations for pay equity increases are prepared by the Director of Finance and Internal Operations and must be approved by the Executive Officer. Employees approved for a pay equity increase will be notified, and adjustments may be paid retroactively to the first pay period of the current calendar year. Funding for pay equity increases is included in the compensation identified in the annual budget and approved by the Board of Directors. Pay equity increases are discretionary and may not be available due to budget constraints or other business reasons

Problem Resolution

At some time, you may have a complaint or question about your job, your working conditions, or the treatment you are receiving. Your good-faith complaints and questions are of concern to us. We ask that you take your concerns first to your supervisor, following these steps:

1. Bring the situation to the attention of your immediate supervisor who will then review your concern and provide a solution or explanation.
2. If the problem remains unresolved, you may present it in writing to the Executive Officer who will work towards a resolution.

This procedure, which we believe is important for both you and us, cannot result in every problem being resolved to your satisfaction. However, we value your input and you should feel free to raise issues of concern, in good faith, without the fear of retaliation.

Alcoholic Beverage Consumption

Due to the high risk and liability involved, VCEA will not provide alcoholic beverages at social gatherings to VCEA employees. This policy applies to the following:

1. Birthday parties;
2. Office parties;
3. Office picnics; and
4. Recreational activities (i.e. organized team sports)

Drug and Alcohol Abuse and Testing

VCEA is concerned about the use of alcohol, illegal drugs, or controlled substances as it affects the workplace. We comply with state and federal drug abuse regulations, including the Drug-Free Workplace Act of 1988. Use of these illegal substances (whether illegal under California or federal law) whether on or off the job can adversely affect your work performance, efficiency, and safety and health. The use or possession of these substances on the job constitutes a potential danger to the welfare and safety of other employees, and exposes VCEA to the risks of property loss or damage, or injury to other persons. Furthermore, the use of prescription drugs and/or over-the-counter drugs also may affect your job performance and seriously impair your value to us. Any employee who is using prescription or over-the-counter drugs that may impair your ability to safely perform the job, or affect the safety or well-being of others, must notify a supervisor of such use immediately before starting or resuming work. All precautions necessary to preserve your privacy will be taken. You must adhere to the rules stated in this policy as a condition of employment. Failure to comply with this policy may result in discipline, including termination. The Executive Officer has been designated to administer this policy, monitor the program and make reports as required by law.

If there is ever a reasonable basis to suspect you of violating the drug and alcohol policy and being under the influence during working hours, you will be requested to immediately submit to a drug and/or alcohol test. Suspicion will be based on objective symptoms, such as factors related to your appearance, behavior and speech. A reasonable basis may also exist if you are found to be in possession of illegal drugs, alcohol or paraphernalia connected with the use of an illegal drug. Possession of illegal drugs or alcohol is prohibited even if you have not used these substances.

The following rules and standards of conduct apply to all employees either on agency property, or during the workday (including meals and rest periods). The following are strictly prohibited by VCEA:

1. Possession or use of alcohol or illegal drugs, including marijuana, or being under the influence of alcohol or illegal drugs while on agency premises or at any time on duty.
2. Driving an agency vehicle or driving for agency business in a private vehicle while under the influence of alcohol or illegal drugs, including marijuana.
3. Distribution, sale, or purchase of an illegal or controlled substance while on agency premises or at any time on duty.
4. Possession or use of an illegal or controlled substance, or being under the influence of an illegal or controlled substance while on agency premises or at any time while working.
5. Any drug or alcohol statute conviction. You must notify VCEA within 5 days of such conviction.

In order to enforce this policy, we reserve the right to conduct searches of agency property and to implement measures necessary to deter and detect abuse of this policy.

In the event of suspicion of use in connection with an on the job accident, you may be asked to provide body substance samples (such as urine and/or blood) to determine the illicit or illegal use of drugs and alcohol. VCEA will test for alcohol, cannabinoids, (THC), Opiates, i.e. codeine and morphine, Cocaine metabolites, Amphetamines, i.e. amphetamine and metamorphines, adulterants low creatine levels and Phencyclidine. VCEA

assures that any information concerning your drug and/or alcohol use will remain confidential. Refusal to submit to drug testing may result in disciplinary action, up to and including termination of employment.

If the results of your drug and/or alcohol test are positive, VCEA will take disciplinary action which may include suspension or immediate termination. The disciplinary action will be based on the seriousness of the offense and your past performance. If you return to work after testing positive for drugs and/or alcohol, you may be required to consent to unannounced tests for drugs and/or alcohol for a specified period as a condition of continued employment. In the event that you test positive, you may request a second test to be performed by a reliable drug testing agency, at your expense.

Any conviction you receive on a charge of illegal sale or possession of any controlled substance will not be tolerated. In addition, we must keep people who use, sell, or possess controlled substances off VCEA's premises in order to keep the controlled substances themselves off the premises.

Violation of the above rules and standards of conduct will not be tolerated. VCEA may bring the matter to the attention of appropriate law enforcement authorities.

VCEA's policy on drug and alcohol in no way limits or alters the at-will employment relationship.

Customer and Public Relations

The success of VCEA depends upon the quality of the relationships between VCEA, our employees, and our customers, suppliers and the general public. Our customers' impression of VCEA and their interest and willingness to do business with us are formed by how you serve them.

The opinions and attitudes that customers have toward our agency can be affected for a long period of time by the actions of just one employee. It is sometimes easy to take a customer for granted, but when we do, we run the risk of not only losing that customer, but their associates, friends or family who also may be customers or prospective customers.

Here are several things you can do to help give customers a good impression of VCEA:

1. Customers are to be treated courteously and given proper attention at all times. Never regard a customer's questions or concerns as an interruption or an annoyance. Customer inquiries, whether in person or by telephone, must be addressed promptly and professionally.
2. Never place a telephone caller on hold for an extended period of time. Direct incoming calls to the appropriate person and make sure that the call is answered.
3. Act competently and deal with customers in a courteous and respectful manner. Through your conduct, show your desire to assist the customer in obtaining the help that he or she needs. If you are unable to help a customer, find someone who can.
4. All correspondence and documents, whether to customers or others, must be neatly prepared and error-free. Attention to accuracy and detail in all paperwork demonstrates your commitment to those with whom we do business.
5. Never argue with a customer. If a problem develops or if a customer remains dissatisfied, ask your supervisor to intervene.

6. Communicate pleasantly and respectfully with other employees at all times.

These are the building blocks for your and VCEA's continued success.

Confidentiality

It is your responsibility to safeguard confidential information obtained during your employment with us, including financial information obtained from customers and private information about other employees.

You may in no way reveal or divulge any such information unless it is necessary for you to do so in the performance of your duties. Access to confidential information should be on a "need-to-know" basis and must be authorized by your supervisor.

If you are questioned by someone outside VCEA or your department and you are concerned about the appropriateness of giving them certain information, you are not required to answer. Instead, as politely as possible, refer the request to your supervisor or the Executive Officer.

It is also important to remember that you may not disclose or use proprietary or confidential information except as your job requires. You may not keep or retain any originals or copies of reports, notes, proposals, customer lists or other confidential and proprietary documents, equipment, supplies, or property belonging to VCEA. Any and all copies or originals of reports, and notes belong to VCEA and must be turned over to VCEA within twenty-four (24) hours of termination of employment.

You are not permitted to remove or make copies of any VCEA records, reports or documents without prior management approval. Do not post confidential information about VCEA, customers, employees, or affiliates on any social media. Disclosure of confidential information could lead to termination, as well as other possible legal action.

Conflict of Interest

As an employee of VCEA, you must avoid actual or potential conflicts of interest with VCEA. If you are found to have a conflict of interest, you may be subject to discipline, including termination. You should contact your supervisor with any questions about this policy. Prohibited activities include, but are not limited to:

1. Having a direct or indirect financial relationship with a VCEA customer, vendor, or supplier; however, no conflict will exist in the case of ownership of less than 1 percent of a publicly traded corporation.
2. Engaging in any other employment or personal activity during work hours, or using VCEA's name, logo, equipment or property, including stationery, office supplies, computers, telephones, fax machines, postage, and office machines, for personal purposes.
3. Soliciting agency employees, suppliers, or customers to purchase goods or services of any kind for non-agency purposes, or to make contributions to any organizations or in support of any causes.
4. Soliciting or entering into any business or financial transaction with another employee whom the soliciting employee supervises, either directly or indirectly, such as hiring the employee to perform personal services or soliciting the employee to enter into an investment.

Solicitation

You are not permitted to solicit or distribute literature during working time. Working time includes both your working time and the working time of the employee to whom the solicitation or distribution is directed. Similarly, distribution of written solicitation material in working areas is prohibited at all times. If you wish to distribute fundraising items such as cookies, candy, and coupon books for sale, you may place them without solicitation in your workstation or VCEA break rooms.

Media Contact

If you are contacted by a news organization regarding VCEA business, please direct all media inquiries to your supervisor, the Executive Officer, or the Director of Marketing.

Employment of Friends or Relatives

The employment of friends and relatives in the same area of an organization may cause conflicts of interest and appearances of impropriety. In addition, personal conflicts may impact the working relationship of the parties. Although VCEA does not prohibit the hiring of friends and relatives of existing employees, VCEA is committed to monitoring situations in which friends or relatives work in the same area. In the event of an actual or potential problem, VCEA's response may include reassignment or termination of one or both of the individuals involved. For the purposes of this policy, a relative is any person who is related by blood or marriage, or whose relationship with an employee is similar to that of persons who are related by blood or marriage, or one who is a domestic partner.

Personal Relationships in the Workplace

VCEA desires to avoid misunderstandings, complaints of favoritism, claims of sexual harassment, and employee dissension that may result from personal or social relationships amongst employees. Therefore, VCEA asks that if you become romantically involved with another employee that you disclose your relationship to a supervisor with whom you feel comfortable. This information will be kept as confidential as possible. For purposes of this provision, "romantically involved" will be interpreted broadly. VCEA reserves the right to take necessary and appropriate action to resolve any potential conflict of interest arising out of romantic involvement among employees. Depending on the facts of the situation, such action may include reassignment or termination of one or both of the employees involved.

VCEA is committed to maintaining a professional work environment where supervisors treat all employees fairly and impartially. Accordingly, supervisors are not allowed to date, or become romantically or intimately involved with, employees who report to them directly or indirectly. Also, spouses and immediate family members are prohibited from working in positions where they directly report to, or are reported to, by their spouses or family members. Personal relationships very often cause problems in the workplace, such as a lack of objectivity towards the subordinate's job performance, the perception of favoritism by other employees (whether justified or not), and potential sexual harassment complaints.

For purposes of this policy, "immediate family" includes significant others (such as unmarried couples who live together), domestic partners, step-parent and step-child relationships, in-law relationships, grandparents and cousins (including analogous relationships with the parents and children of an employee's significant other). This policy covers all family-like relationships, regardless of blood or legal relationships.

Employees who are currently dating one another, or employees who are married or related and report to or supervise each other, may request to be transferred in order to comply with this policy. When possible, VCEA will attempt to accommodate such requests. Please understand, however, that VCEA reserves the right not to transfer employees based on conflicting business considerations.

Unprofessional behavior in the workplace, such as sexually related conversations, inappropriate touching (i.e., kissing, hugging, massaging, sitting on laps) another employee, and any other behavior of a sexual nature, is prohibited.

If two employees marry or become related, causing actual or potential problems such as those described, only one of the employees will be retained with VCEA unless reasonable accommodations can be made to eliminate the actual or potential conflict. The employees will have 30 days to decide which relative will stay with VCEA. If this decision is not made in the time allowed the Executive Officer will make the decision, taking the employment history and job performance of both employees as well as the business needs of VCEA into account. Supervisors who have any questions about the application of this policy to an employee or applicant should contact the Executive Officer.

Dress Policy

You are expected to dress and groom yourself in accordance with accepted social and business standards, particularly if your job involves dealing with customers or visitors in person. A neat, tasteful appearance contributes to the positive impression you make on our customers.

Business casual dress is generally expected which should include nice shoes, slacks, pantsuits, dresses, skirts, and shirts (and possibly suits and ties when appropriate). Violating dress code standards may subject you to appropriate disciplinary action.

Day-to-Day Operations

Employer and Employee Property

Routine inspections of agency property might result in the discovery of an employee's personal possessions. You are encouraged not to bring into the workplace any item of personal property which you do not want to reveal to VCEA.

All desks, lockers, offices, work spaces, credenzas, cabinets, electronic mail (e-mail), telephone systems, office systems, computer systems, any and all electronically issued technology, agency vehicles and other areas or items belonging to VCEA are open to VCEA and its employees. **YOU SHOULD HAVE NO EXPECTATION OF PRIVACY IN ANY OF THESE AREAS.** Personal items and messages or information that you consider private should not be placed or kept in any of these places or areas belonging to VCEA.

Storage areas, work areas, file cabinets, credenzas, computer systems and software, office telephones, cellular telephones, any and all electronically issued technology, modems, facsimile machines, copy and scanner machines, tools, equipment, desks, voice mail, and electronic mail are the property of VCEA, and need to be maintained according to agency rules and regulations.

Desks and work areas must be kept clean, and are to be used for work-related purposes. VCEA's property is subject to inspection at any time, with or without prior notice. Prior authorization must be obtained before any of VCEA's property may be removed from the premises.

For security reasons, you should not leave personal belongings of value in the workplace. Personal items, lockers and desks are subject to inspection and search, with or without notice, and with or without your prior consent.

Terminated employees should remove any personal items at the time of separation. Personal items left in the workplace by previous employees are subject to disposal if not claimed at the time of your termination.

Electronic Systems and Privacy

Access to VCEA's electronic systems is provided for work-related purposes. There should be NO expectation of privacy in connection with the use of electronic systems, including stored e-mail/voice mail/text messages or any messages sent electronically. All messages created, sent, received or stored in these systems are and remain the property of VCEA. VCEA reserves the right to retrieve and review any message composed, sent or received via the system. Please note that even when a message is deleted or erased, it is still possible to recreate the message; therefore, the ultimate privacy of messages cannot be ensured to anyone.

To safeguard and protect the proprietary, confidential and business-sensitive information of VCEA, and to ensure that the use of all electronic systems and equipment is consistent with VCEA's legitimate business interests, authorized representatives of VCEA may monitor the use of such systems from time to time without notice, which may include printing and reading materials, files on the system, list servers, and equipment.

You should be aware that e-mail messages, like VCEA correspondence, and any and all messages sent electronically may be read by other VCEA employees and outsiders under certain circumstances. While it is impossible to list all of the circumstances, some examples are the following: (1) during system maintenance of the e-mail system, (2) when VCEA has business needs to access the employee's mailbox, (3) when VCEA receives a legal request that requires disclosure of e-mail messages, or (4) when VCEA has reason to believe the employee is using e-mail in violation of VCEA policies.

Social Media Guidelines

VCEA understands that various forms of communication occur through social media, such as Facebook, Twitter, LinkedIn, blogs, and multimedia host sites such as YouTube. Such communications occur in social networking, blogs, and video sharing and similar media. It should be remembered that social media sites do not provide a private setting. Employees who communicate information through social media therefore should not expect that such information is private

Employees must remember that all existing policies apply to information disseminated through social media. These guidelines are intended to help employees understand some of the unintended outcomes of sharing information through social media.

Application of Policies

The employer's policies and standards apply to conduct that occurs in the workplace and while employees are on duty, wherever they happen to be. They also apply to activities that occur during an employee's own time,

outside of work, if the activities have an actual or potential impact on the employee's performance, the performance of coworkers, or the employer. Employees should therefore understand that they are responsible for certain activities that occur off the employer's premises or on their own time both to the employer and third parties. Nothing in this policy prevents employees from exercising their broad rights to discuss the terms and conditions of employment with others, to take action with others to improve your working conditions, or to otherwise exercise their rights to engage in protected concerted activity.

General Policies

VCEA's policies regarding workplace conduct and interpersonal interactions are embodied in a number of policies, including policies that protect VCEA's legal interests and confidential information.

The policies also prohibit unlawful harassment and discrimination and require employees to use work time in an appropriate manner.

The principles set forth in VCEA's policies apply equally to social media, even when the policies do not refer specifically to social media. Violations of any policy through social media or networking will be appropriately addressed when brought to management's attention.

Illustrations of some of the relevant policies and how they may apply to social media are provided below. The following guidelines apply to all employees when they are at work and away from work.

General expectations

- Employees may not post or transmit any material or information that includes confidential, proprietary or trade secret information, or information that is untrue, defamatory, obscene, profane, threatening, harassing, abusive, hateful or humiliating to another person or entity. This includes, but is not limited to, comments regarding VCEA or its employees or customers. Employees should ask their supervisors and refer to agency policies if they have any questions about what is appropriate to include in communications involving social media.

Harassment

- VCEA will not tolerate intimidation, bullying or threats of violence among co-workers and such acts, even if occurring outside of work, will result in serious consequences, including termination.
- VCEA maintains a strict policy prohibiting harassment of any kind. Harassment is inappropriate and contrary to VCEA policy if it is based upon any legally protected characteristic. It includes unwelcome verbal, physical, or visual conduct that creates an intimidating, offensive, or hostile work environment or unreasonably interferes with work performance.

Reputation

- Employees should act responsibly and remember that untrue or defamatory postings can have serious consequences. Do not create fake blogs or false reviews of VCEA or its customers.

Acceptable Use Guidelines

- E-mail and Internet access is provided to support VCEA's business operations. Incidental use of e-mail and internet for personal reasons is permissible during non-working periods during the workday,

provided it is not excessive and provided it does not interfere with VCEA business. Any use that includes tapping into electronic social media should be consistent with VCEA's values, policies and applicable laws.

- Participation in social media sites should be limited during work time; incidental use during break time is not prohibited by this policy. Under no circumstances may employees access social media sites while performing safety-sensitive functions such as driving.

Opinions

- Employees should not speak on behalf of VCEA without proper authorization to do so. Employees should at all times make it clear that their opinions do not represent those of VCEA. They should include disclaimers in online communications advising that they are not speaking officially or unofficially on behalf of the organization.
- Employees may not use VCEA's logo or proprietary graphics to imply that you are speaking on behalf of VCEA.

Questions

- Employees who have concerns regarding workplace conduct or inappropriate behavior or comments are encouraged to contact the Executive Officer for further guidance.

Additional Guidance and Information

While VCEA's policies offer very clear direction on some issues, there are other areas where common sense must prevail. When in doubt about posting, employees should consider the following:

- There is no expectation of privacy when engaging in social media networking activities. You may know everyone in the room when you have a conversation in person. This will not apply with social networking applications. You may not have full control over how your comments are perceived or shared.
- These are public forums. As a practical matter, it may be impossible to delete information that is shared. Comments may be publicly available for years.
- Even when you do not identify your employer by name in the communication or posting, some readers are likely to know where you work. Keep this in mind when you consider posting or transmitting comments that may be work-related. This should also be considered when creating your profile.
- Do not state or imply that the opinions you express are those of VCEA, its management, or other employees. Include a disclaimer to this effect.

Telephone Usage

You may use agency telephones for local or personal calls within reason. You are not to charge long distance personal telephone calls to VCEA. You are expected to limit personal calls so they do not become excessive or disruptive to your work or work area.

Cell Phone Usage

VCEA realizes that in our fast-paced business environment, meeting our goals and staying in touch with our customers and co-workers is a necessary process in working efficiently. But, first and foremost, we want to

preserve the safety of our employees and those in the community. California law limits the use of cell phones while driving to those having hands-free operation.

This law provides that, it is illegal to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving.

Additionally, writing, sending, or reading text-based communications on your cell phone while driving is also prohibited under California law. This includes text messaging, instant messaging, and e-mail. You will be responsible for any tickets you receive if you violate this law.

Use of a hands-free cell phone is required while driving for agency business. An option is that you pull over while driving to place or receive calls on your cellular phones. There is a great potential for harm to you and to others if this policy is violated.

Personal cell phone use is not needed or required for work purposes and should not be used for work.

Workplace Monitoring

Workplace monitoring, both human and electronic, may be conducted by VCEA to ensure quality control, employee safety, compliance with VCEA policies, security, and customer satisfaction.

Customer sites may also utilize video surveillance of non-private workplace areas. Video monitoring is used to identify safety concerns, maintain quality control, detect theft and misconduct, and discourage or prevent acts of harassment and workplace violence.

Because VCEA is sensitive to your legitimate privacy rights, every effort will be made to see that workplace monitoring is done in an ethical and respectful manner.

Travel Expense Policy

VCEA will reimburse you for work-related travel expenses such as transportation, overnight accommodations and meals. You should have your supervisor's approval before incurring travel expenses. All requests for reimbursement must be submitted to the Executive Officer for approval along with supporting documents or original invoices.

Non-exempt employees will be paid for time spent traveling and in conference sessions. If you are required to use your personal automobile on work-related business, VCEA will reimburse you for mileage at the current IRS reimbursement rate and for parking expenses. You should submit the appropriate expense form to the Executive Officer for approval and then forward it to accounting for payment once per month. If you use your personal vehicle for work-related travel you are expected to maintain at least the minimum insurance required by law.

Agency Property and Equipment

Equipment essential to accomplishing job duties is often expensive and may be difficult to replace. When using agency property, you are expected to exercise care, arrange for required maintenance, and follow all operating instructions, safety standards, and guidelines.

VCEA requires that all equipment be in proper working order and safe to work with at all times. If any equipment appears to be damaged, defective, or in need of repair, do not use it until a qualified technician certifies that it is repaired and safe. Never try to fix broken equipment yourself. Please notify your supervisor of any equipment breakdown as soon as it happens. If the breakdown requires emergency repairs, your supervisor will help you deal with the emergency situation as soon as possible. Prompt reporting of damages, defects, and the need for repairs could prevent possible personal injury and deterioration of equipment. Please ask your supervisor if you have any questions about your responsibility for maintenance and care of equipment used on the job.

If you are authorized to operate an agency vehicle in the course of your assigned work, or if you operate your own vehicle in performing your job, you must adhere to the following rules:

1. You must be a licensed California driver and must maintain at least the minimum insurance required by law.
2. You must maintain weekly mileage reports.
3. You are responsible for following all the manufacturer's recommended maintenance schedules so as to maintain valid warranties, and for following the manufacturer's recommended oil change schedule.
4. VCEA provides insurance on agency vehicles. However, you will be considered completely responsible for any accidents, fines, moving or parking violations.
5. If involved in an accident do not admit fault, only provide required insurance and personal DMV information.
6. You must keep VCEA vehicle clean at all times.
7. Persons not authorized or employed by VCEA cannot operate or ride in an agency vehicle.
8. Prior to operation of any agency vehicle, your supervisor will train you on the appropriate steps to take if you are involved in an accident, such as filling out the accident report, getting names and phone numbers of witnesses and so on.

If you are required to drive an agency vehicle or your own vehicle for agency business, you will also be required to show proof of a current, valid driver's license and current effective auto insurance coverage prior to the first day of employment.

If you drive your own vehicles on agency business you will be reimbursed at the current IRS reimbursement rate.

You are responsible for all agency property, materials, or written information issued to you or in your possession. You may be asked to sign an acknowledgment of receipt of agency property issued to you. All agency property must be returned on or before your last day of work. You may be responsible for the replacement cost of agency property not returned.

Agency cars are for agency business only, and only authorized employees may drive agency cars. Employee spouses, children, friends or anyone other than the employee may not operate these vehicles, unless an emergency arises. A violation of these rules, or excessive or avoidable traffic and parking violations may result in disciplinary action, up to and including termination.

Personal Use of Agency Property

You are not allowed to use agency owned property for personal use. The definition of “agency owned” assets includes, but is not limited to, facilities, computers, and their related equipment, labelers, copy machines, postage meter, any type of supplies including office supplies, tools, vehicles, credit cards, etc. These assets are provided to you for agency related business only.

Please also remember that all desks, lockers, cabinets, computers and vehicles that belong to VCEA will be open to all agency employees. Personal items, messages or information that you consider private should not be placed or kept in telephone systems, office systems, agency computer systems, office work spaces, desks, and credenzas or file cabinets.

If you are issued an agency credit card you are responsible for the use of that card. Under no circumstances will VCEA allow you to sign an agency credit card unless the card being signed is issued in your name. Signing another employee’s credit card will result in liability for the expense and may subject you to immediate termination. If you hold an agency credit card you may only give permission to another employee to make an authorized business purchase or reservation using your card with prior approval from the Executive Officer of VCEA. Any holders of agency credit cards or authorized users who transact a non-business related charge may be subject to immediate termination. Receipts for all credit card transactions must be given to the Finance Director along with an explanation of the purchase.

Driving Record and Insurance

As a condition of employment, we require you to maintain an acceptable driving record if you drive for agency business. Any accidents or traffic violations must be reported to a supervisor immediately if they occur during the course of your duties. You will be responsible for any tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle. Failure to report an on-the-job motor vehicle accident, no matter how minor, will lead to disciplinary action, up to and including termination. Additionally, you are required to maintain the level of insurance required by the state of California. A copy of your insurance card must be on file before you will be allowed to drive for agency business.

Health and Safety

Safety is everybody's business. Safety is to be given primary importance in every aspect of planning and performing all VCEA activities. We want to protect you against injury and illness, as well as minimize the potential loss of production. To achieve our goal of maintaining a safe workplace, everyone must be safety conscious at all times. In compliance with California law, and to promote the concept of a safe workplace, we maintain an Injury and Illness Prevention Plan (IIPP). The IIPP is available for your review from the Director of Finance & Internal Operations. The Director of Finance & Internal Operations has responsibility for implementing, administering, monitoring, and evaluating the safety program. Its success depends on the alertness and personal commitment of all.

You will receive a copy of VCEA's general safety rules and will receive health and safety training as part of this program. A complete copy of the Safety Program is kept by the Executive Officer and is available for your review.

Smoking Policies

Smoking, use of e-cigarettes or vapor products is not allowed in any enclosed area of the building, or within 25 feet of any entrance of the building or in any agency vehicle. In fairness to those who do not smoke, smoking is allowed only during breaks and lunch and only outside of the office or building.

Security

To provide for the safety and security of you, our customers and our facilities, only authorized visitors are allowed in the work areas. To ensure the safety of our guests, we encourage family and friends to check in when visiting you at the workplace.

The following security procedures should always be followed to ensure your safety and the safety of your fellow employees, and to ensure the confidentiality of VCEA's information. At no time should unauthorized persons be allowed to roam unescorted through VCEA's office. It is a matter of courtesy to accompany customers and guests to and from the exits and other office to which they may be destined. If strangers are encountered in our office who do not satisfactorily identify themselves or the person with whom they will be meeting, escort them to the front of the office. If they resist, contact your supervisor immediately.

Be aware of persons loitering for no apparent reason in other non-office areas (e.g., in parking areas, walkways, entrances/exits and service areas). Report any suspicious persons or activities to your supervisor. Secure your desk at the end of the day or when called away from your work area for an extended length of time and do not leave valuable and/or personal articles in or around your workstation that may be accessible. Please report any lost facility keys to your supervisor immediately.

Workplace Violence

VCEA recognizes that violence in the workplace is a growing nationwide problem necessitating a firm, careful response by all employers. The costs of workplace violence are great, both in human and financial terms.

VCEA has adopted the following policies to ensure the safety of its employees and to provide guidance on dealing with violence in the workplace. If qualified, you may provide first aid to injured persons. You are required to:

1. Immediately report all indirect and direct threats of violence to a supervisor.
2. Immediately report all suspicious individuals or activities to a supervisor.
3. Never put yourself or others in peril.
4. Immediately call 911 and seek shelter if you hear a violent commotion near your workstation.
5. Cooperate fully with security, law enforcement, and medical personnel who respond to a call for help.
6. Direct all inquiries from the media about violence on VCEA premises to your supervisor or the Executive Officer.

The Executive Officer of VCEA will make the sole determination of whether, and to what extent, threats or acts of violence will be acted upon by the agency. In making this determination, we may undertake a case-by-case analysis in order to ascertain whether there is a reasonable basis to believe that workplace violence has occurred. No provision of this policy shall alter the at-will nature of employment at VCEA.

Off-Duty Use of Facilities

You are prohibited from being on agency premises, or making use of agency facilities, while not on duty. You are expressly prohibited from using agency facilities, agency property or agency equipment for personal use.

Parking

You are encouraged to use the parking areas designated for our employees. Remember to lock your car every day and park within the specified areas.

Courtesy and common sense in parking will help eliminate accidents, personal injuries, and damage to your vehicle and to the vehicles of other employees. If you should damage another car while parking or leaving, immediately report the incident, along with the license numbers of both vehicles and any other pertinent information you may have, to your supervisor. VCEA cannot be and is not responsible for any loss, theft or damage to your vehicle or any of its contents. You will be responsible for any parking tickets you receive while driving on agency business whether in an agency vehicle or your own personal vehicle.

Employee Suggestion Program

We encourage you to bring forward your suggestions and good ideas about how our agency can be made a better place to work and our service to customers enhanced. When you see an opportunity for improvement, please talk it over with your supervisors. All suggestions are valued and listened to.

Employee Benefits

Benefits

VCEA has developed and invested in an employee benefit program to supplement your regular wages. VCEA will continue these benefits as agency resources allow; however, we reserve the right to change or eliminate any benefit program at any time (including increasing the employee's share of the cost).

Our benefit program consists of programs which may include health, dental, and vision coverage, life insurance, paid time off (PTO) and holiday pay. In addition, there are a number of programs available to employees through other sources such as State Disability, Paid Family Leave, Unemployment Insurance, Social Security and Workers' Compensation. Eligibility to participate in some of these programs is determined by your employee classification and length of continued service with VCEA.

Official Health Plan Documents

The employee handbook contains a number of brief summaries of the benefit programs that the employer provides for eligible employees. The purpose of these summaries is simply to acquaint you with the general provisions of the applicable plans; they do not contain full statements of all of the terms, conditions, and

limitations of the plans. If there are any real or apparent conflicts between the brief information in the handbook and the terms, conditions and limitations of the official plan documents, the provisions of the official plan documents will be considered accurate. You are encouraged to review all plan documents carefully to familiarize yourself with all of the provisions of the plans.

Paid Time Off (PTO)

Eligibility

Paid Time Off (PTO) is an all purpose time-off policy for eligible employees to use for the following: vacation; the diagnosis, care, treatment of an existing health condition; preventative care of an employee or family member; for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance; illness or injury; and personal business. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, in-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status). Personal business also includes time spent for jury duty, bereavement, and time off to vote. Regular full-time employees are eligible to earn and use PTO as described in this policy.

PTO begins accruing upon your date of hire. Employees may begin using PTO upon your 90th day of employment. At that time, you can request the use of earned PTO including that accrued during the waiting period.

Accrual

Regular, full-time employees accrue 6.67 hours of PTO per pay period (24 pay periods per year) in your first year of eligibility – 160 hours. After your first anniversary, and thereafter, you will receive an additional eight (8) hours per year, which will accrue at an additional rate of .34 hours per pay period. Once you have worked for the agency for ten (10) years, you will not accrue any additional PTO.

The length of eligible service is calculated on the basis of a "benefit year." This is the 12-month period that begins when you start to earn PTO. You will not earn PTO while you are out on an unpaid leave of absence. Therefore, your benefit year may be extended if you go out on a leave of absence other than a military leave of absence. Military leave has no effect on this calculation. (See individual leave of absence policies for more information.)

Scheduling PTO

PTO can be used in minimum increments of one (1) hour for non-exempt employees. Exempt employees may use PTO in ½ day or 1 full day increments. If you have an unexpected need to be absent from work you should notify your direct supervisor before the scheduled start of your workday, if possible. Your direct supervisor must also be contacted on each additional day of unexpected absence.

To schedule planned PTO, you need to request advance approval from your supervisor. Requests will be reviewed based on a number of factors, including business needs and staffing requirements.

PTO is paid at your base pay rate at the time of absence. It does not include overtime or any special forms of compensation such as incentives, commissions, bonuses, or shift differentials.

PTO will be used to supplement any payments that you are eligible to receive from state disability insurance, or workers' compensation. The combination of any such disability payments and PTO cannot exceed your normal weekly earnings.

PTO Payout

The Executive Officer may, in his or her sole discretion, authorize a cash payout of up to 60 hours of PTO annually to an employee who meets the following criteria: (a) the employee used an equal or greater amount of hours in the preceding 12 months; and (b) the employee will maintain a minimum PTO balance of 120 hours after the payout. Such requests will be granted at the sole discretion of the Executive Officer in the interest of work program effectiveness and subject to VCEA's fiscal capability.

PTO Caps

Employee can accumulate PTO up to a balance of twice the annual PTO for which they are entitled. Once that limit is reached, employee will no longer accrue PTO until time is taken, and the employee's accrual falls below the cap.

Upon termination of employment, you will be paid for unused PTO that has been earned through your last day of work.

Sick Leave

Employees who are not eligible for the PTO policy as outlined above will earn sick leave in accordance with this policy.

Sick leave is a form of insurance that is accumulated in order to provide a cushion for incapacitation due to illness. It is to be used only for the diagnosis, care, treatment of an existing health condition or preventative care of an employee, family member or for employees who are victims of domestic violence, sexual assault or stalking to seek aid, treatment, or related assistance. A family member is defined as a spouse, registered domestic partner (RDP), grandparent, grandchild, sibling, in-law, parent, step-parent, legal guardian, or child (regardless of age or dependency status).

On the employee's hire date, eligible employees will receive 24 hours of paid sick leave. At the end of each year of employment (i.e., on the employee's anniversary date), unused sick leave will be removed from the employee's leave bank. All eligible employees will be credited with 24 hours of paid sick leave at the commencement of the next employment year. Any unused sick leave is not paid out on separation of employment.

Employees may begin using sick leave upon their 90th day of employment.

When wishing to use sick leave, you should personally call your supervisor prior to the start of your shift on the day you are scheduled to work. Sick leave is not to be taken in less than two (2) hour increments and does not accrue when you are out on sick leave.

A paid absence is not counted as a basis for computing overtime.

If you are receiving State Disability Insurance (SDI) or Workers' Compensation payments, then you can integrate sick pay (meaning that you can supplement your wage replacement benefits with a portion of your sick leave to equal your full wage). Under no circumstances can you receive more than your customary wage.

Sick leave is not granted for the purpose of accompanying or taking pets to procure medical attention.

Unused sick leave has no cash value and will not be paid at termination.

Holidays

We observe the following paid holidays for full-time employees:

- New Year's Day
- Martin Luther King Jr.'s Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving
- Day after Thanksgiving
- Christmas Day

Eligibility for holiday pay begins upon date of hire. You must also be regularly scheduled to work on the day on which the holiday is observed, and must work your regularly scheduled working days immediately preceding and immediately following the holiday, unless an absence on either day is approved in advance by your supervisor.

When a holiday falls on a Saturday or Sunday, it is usually observed on the preceding Friday or the following Monday. Holiday observance will be announced in advance.

If you are on a paid absence due to PTO when a holiday occurs, you will receive holiday pay. Non-exempt employees who work on holidays, due to customer job requirements, will receive regular earned wages. Part-time employees and interns are not eligible for holiday pay.

Insurance Benefits

Medical, Dental and Vision Insurance: We provide access to medical, dental & vision insurance plans for eligible employees and their dependents. You may be required to provide adequate proof of the dependent relationship in order to add the dependents to VCEA's insurance policies. Typically proof of the relationship may be established through a copy of a birth certificate, adoption documents, marriage license, or certificate of registered domestic partnership. We cannot guarantee your domestic partner relationship will be kept confidential.

Full-time employees and part-time employees who are regularly scheduled to work a minimum of 30 hours per week are eligible for VCEA's medical, dental, and vision insurance coverage. Each employee becomes eligible on the first of the month after the employee has started employment with VCEA. VCEA will contribute up to \$1,826 per month per employee towards VCEA's medical, dental and vision insurance for a full-time employee and dependents coverage. VCEA will contribute a prorated amount for part-time employees based on the average hours worked (for example, if the part-time employee is regularly scheduled to work 30 hours per week, VCEA's contribution toward the cost of VCEA's medical, dental and vision insurance coverage for the part time employee and his/her eligible dependents would be prorated to 75% of the full-time equivalent, i.e., \$1,365.50). The employee is responsible for any premiums due for VCEA coverage(s) that are in excess of the VCEA contribution amount. Deductions from the employee's paycheck will be made to cover this cost. Information describing medical, dental and vision insurance benefits will be given to you when you become eligible to participate in the program. Eligible employees who elect not to receive medical insurance coverage from VCEA must provide proof of adequate medical coverage from an alternate source within 30 days of becoming eligible through VCEA for the benefit. Such election will be effective as of the employee's eligibility date and will remain in effect until the start of the next open enrollment period. Employees who have declined VCEA medical insurance coverage and want to continue to decline coverage must provide proof of adequate medical coverage once per year, no later than 30 days prior to VCEA's open enrollment period. Full time employees who decline to accept VCEA medical, dental, and vision insurance benefits shall receive a payment of \$550 per month in lieu of coverage; part-time employees who are eligible for VCEA medical, dental and vision insurance and decline to accept VCEA medical, dental, and vision insurance shall receive a prorated payout based on the employee's regularly scheduled hours (i.e., an employee who is regularly scheduled to work 30 hours per week will receive 75% of the full-time equivalent, or \$412.5.)

During any leave of absence such as personal leave, Workers' Compensation leave or other disability leave, VCEA-provided health benefits will continue through the end of the month during which leave commenced. At that point, the employee will be provided with the option to continue coverage at the employee's own expense pursuant to Cal-COBRA. For the duration of any pregnancy disability leave of absence, health and life insurance benefits will be continued for the duration of your approved pregnancy disability leave as required by applicable law.

Please direct any questions you have regarding your medical, dental and/or vision insurance to the Executive Officer.

Retirement Plan: We provide a 401(A) and 457B defined contribution retirement plans for eligible employees in order to assist in planning for your retirement. Eligible employees may enroll following 6 months of employment. Retirement plan participants can participate in loan programs permitted under the plan guidelines. For more information regarding eligibility, contributions, benefits and tax status, contact the Executive Officer. All eligible participants will receive a summary plan description.

Disability Insurance: VCEA furnishes private long-term disability policies. For more information, contact the Executive Officer.

Life and Accidental Death and Dismemberment Insurance: If you are a regular full time employee of VCEA, you will be provided our group life insurance coverage paid for by the organization. This insurance is payable in the event of your death, in accordance with the policy, while you are insured. You may change your beneficiary whenever you wish by submitting the appropriate documents to the Human Resources Consultant. Refer to the literature provided by our insurance agency for details on your life insurance coverage.

Paid Family Leave (PFL) Insurance: All employees who take time off to care for a seriously ill family member (child, parent, grandparent, grandchildren, in-laws, spouse or registered domestic partner) or bond with a new child may be eligible to receive replacement wages for up to six weeks during any 12-month period, under California's Paid Family Leave program. This program is funded with employee contributions through the State Disability Insurance (SDI) Program. Such contributions are deducted from each employee's paycheck. Even though employees may be eligible to receive Paid Family Leave insurance benefits, a leave of absence must still be requested and approved as defined in our leave policies. Please understand that this leave does not mandate any guarantee that your job will be available when you are ready to return.

State Disability Insurance: If you are unable to work due to a non-work related medical condition or injury you may be entitled to State Disability Insurance (SDI). SDI benefits are paid by the state and are financed from mandatory payroll tax deductions from all employees' wages. Questions regarding SDI benefits should be directed to the Executive Officer or the state's Employment Development Department.

Unemployment Compensation: We contribute each year to the California Unemployment Insurance Fund on behalf of our employees.

Social Security: Social Security is an important part of every employee's retirement benefit. We pay a matching contribution to each employee's Social Security taxes.

Workers' Compensation: VCEA purchases a workers' compensation insurance policy to protect you while you are employed by us. The policy covers you in case of occupational injury or illness. It is your responsibility to notify a member of management immediately if injured. Please refer to the Workers' Compensation policy for additional information.

We provide workers' compensation insurance for our employees as required by state law. The insurance provides important protection for employees who suffer a work-related injury. We encourage you to report all workplace injuries immediately and to take advantage of the benefits provided by our workers' compensation insurance if you are injured on the job.

Workers' compensation insurance provides important protection for employees who suffer an injury at work. Unfortunately, we understand that some employees are encouraged to file fraudulent workers' compensation claims. For your own protection, you should know that the California Insurance Frauds Protection Act provides that it is unlawful for any person to:

"Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining . . . compensation . . . and shall be punished by

imprisonment in county jail for one year, or in the state prison for two, three or five years, or by a fine not exceeding Fifty Thousand Dollars (\$50,000.00) . . . or by both imprisonment and fine."

Our policy is to investigate all questionable workers' compensation claims. If they appear to be fraudulent, they are referred to the Bureau of Fraudulent Claims and the District Attorney's office.

Section 125 (Cafeteria Plan): Through the flexible spending account or the health savings account, you may designate an annual dollar amount of your before-tax income to pay for certain eligible expenses. Particular care should be taken to assure that the funds required in the flexible spending account are not over estimated as unused funds cannot be returned to the participant at the end of the plan year. Please refer to the booklets for information about the program. If you need additional information or change forms, please speak with the Executive Officer.

Domestic Partners

VCEA believes that basic medical/dental/vision coverage should be available to employees and their dependents. To recognize non-traditional family arrangements and to demonstrate our commitment to our community of employees and their families, VCEA has instituted a Domestic Partners Policy. This policy gives you the opportunity to cover a long-term, significant same sex partner under our benefits plans, as well as opposite sex partners for employees over 62 years of age. VCEA wishes to make it clear that it cannot guarantee confidentiality of the relationship once a domestic partner is covered under our policy. See the Executive Officer for more information.

Cal-COBRA

The California Continuation Benefits Replacement Act (Cal-COBRA) gives qualified employees and their dependents the opportunity to continue health insurance coverage under VCEA's health plan when a "qualifying event" would normally result in the loss of eligibility. Some common qualifying events are resignation, termination of employment, or death of an employee; a reduction in an employee's hours or a leave of absence; an employee's divorce or legal separation; and a dependent child no longer meeting eligibility requirements. Under Cal-COBRA, you or the beneficiary pays the full cost of coverage at VCEA's group rates. In addition, you or the beneficiary may be required to pay an administration fee. Our plan administrator will provide you with a written notice describing rights granted under Cal-COBRA when you become eligible for coverage under our plan. The notice contains important information about your rights and obligations.

Recreational Activities and Programs

VCEA or its insurer will not be liable for payment of workers' compensation benefits for any injury that arises out of your voluntary participation in any off-duty recreational, social, or athletic activity that is not part of your work related duties.

Leaves of Absence

Occasionally, for medical, personal, or other reasons, you may need to be temporarily released from the duties of your job with VCEA. It is the policy of VCEA to allow its eligible employees to apply for and be considered for certain specific leaves of absence.

All requests for leaves of absence shall be submitted in writing to your supervisor. Each request shall provide sufficient detail such as the reason for the leave, the expected duration of the leave, and the relationship of family members, if applicable. When you become aware of your need for leave, requests should be provided at least 30 days in advance. If your need for leave is not foreseeable, you should follow VCEA's customary notice and procedural requirements for requesting leave. Failure to return to work as scheduled from an approved leave of absence or to inform your supervisor of an acceptable reason for not returning as scheduled will be considered a voluntary resignation of employment. While on a leave of absence you may not obtain other employment or apply for unemployment insurance. If either of these instances occurs, you may be viewed as having voluntarily resigned from VCEA.

You will not accrue PTO while you are on an unpaid leave of absence. There are several types of leaves for which you may be eligible.

Medical Leaves of Absence

A medical leave of absence may be granted for non-work related temporary medical disabilities (other than pregnancy, childbirth and related medical conditions) until the end of the month in which the leave began with a doctor's written certificate of disability (unless leave of a longer duration is required by law). Requests for leave should be made in writing as far in advance as possible, but, requests should be provided at least 30 days in advance. If your need for leave is not foreseeable, you should follow VCEA's customary notice and procedural requirements for requesting leave. If you are granted a medical leave, you are required to use any accrued sick pay. You also may use any PTO previously accrued.

A medical leave begins on the first day your doctor certifies that you are unable to work and ends when your doctor certifies that you are able to return to work. Your supervisor will supply you with a form for your doctor to complete, showing the date you were disabled and the estimated date you will be able to return to work. Upon your return, you must present a doctor's certificate showing fitness to return to work. If you need a medical-related leave longer than VCEA can, consistent with business necessity and reasonable accommodation, approve, you will be advised.

For the duration of any leave of absence, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued until the last day of the month in which the leave begins. For the duration of a pregnancy disability leave, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

If you wish to continue these benefits you may do so by electing to continue the benefit through the CAL-COBRA provisions, and by paying the applicable premiums.

You will not accrue PTO while you are on an unpaid medical leave of absence.

If returning from a non-work related medical leave, you will be offered the same position held at the time of leaving, if available. However, we cannot guarantee that your job or a similar job will be available upon your return. If VCEA is unable to provide a job for you at the end of your leave, we will end your employment, but you will be eligible to apply for any opening that may arise for which you are qualified.

Bereavement Leave

VCEA provides regular full-time and regular part-time employees up to three (3) days' paid bereavement leave in the event of a death in your immediate family. For purposes of this policy, "immediate family" includes your spouse, parent, child, sibling; your spouse's parent, child, or sibling; your long- time companion or domestic partner; and your grandparents or grandchildren. If you need to take time off due to the death of an immediate family member you should contact your supervisor. Your supervisor may approve additional unpaid time off.

Bone Marrow and Organ Donation Leave

Employees who are donating an organ to another person may take a leave of absence not exceeding 30 business days (and which may be taken in one or more periods) in any one-year. Employees who are donating their bone marrow to another person may take a leave of absence not exceeding 5 business days (and which may be taken in one or more periods) in any one year.

Requests for leave should be made in writing as far in advance as possible. You must provide a written medical certification from your health care provider to VCEA that shows that you are a bone marrow or organ donor and that there is a medical necessity for the donation.

Bone Marrow and Organ Donation leave is a paid leave, however you are required to use up to 5 days of accrued but unused sick or PTO leave for bone marrow donation, and up to 2 weeks of accrued but unused sick or PTO leave for organ donation.

For the duration of a Bone Marrow or Organ Donation leave of absence, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued until the last day of the month in which the leave begins. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected.

When you are ready to return to work after a Bone Marrow or Organ Donation leave, you must provide certification from your medical care provider that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. Except as otherwise allowed by law, you are entitled, upon return from leave, to be reinstated in the position you held before the Bone Marrow or Organ Donation leave, or to be placed in a comparable position with comparable benefits, pay, and terms and conditions of employment.

Civil Air Patrol Leave

Employees who volunteer for the California Wing of the Civil Air Patrol are allowed up to ten days of unpaid leave each year. This leave covers employees who are needed to respond to an emergency operational mission

who have been employed by VCEA for at least 90 days immediately preceding the requested leave. VCEA reserves the right to verify the need for the leave with the Air Patrol.

Domestic Violence and Sexual Assault Victim Leave

VCEA takes threats and actions of domestic abuse and sexual assault against our employees very seriously, and wants employees to feel free to obtain services to keep themselves and their dependents safe.

If at any time you need to be absent from work because you have been a victim of domestic violence or sexual assault, and you need to take time off to ensure your safety, seek medical treatment, or receive counseling as a result of domestic violence or sexual assault, please let your supervisor or the Executive Officer know immediately. Your privacy will be protected to the greatest extent possible. You may use accrued PTO or sick leave in lieu of unpaid time off for these purposes.

Jury Duty or Witness Leave

You may want to fulfill your civic responsibilities by serving on a jury or as a witness as required by law. You may request unpaid leave for the length of absence, unless the leave of absence is taken as PTO. We will comply with federal and state requirements on pay for exempt employees. You may be requested to provide written verification from the court clerk of having served.

You must show the jury duty or witness summons to your supervisor as soon as possible so that arrangements can be made to cover your absence. Of course, you are expected to report for work whenever the court schedule permits. If you are called for jury duty during a particularly busy time, we may ask you to request the court to postpone the mandatory jury duty to a more convenient time for us. You retain all fees paid for appearing, plus transportation reimbursements received, if any.

Military Leave

If you wish to serve in the military and take military leave you should contact the Executive Officer for information about your rights before and after such leave. You are entitled to reinstatement upon completion of military service provided you return or apply for reinstatement within the time allowed by law.

Pregnancy Disability Leave

Eligibility and Terms of Leave

Female employees are entitled to an unpaid Pregnancy Disability Leave (PDL) during the time they are disabled due to pregnancy, childbirth, or related medical conditions. This leave will be for the period of disability, up to four months or 17 1/3 workweeks. You are “disabled by pregnancy” if you are unable because of pregnancy to work at all, are unable to perform the essential functions of your job, or to perform these functions without undue risk to successful completion of your pregnancy, or to other persons.

Leave may be taken intermittently or on a reduced work schedule when medically advisable, as determined by your medical care provider. Medical certification is required, and the length of Pregnancy Disability Leave will depend on the medical necessity for the leave. If you need intermittent leave or leave on a reduced schedule, VCEA may require you to transfer, during the period of the intermittent or reduced schedule leave, to an

available alternative position for which you are qualified and which better accommodates your recurring periods of leave. Transfer to an alternative position may include altering an existing job to better accommodate your need for intermittent leave or a reduced work schedule.

Applying For Leave

If possible, you should give at least 30 days' notice requesting a pregnancy-related leave. This notice must provide and include the expected date on which the leave will begin, written certification from your medical care provider stating the anticipated delivery date and the duration of the leave.

Return to Work

Before returning to work, you must provide a release from your medical care provider certifying that you are able to safely perform all of the essential functions of your position with or without reasonable accommodation. VCEA will reinstate you to your position unless:

1. Your job has ceased to exist for legitimate business reasons;
2. Your job could not be kept open or filled by a temporary employee without substantially undermining VCEA's ability to operate safely and efficiently;
3. You have directly or indirectly indicated your intention not to return;
4. You are no longer able to perform the essential functions of the job with or without reasonable accommodation;
5. You have exceeded the length of the approved leave; or
6. You are no longer qualified for the job.

If VCEA cannot reinstate you to the position you held before the pregnancy disability leave began, VCEA will offer you a comparable position, provided that a comparable position exists and is available, and provided that filling the available position would not substantially undermine VCEA's ability to operate safely and efficiently.

Integration With Other Benefits

A pregnancy disability leave is unpaid, but you are required to use your accrued sick leave during the leave. In addition, you may elect to use accrued PTO during the leave. Sick leave and PTO will supplement any State Disability Insurance benefits. VCEA will maintain group medical benefits during a pregnancy disability leave as required by law. No additional PTO, sick leave or holiday pay will accrue during the leave (except during the time period you are using sick leave or PTO). You may also, however, be eligible for short term disability benefits.

Continuation of Medical Benefits

For the duration of your PDL leave of absence, health and life insurance benefits ordinarily provided by VCEA, and for which you are otherwise eligible, will be continued for the duration of your pregnancy disability leave. During this time, you will be required to contribute your portion of the premium on the same basis as you would have been required during your normal working relationship, including payment of any premium for the dependent coverage you have elected. If you fail to return to work at the conclusion of PDL leave and wish to continue these benefits, you may do so by electing to continue the benefit through the Cal-COBRA provisions, and by paying the applicable premiums.

School Appearance Leave

If you are the parent or guardian of a child who has been suspended from school and you receive a notice from your child's school requesting that you attend a portion of a school day in the child's classroom, you may take unpaid time to appear at the school, unless you use accrued PTO. Before your planned absence, you must give reasonable notice to your supervisor that you have been requested to appear by your child's school.

Time Off for Victims of a Violent or Serious Crime

Under certain circumstances, employees who are victims of serious crimes may take time off work to participate in judicial proceedings. Qualified family members of such crime victims may also be eligible to take time off from work to participate in judicial proceedings. The law defines a serious crime to include violent or serious felonies, such as felonies involving theft or embezzlement, crimes involving vehicular manslaughter while intoxicated, child abuse, physical abuse of an elder or dependent adult, stalking, solicitation for murder, hit-and-run causing death or injury, driving under the influence causing injury, and sexual assault. When possible, you must provide us with advance notice of the need for the time off. Your privacy will be protected to the greatest extent possible. Time away from work for non-exempt employees will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

Time Off To Vote

If you do not have sufficient time outside of working hours to vote in a statewide election, you may, without loss of pay, take off up to two hours of working time to vote. Such time must be at the beginning or end of the regular working shift, whichever allows the most free time for voting and the least time off from working, unless otherwise mutually agreed. You must notify us at least two working days in advance to arrange a voting time.

Volunteer Emergency Duty Leave

VCEA will allow unpaid time off to employees who perform emergency duty as a volunteer firefighter, reserve peace officer, emergency rescue personnel, an officer, employee, or member of a disaster medical response entity sponsored or requested by the state. If you are a volunteer firefighter, or perform other emergency personnel duties, please alert your supervisor so that he or she may be aware of the fact that you may have to take time off for emergency duty. When possible, you must provide us with advance notice of the need for the time off. Time away from work will be without pay, unless you wish to use your accrued PTO or sick leave to cover the period of absence.

Workers' Compensation

We, in accordance with state law, provide insurance coverage for employees in case of a work related injury. To ensure that you receive any workers' compensation benefits to which you may be entitled, you will need to:

1. Immediately report any work-related injury to your supervisor.
2. Seek medical treatment and follow-up care if required.
3. Complete a written Employee's Claim Form (DWC Form 1) and return it to your supervisor.

Provide us with certification from your health care provider regarding the need for workers' compensation disability leave and your ability to return to work from the leave.

Return to Work Policy

VCEA is committed to returning injured employees to modified or alternative work as soon after a work related injury as possible. Temporarily modifying your job or providing you with an alternative position will do this. Your medical condition along with any limitations or restrictions given by the attending physician will be considered as a priority when identifying the modified/alternative position.

The program is intended to provide our employees with an opportunity to continue as valuable members of our team while recovering from a work related injury. We want to minimize any adverse effects of an ongoing disability on our employees. This program is intended to promote speedy recovery, while keeping the employees' work patterns and income consistent. At the same time, we benefit from having our employees providing a service and contributing to the overall productivity of our business. VCEA retains discretion to decide whether to provide modified duty.

Receipt and Acknowledgment of VCEA Employee Handbook

I have received my copy of VCEA's employee handbook. I understand and agree that it is my responsibility to read and familiarize myself with the policies and procedures contained in the handbook.

At-Will Employment

I further understand that my employment is at-will, and neither VCEA nor I have entered into a contract regarding the duration of my employment. I am free to terminate my employment with VCEA at any time, with or without cause. Likewise, VCEA has the right to terminate my employment with or without cause, at the discretion of VCEA. No employee of VCEA can enter into an employment contract for a specified period of time, or make any agreement contrary to this policy without the written approval from the Executive Officer.

Future Revisions

We reserve the right to revise, modify, delete or add to any and all policies, procedures, work rules or benefits stated in this employee handbook or in any other document, except for the policy of at-will employment. Any written changes to this employee handbook will be distributed to all employees so that you will be aware of the new policies or procedures. No oral statements or representations can in any way change or alter the provisions of this employee handbook.

Receipt and Acknowledgement of VCEA Handouts

Illness and Injury Prevention Plan

I acknowledge that I have read and understand the VCEA's Illness & Injury Prevention Plan and that I agree to abide by these policies.

Drug and Alcohol Abuse Policy

I certify that I have read VCEA's Drug and Alcohol Abuse Policy and agree to abide fully by its terms. I understand that as a condition of my employment, I may be subjected to drug testing and that my privacy rights are thereby limited. I also understand that I must notify VCEA of any conviction for a drug violation that occurs within five

days after such a conviction. I understand that any violation of the policy may result in serious disciplinary action, including immediate termination.

Employee's Printed Name _____ Position _____

Employee's Signature _____ Date _____

Receipt and Acknowledgement of VCEA Handouts

Sexual Harassment Prevention Handout

I acknowledge that I have read and understand the enclosed pamphlet on sexual harassment prevention in the workplace and reporting procedures in the event that harassment occurs.

State Disability Insurance, Paid Family Leave and Unemployment Handouts

I acknowledge that I have received the enclosed pamphlets on state disability insurance, paid family leave and unemployment insurance as provided by the Employment Development Department.

Workers' Compensation Handout

I acknowledge that I have received the enclosed pamphlet on workers' compensation benefits as provided by the California Chamber of Commerce.

Employee's Printed Name _____

Position _____

Employee's Signature _____

Date _____

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022-___

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

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

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

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

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

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

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

1. Adopt changes to the Employee Handbook to update the General Manager to Executive Officer, working schedules for flexible work schedules and telecommuting agreements, discretionary pay for performance merit increases and performance bonuses, compensation equity adjustments relating to consumer price index and salary studies, authority for the Executive Officer to approve employee requested paid time off (PTO) payout, annual adjustment to medical contributions to maintain parity to costs, and the addition of a loan program offered by our retirement plan, as detailed in the attached April 2022 redline employee handbook.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jesse Loren , VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment: Employee Handbook (April 2022) Redline

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

TO: Board of Directors

FROM: Mitch Sears, Executive Director
Edward Burnham, Director of Finance and Operations
Alisa Lembke, VCE Board Clerk/Administrative Analyst

SUBJECT: Community Advisory Committee (At-Large Members) Selection Update

DATE: April 14, 2021

RECOMMENDATION

1. Direct the Board Chair and Vice Chair to review and provide recommendations to the full Board for appointments to the two vacant Community Advisory Committee At-Large seats.

BACKGROUND

Based on Board [Item 20](#) on September 9, 2021, the Board adopted a revised Community Advisory Committee (CAC) structure with eleven total members: eight jurisdictional members (two per jurisdiction) and three additional seats for At-large members intended to fill specific subject matter expertise/experience areas. As part of the newly adopted CAC structure, the Board adopted [Item 15](#) on October 14, 2021, which included nonbinding recruitment/selection guidelines for recruiting and considering CAC applicants for At-Large seats. The guidelines, as previously presented in October, are as follows:

Recruitment/Selection Guidelines – Adopted October 2021

Ideal candidates for At-Large CAC seats possess subject matter expertise/experience related to the goals contained in the VCE Strategic Plan, including:

- Energy Sector (e.g., procurement)
- Community engagement
- Environmental justice
- Agricultural Sector
- Grid reliability and sustainability
- Decarbonization

Candidates representing historically underrepresented communities in VCE's service territory and/or underrepresented in the Energy Sector professions are encouraged to apply for the CAC in general and specifically the At-Large CAC seats.

Professional Sectors that tend to intersect with VCE activities include but are not limited to those listed below. Ideal candidates for At-Large CAC seats possess professional experience in one or more of the following sectors:

- Legal (specialties in energy sector/regulatory)
- Financial (banking, accounting, auditing)
- Energy (procurement, regulatory, planning, engineering)
- Agricultural
- Community Engagement/Outreach/Customer Service (community organizing, legislative, public relations, marketing)
- Research (energy sector, decarbonization)

Selection Process for At-Large CAC Seats

Following the recruitment process, a subcommittee of Board members considers eligible candidate(s) based on professional and subject matter/experience selection guidelines above. Though no specific weight will be given to a particular professional or experience factor, with the appointment of At-Large CAC members, the Board should seek a reasonable balance to allow the CAC to assess policy options and provide informed recommendations.

ANALYSIS

VCE has been actively recruiting additional members for the CAC At-Large seat following the Board meeting on October 14, 2021. VCE has received a total of four applications for the two vacancies. Staff recommends that VCE proceed with the selection process as follows:

Proposed At-Large Selection Schedule

Estimated Date	Scheduled Activity
4/14/2022	Board Meeting - Approval of Selection Schedule
4/28/2022	Completion of Application Review and Candidate Discussions
5/12/2022	Board Meeting - Appointment of vacant CAC At-Large seats

At its regular Monthly agenda review meeting on April 6th, the Board Subcommittee directed the Board Chair and Vice Chair to review the candidate applications and provide a recommendation to the full Board at the May meeting.

CONCLUSION

As described above, Staff recommends closing the recruitment and proceeding with the selection process leading to consideration of appointments at the May 12, 2022, Board meeting.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

TO: Board of Directors

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

SUBJECT: CC Power Goal Line Energy Storage Project

DATE: April 14, 2022

Recommendation

- 1) Authorize via Resolution the Executive Officer to execute on behalf of Valley Clean Energy as a member of CC Power the following agreements and any necessary ancillary documents for the Goal Line long duration storage project with a delivery term of 15 years starting at the commercial operation date on or about June 1, 2025:
 - a. Project Participation Share Agreement between Valley Clean Energy, California Community Power and other participating CCAs.
 - b. Energy Storage Service Agreement (ESSA) - Buyer Liability Pass Through Agreement (BLPTA) between Valley Clean Energy, California Community Power and Goal Line BESS 1, LLC.

Background

Joint CCA Request for Information and Offers

In June 2020, Valley Clean Energy along with 10 other CCAs issued a request for information (RFI) from long duration storage (LDS) technology providers and project developers (LDS >=8hrs). The information collected through the RFI was used to develop a request for offers (RFO). This RFO was issued on October 15, 2020, and bids were due on December 1, 2020.

The joint CCAs received a robust response with 51 entities submitting offers representing over 9,000 MW. In collaboration with staff from the participating CCAs, these projects were evaluated through a two round evaluation process. Projects were scored based on value to the CCAs, locational value, development status, project viability and ability to meet resource adequacy requirements, technology viability, project team experience, compliance with workforce policy and environmental impact. The top 17 projects were moved to a second round of evaluation. All 17 projects were sent a follow-up questionnaire on labor, environmental and developer experience. Developers representing non-Li-Ion projects (such as: Emerging technologies defined as non-Li-Ion including 2nd life EV, Gravity, Hydrogen, Liquid Air, Compressed Air, Iron Redox Flow, and Pumped Storage Hydro) were interviewed about their project and technology as well.

Formation of CC Power

In 2020, a group of CCAs came together to discuss forming a joint powers authority (JPA) called California Community Power (CC Power) to leverage their combined buying power to provide cost effective joint services, programs, and procurement of energy resources and products. In February 2021, Valley Clean Energy's Board voted for VCE to become a member of CC Power (topic was

presented to the CAC in January 2021). The other CCAs that are members of CC Power include MCE, 3CE, SVCE, SJCE, RCEA, VCE, SCP, EBCE, and CPSF. Once CC Power was formed, CC Power as an organization took over the LDS RFO work that had been underway.

CPUC Mid-Term Reliability Procurement Mandate

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035. This decision is commonly known as the mid-term reliability (MTR) procurement mandate. It directs load serving entities (LSEs) to collectively procure 11,500 MW of new resources between 2023 to 2026 to meet mid-term grid reliability needs. The requirement is measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology’s nameplate capacity would count toward this requirement. This means that each LSE’s nameplate capacity is higher than the requirement identified in the decision. The decision requires that contracts have a term of at least 10 years and that resources be zero-emission or eligible under the California renewable portfolio standard (RPS).

Procurement Category	2023	2024	2025	2026	Total
Zero-emissions generation, generation paired with storage, or demand response resources	-	-	2,500	-	2,500
Firm zero-emitting resources	-	-	-	1,000	1,000
Long-duration storage resources	-	-	-	1,000	1,000
Remaining New Capacity Required			-	-	7,000
Total Annual Net Qualifying Capacity (NQC) Requirements	2,000	6,000	1,500	2,000	11,500

One of the categories identified in the decision was long duration energy storage. Once this decision was issued, the CCAs focused the RFO negotiations to ensure that the identified project and contract terms would allow the project to count toward each of the CCAs obligations under this decision.

The requirements were allocated to each LSE based on load share. Under the decision, VCE was allocated a requirement for 4 MW of LDS NQC, which is approximately equivalent to 5.1 MW of nameplate capacity.

Shortlist and Negotiations

Staff conducted an extensive analysis of projects submitted through the LDS RFO to identify a shortlist of projects. The Tumbleweed (approved by the VCE Board in February 2022) and the Goal Line projects were determined to be in the top tier of projects that would provide the most value to the CCAs. This shortlist was identified in June 2021 and at that time CC Power entered exclusivity with shortlisted projects and began negotiations.

CC Power conducted a solicitation process to identify counsel and a key negotiator to represent CC Power in its negotiations with counterparties identified through the LDS RFO process. CC Power retained Keyes and Fox and Gridwell Consulting to conduct the negotiations.

Representatives from each of the participating CCAs met with the CC Power General Manager and the negotiating team on a weekly basis to receive updates on negotiating status and provide input to the negotiating process.

Overview of Project

Project Name	Goal Line BESS 1, LLC
Technology	Li-Ion Storage – 8 hr discharge duration
Storage Capacity	50 MW / 400 MWh
Commercial Operation Date	6/1/2025, 15 yrs
Developer	Onward
Location	Escondido, CA in San Diego County

The Goal Line project is a 50 MW / 400 MWh lithium-ion battery storage facility located near Escondido, CA in San Diego County. The Commercial Operation Date is June 1, 2025. VCE’s share of this project is 2.25 MW / 18 MWh.

Goal Line is in process of achieving an executed interconnection agreement with the California Independent System Operator (CAISO) for Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes in addition to energy and ancillary service benefits. The project will interconnect to one of San Diego Gas & Electric’s substations.

Under the contract, CC Power will pay for the use of the storage project at a fixed-price rate per kW-month, with no escalation, for the full term of the contract (15 years). CC Power is entitled to all product attributes from the facility, including energy arbitrage, ancillary services, and resource adequacy.

Developer

The project is being developed by Onward Energy an independent power generator that owns and operates 43 projects in 16 states across North America including solar, wind, and methane gas electric generation plants. In California, Onward has developed over 2,300 MW of renewable and methane gas projects that are in operation today. Onward currently has 200 MW of battery storage in development in California.

Workforce Requirements

Consistent with the CC Power Board direction for enhanced contracting conditions, the developer will construct the project under a project labor agreement, thus assuring payment of prevailing wages and use of apprenticeship programs. The project will also adhere to CC Power environmental and environmental justice conditions.

Participating CCAs

Six of the CC Power CCAs are participating in this contract. The CCAs and their shares of the project are identified in the table below. The project’s capacity was allocated to the CCAs based on their obligation under the CPUC MTR procurement mandate.

CCA	Entitlement Share %	Expected Entitlement Share MW
CPSF	21.50%	10.75
RCEA	4.00%	2.00
SJCE	24.22%	12.11
SVCE	28.42%	14.21
SCPA	17.36%	8.68
VCE	4.50%	2.25
Total	100%	50

Below is a table identifying how VCE is planning to satisfy the MTR mandate for long duration storage.

MTR Requirement NQC MW	MTR Obligation NQC MW	Tumbleweed Entitlement Nameplate MW	Remaining Need NQC MW	Goal Line Entitlement Nameplate MW	Net Open Position +Surplus/(-) Deficit NQC MW
4.0	5.1	2.86	2.25	2.25	0

Contract Structure

VCE will execute the following agreements:

- **Project Participation Share Agreement (PPSA):** This agreement will be executed by CC Power and each of the participating CCAs. This agreement conveys the project benefits (energy arbitrage, resource adequacy, ancillary services) from CC Power to each of the CCAs. It also details payment timelines from each CCA to CC Power and covers terms and procedures if a CCA does not make payments when due and if a CCA needs to be removed from the contract for non-performance. Under this agreement, each CCA commits to a 25% “step-up” obligation. If one of the participating CCAs defaults and is removed from the agreement, each CCA commits to take additional capacity up to 25% of its initial share. Under this agreement, each CCA also commits to pre-pay three months of expected project payments. This provides a cushion to CC Power to allow it to make payments to the project developer on a timely basis.
- **Buyer Liability Pass Through Agreement (BLPTA):** This agreement will be executed by VCE, CC Power and Goal Line BESS 1, LLC. The form of this agreement is an appendix to the Energy Storage Services Agreement (ESSA). This agreement is a guaranty by VCE of its share of payment obligations under the ESSA.

- **Coordinated Operations Agreement (COA)**: This agreement will be executed by CC Power and each of the participating CCAs. This agreement details how the CCAs and CC Power will work together to operate the project including hiring a scheduling coordinator and making decisions on charging and discharging the project. This contract will be finalized and executed closer to the start of project operations.

On February 25, 2022, the CC Power Board approved the Goal Line ESSA. Subsequently CC Power and the counterparty executed the ESSA on March 1, 2022 which provides 90 days to secure approval from each of the participating CCAs governing Boards.

Strategic Plan

The Goal Line project supports the following objectives in VCE's strategic plan:

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

-2.3 Objective: Deploy storage and other strategies to achieve renewable, carbon neutral, resource adequacy, and resiliency objectives.

Discussion/Conclusion

VCE's expected share of the Goal Line project is approximately 4.5% of the project which is equivalent to 2.25 MW nameplate capacity or 1.76 MW NQC. This will satisfy nearly 50% of the LDS mandate assigned to VCE.

Staff is asking the Board to approve VCE's participation in the Goal Line project. In addition, each participating CCA is asking its Board for cushion to allow them to proceed with this project in case there are changes in share allocation due to any CCA not receiving their Board's approval (note: VCE will seek approval for up to 5MW). This will also cover situations where there is a step-up event. Staff anticipates that all CCA's will receive approval to participate, but in the event one or more do not, this buffer will help avoid the need to go back to each of the CCA Boards for re-approval.

The Goal Line project is the second project for CCAs to procure together through CC Power, and the second LDS project contract to be executed to meet the MTR procurement mandate.

Attachment

1. Project Participation Share Agreement (PPSA - Draft)
2. Energy Storage Services Agreement (ESSA - redacted)
3. Resolution

**GOAL LINE STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT**

among

**CITY AND COUNTY OF SAN FRANCISCO, ACTING BY AND THROUGH ITS
PUBLIC UTILITIES COMMISSION CLEANPOWERSF**

and

REDWOOD COAST ENERGY AUTHORITY

and

CITY OF SAN JOSÉ, ADMINISTRATOR OF SAN JOSÉ CLEAN ENERGY

and

SILICON VALLEY CLEAN ENERGY

and

SONOMA CLEAN POWER

and

VALLEY CLEAN ENERGY

and

CALIFORNIA COMMUNITY POWER

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS	1
1.1. Definitions.....	1
1.2. Rules of Interpretation	15
ARTICLE 2 EFFECTIVE DATE AND TERM	16
2.1. Term.....	16
ARTICLE 3 AGREEMENT	16
3.1. Transaction.....	16
ARTICLE 4 ENTITLEMENT SHARE	17
4.1. Initial Entitlement Share	17
4.2. Change of Entitlement Share.	17
4.3. Reduction of Entitlement Share to Zero	17
ARTICLE 5 OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER	17
5.1. Obligations of CCP	17
5.2. Role of CCP Board.	21
5.3. Role of CCP Manager.....	23
ARTICLE 6 PROJECT COMMITTEE	23
6.1. Establishment and Authorization of the Project Committee.....	23
6.2. Project Committee Membership	23
6.3. Project Committee Operations, Meetings, and Voting.	24
6.4. Project Committee Responsibilities.	24
6.5. Subcommittees	27
6.6. Representative’s Expenses.....	27
6.7. Inaction by Committee.....	27
6.8. Delegation	27
ARTICLE 7 OPERATING COMMITTEE	27
7.1. Operating Committee.....	27
ARTICLE 8 OPERATING ACCOUNT	28
8.1. Calculation of Estimated Monthly Project Cost.	28
8.2. Operating Account	28
ARTICLE 9 BILLING	29
9.1. Monthly Costs.....	29
9.2. Billing Statements	29
9.3. Disputed Monthly Billing Statement	29
9.4. Payment Adjustments; Billing Errors	29

9.5.	Payment of Invoice Amount	29
9.6.	Withdrawal of Invoice Amount from Operating Account.....	30
9.7.	Late Payments.....	30
ARTICLE 10 UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS; LITIGATION.....		30
10.1.	Unconditional Payment Obligation.....	30
10.2.	Authorizations.....	31
10.3.	Conflicts	31
10.4.	Litigation.....	31
10.5.	San José Clean Energy.....	31
10.6.	Clean Power San Francisco..	31
ARTICLE 11 PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS' RIGHTS AND OBLIGATIONS UNDER THE ESSA.....		32
11.1.	CCP Rights and Obligations under the ESSA	32
ARTICLE 12 NONPERFORMANCE AND PAYMENT DEFAULT.....		32
12.1.	Nonperformance by Project Participants	32
12.2.	Payment Default.....	33
12.3.	Payment Default Notice	33
12.4.	Cured Payment Default.....	33
12.5.	Suspension of Project Participant's Project Revenue Rights.....	33
12.6.	Termination and Disposal of Project Participant's Project Rights	34
12.7.	Step-Up Invoices.....	34
12.8.	Step-Up Allocation of Project Participant's Project Rights.....	35
12.9.	Elimination or Reduction of Payment Obligations	37
ARTICLE 13 LIABILITY		37
13.1.	Project Participants' Obligations Several	37
13.2.	No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants' and CCP Manager's Directors, Officers, Employees Not Individually Liable	37
13.3.	Extent of Exculpation; Enforcement of Rights	38
13.4.	No General Liability of CCP	38
13.5.	Indemnification	38
ARTICLE 14 NOTICES		39
14.1.	Addresses for the Delivery of Notices	39
14.2.	Acceptable Means of Delivering Notice.....	39
ARTICLE 15 ASSIGNMENT		39
15.1.	General Prohibition on Assignments	39
ARTICLE 16 GOVERNING LAW AND DISPUTE RESOLUTION.....		39
16.1.	Governing Law	39

16.2. Dispute Resolution.....	39
ARTICLE 17 MISCELLANEOUS	40
17.1. Entire Agreement; Integration; Exhibits	40
17.2. Amendments	40
17.3. No Waiver	40
17.4. Severability	40
17.5. Counterparts	40
17.6. Electronic Delivery	40
17.7. Binding Effect.....	40
17.8. Forward Contract	40
17.9. City of San Francisco Standard Provisions.....	41
17.10. City of San José Standard Provisions.	42
17.11. Further Assurances.....	43
EXHIBIT A NOTICES	A-1
EXHIBIT B SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES AND STEP-UP ALLOCATION CAPS	B-1
EXHIBIT C PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT’S ENTITLEMENT SHARE	C-1
EXHIBIT D PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING	D-1

**GOAL LINE STORAGE
PROJECT PARTICIPATION SHARE AGREEMENT**

PREAMBLE

This Project Participation Share Agreement (“**Agreement**”) is entered into as of _____ (the “**Effective Date**”), by and among the City and County of San Francisco acting by and through its Public Utilities Commission, CleanPowerSF, Redwood Coast Energy Authority, a California joint powers authority, City of San José, a California municipality, Silicon Valley Clean Energy, a California joint powers authority, Sonoma Clean Power, a California joint powers authority, and Valley Clean Energy, a California joint powers authority (each individually a “**Project Participant**” and collectively referred to as the “**Project Participants**”) and California Community Power (“**CCP**”), a California joint powers authority. CCP and the Project Participants 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 CCP is a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes; and

WHEREAS, the Project Participants have participated with CCP in the negotiation of an agreement for purchase of the certain energy storage products of Goal Line Storage Project (the “**Project**” as defined in Exhibit A of the ESSA), and CCP is to enter into an Energy Storage Service Agreement (“**ESSA**”), which is incorporated herein by this reference, with Goal Line BESS 1, LLC, a Delaware limited liability company (“**Project Developer**”), providing for purchase of the energy storage products, and associated rights, benefits, and credits from the Project on behalf of the Project Participants.

WHEREAS, pursuant to this Agreement, CCP shall cause to deliver to each Project Participant the Project Participant’s associated share of the energy storage products and associated rights, benefits, and credits of the Project.

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

“**AC**” means alternating current.

“**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 any Exhibits, schedules, and any written supplements hereto.

“**Amended Annual Budget**” means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions set forth in Exhibit Q of the ESSA, as each is defined in the CAISO Tariff.

“**Annual Budget**” means the budget approved by the Project Committee and adopted by the CCP Board pursuant to Section 5.1(c) of this Agreement.

“**Annual Excess Cycle Payment**” means the payment, if any, to be made by CCP to Project Developer annually during the Delivery Term if Buyer dispatches the Facility for more than 200 cycles during a Contract Year, as calculated in accordance with Exhibit C of the ESSA.

“**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.

“**Billing Statement**” has the meaning set forth in Section 9.2 of this Agreement.

“**Buyer Liability Pass Through Agreement**” or “**BLPTA**” means, for each Project Participant, the form set forth in Exhibit L of the ESSA, as executed by such Project Participant, countersigned by CCP, and delivered to the Project Developer.

“**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.

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

“**CAISO Balancing Authority Area**” has the meaning set forth in the CAISO Tariff.

“**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 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.

“**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.

“**Capital Improvements**” means any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the CCP Board or (ii) required by any governmental agency having jurisdiction over the Project.

“**CCP Board**” means the Board of Directors of California Community Power.

“**CCP Manager**” means the General Manager of California Community Power.

“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.

“**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 charge, discharge, and deliver to the Delivery Point at a particular moment and that can be purchased, sold, or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**Chairperson**” has the meaning set forth in Exhibit D.

“Change of Control” has the meaning set forth in Section 1.1 of the ESSA.

“Charging Energy” means the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“Charging Notice” means the operating instruction, and any subsequent updates, given by CCP’s SC or the CAISO to Project Developer, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions.

“Commercial Operation” has the meaning set forth in Section 1.1 of the ESSA.

“Commercial Operation Date” or **“COD”** has the meaning set forth in Section 1.1 of the ESSA.

“Commercial Operation Delay Damages” has the meaning set forth in Section 1.1 of the ESSA.

“Communications Protocols” has the meaning set forth in Section 1.1 of the ESSA.

“Community Choice Aggregator” has the meaning set forth in California Public Utilities Code § 331.1.

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

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

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

“Contract Price” has the meaning set forth on the Cover Sheet of the ESSA.

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

“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.

“Coordinated Operations Agreement” means the agreement by and among CCP and all Project Participants for purposes of operating the Project.

“Costs” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Project Participant in terminating any arrangement pursuant to which it has hedged its obligations; and all reasonable attorneys’ fees and expenses incurred by the Project Participant in connection with the Step-Up Allocation.

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

“Cured Payment Default” means a Payment Default that has been cured in accordance with Section 12.4 of this Agreement.

“Daily Delay Damages” has the meaning set forth in Section 1.1 of the ESSA.

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

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

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

“Defaulting Project Participant” has the meaning set forth in Section 12.1.

“Delivery Point” means the Facility PNode on the CAISO grid.

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

“Designated Fund” has the meaning set forth in Section 10.5.

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

“Discharging Energy” means the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by CCP’s SC or the CAISO to the Facility, directing the Facility to discharge Facility Energy at a specific MW rate for a specified period of time or to an amount of MWh.

“Effective Date” has the meaning set forth in the Preamble.

“Electrical Losses” means all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Facility Energy.

“Emission Reduction Credits” or **“ERCs”** means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

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

“**Energy Storage Service Agreement**” or “**ESSA**” means the agreement between CCP and Project Developer for the purchase of energy storage products of Goal Line Storage Project, executed on _____.

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

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

“**Entitlement Share**” means the percentage entitlement of each Project Participant as set forth in Exhibit B of this Agreement (entitled “Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps”) attributable to each such Project Participant, as may be amended pursuant to Section 4.2 or 12.8.

“**Entitlement Share Reduction Amount**” has the meaning set forth in Exhibit C.

“**Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**Entitlement Share Reduction Notice**” has the meaning set forth in Exhibit C.

“**Environmental Attributes**” shall mean any and all attributes under the RPS regulations 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) that are attributable now, or in the future to the Facility and its displacement of conventional energy generation.

“**Estimated Monthly Project Cost**” has the meaning set forth in Section 8.1.

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

“**Expected Commercial Operation Date**” means the date set forth on the Cover Sheet of the ESSA.

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

“**Facility Energy**” means the Energy delivered from the Facility to the Delivery Point during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“**Facility Meter**” has the meaning set forth in Section 1.1 of the ESSA.

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

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

“**Flexible Capacity**” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“**Flexible RAR**” means the flexible capacity 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.

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

“**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 Facility is eligible for Full Capacity Deliverability Status.

“**Gains**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining the economic benefit to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of such Project Participant, 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 Environmental Attributes and Capacity Attributes.

“**GHG Regulations**” means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

“**Governmental Authority**” means any federal, state, provincial, local, or municipal government, any political subdivision thereof or any other governmental, congressional, or

parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, “Governmental Authority” shall not in any event include any Party, except to the extent that the Party is acting solely in its governmental capacity.

“**Greenhouse Gas**” or “**GHG**” has the meaning set forth in the GHG Regulations or in any other applicable Laws.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet of the ESSA, as such date may be extended pursuant to Exhibit B of the ESSA.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet of the ESSA, as such date may be extended pursuant to Exhibit B of the ESSA.

“**Installed Capacity**” means the lesser of (a) P_{MAX}, and (b) maximum dependable operating capacity of the Facility to discharge Energy for eight (8) hours of continuous discharge, as measured in MW AC at the Facility Meter Point by the 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 of the ESSA, as such capacity may be adjusted pursuant to Section 5 of Exhibit B of the ESSA.

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

“**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 of the ESSA.

“**Invoice Amount**” has the meaning set forth in Section 9.2.

“**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 January 29, 2021, as amended from time to time, under which CCP 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.

“**Late Payment Notice**” means a notice issued by CCP to a Project Participant pursuant to Section 9.7.

“**Late Payment Charge**” has the meaning set forth in Section 9.7.

“**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.

“**Letter(s) of Credit**” has the meaning set forth in Section 1.1 the ESSA.

“**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 requirements in other regulatory proceedings or legislative actions.

“**Losses**” means, with respect to a Project Participant assuming all or a portion of a Defaulting Project Participant’s Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c), an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from such Step-Up Allocation for the remaining Contract Term of the ESSA, determined in a commercially reasonable manner. Factors used in determining economic loss to such Project Participant may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Project Participant, 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 of the ESSA and must include the value of Environmental Attributes and Capacity Attributes.

“**Marketable Emission Trading Credits**” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“**Month**” means a calendar month.

“**Monthly Costs**” has the meaning set forth in Section 9.1.

“**Monthly Capacity Payment**” means the payment required to be made by CCP to Project Developer each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C of the ESSA.

“**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.

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

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

“**Non-Defaulting Project Participant**” has the meaning set forth in Section 12.1.

“**Normal Vote**” has the meaning set forth in Exhibit D.

“**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).

“**Operating Account**” means an account established by CCP for each Project Participant pursuant to Section 8.2.

“**Operating Cost**” means the share of the Annual Budget or Amended Annual Budget attributable to the applicable Month for a Billing Statement.

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

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

“**Payment Default**” has the meaning set forth in Section 12.2.

“**Payment Default Termination Deadline**” has the meaning set forth in Section 12.6.

“**Performance Guarantees**” has the meaning set forth in Section 4.3(b) of the ESSA.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet of the ESSA.

“**Permitted Transferee**” has the meaning set forth in Section 1.1 of the ESSA.

“**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.

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

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

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

“**Product**” has the meaning set forth in Section 3.1

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

“**Project**” shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of CCP pursuant to the ESSA, including but not limited to all rights, liabilities, interests, and obligations associated with the Product, all rights, liabilities, interests and obligations associated with the Facility, and including all aspects of the operation and administration of the Facility and the ESSA and the rights, liabilities, interests and obligations associated therewith.

“**Project Committee**” means the committee established in accordance with Section 6.1.

“**Project Developer**” means Goal Line BESS 1, LLC, a Delaware limited liability company, or assignee as permitted under the ESSA.

“**Project Participants**” means those entities executing this Agreement, as identified in the Preamble, together in each case with each entity’s successors or assigns.

“**Project Revenue Rights**” means all rights of a Project Participant under this Agreement to any revenue associated with the Facility Energy or Ancillary Services associated with the Facility.

“**Project Rights**” means all rights and privileges of a Project Participant under this Agreement, including but not limited to its Entitlement Share, its right to receive the Product from the Facility, and its right to vote on Project Committee matters.

“**Project Rights and Obligations**” means the Project Participants’ Project Rights and obligations under the terms of this Agreement.

“**Proposed Entitlement Share Reduction Compensation Amount**” has the meaning set forth in Exhibit C.

“**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 industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and 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.

“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” has the meaning set forth in Section 1.1 of the ESSA.

“RA Guarantee Date” means the date by which the Facility is expected to achieve Full Capacity Deliverability Status, which is the Commercial Operation Date.

“RA Shortfall Month” has the meaning set forth in Section 1.1 of the ESSA.

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

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

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

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

“Replacement RA” has the meaning set forth in Section 1.1 of the ESSA.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings and shall include Flexible Capacity, and 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” has 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006, 21-06-035 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.

“**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(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), 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.

“**Scheduling Coordinator Services Agreement**” means the agreement between CCP and a Scheduling Coordinator that was approved by the CCP Board pursuant to Section 5.2(a)(xiii).

“**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 Facility Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by the Project Developer for electric generation or storage facilities owned by Project Developer other than the Facility.

“**Showing Month**” means the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, 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**” has the meaning set forth in Section 1.1 of the ESSA, as further described in Exhibit A of the ESSA.

“**Station Use**” means the Energy 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.

“**Step-Up Allocation Cap**” has the meaning set forth in Section 12.8(a).

“**Step-Up Invoice**” means an invoice sent to a Non-Defaulting Project Participant as a result of a Defaulting Project Participant’s Payment Default, which invoice shall separately

identify any amount owed with respect to the monthly Billing Statement of the Defaulting Project Participant, as the case may be, pursuant to Section 12.7.

“Step-Up Invoice Amount” has the meaning set forth in Section 12.7.

“Step-Up Invoice Amount Cap” has the meaning set forth in Section 12.7.

“Step-Up Reserve Account” has the meaning set forth in Section 12.7(a)(i).

“Storage Level” means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Facility Energy, expressed in MWh.

“System Emergency” means any condition that requires, as determined, and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) 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 any state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities.

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

“Termination Payment” has the meaning set forth in Section 11.3 of the ESSA.

“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.

“Unanimous Vote” has the meaning set forth in Exhibit D.

“Uncontrollable Forces” means any Force Majeure event and any cause beyond the control of any Party, which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, epidemic or pandemic (excluding impacts of the disease designated COVID-19 or the related virus designated

SARS-CoV-2 impacts actually known by the Party claiming the Force Majeure Event as of the Effective Date), an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the ESSA, as defined therein.

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;

(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; and

(n) in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the ESSA or the Coordinated Operations Agreement, the terms and provisions of this Agreement shall control.

ARTICLE 2

EFFECTIVE DATE AND TERM

2.1. Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the occurrence of all of the following: (i) the termination of the ESSA and (ii) the termination of the Buyer Liability Pass Through Agreement for all the Project Participants, and (iii) all Parties have met their obligations under this Agreement (“**Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. All indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

ARTICLE 3

AGREEMENT

3.1. Transaction. Subject to the terms and conditions of this Agreement, the Project Participants authorize CCP to purchase all Facility Energy, Capacity Attributes, Ancillary Services, and Environmental Attributes associated with the Facility and any Replacement RA provided pursuant to the ESSA (collectively the “**Product**”), on behalf of the Project Participants. Pursuant to the procedures set forth in the Coordinated Operations Agreement, CCP shall cause Project Developer to deliver each Project Participant’s Entitlement Share of the Product to such Project Participant, including but not limited to (i) any revenue associated with the Facility Energy, Capacity Attributes, Ancillary Services, or Environmental Attributes associated with the Facility, and (ii) the Capacity Attributes and Environmental Attributes associated with the Facility or

otherwise provided to CCP pursuant to the ESSA. CCP shall administer the ESSA and oversee the operation of the Project. CCP shall not sell, assign, or otherwise transfer any Product, or any portion thereof, to any third party other than to the Project Participants, unless authorized by the Project Participants pursuant to this Agreement.

ARTICLE 4 **ENTITLEMENT SHARE**

4.1. **Initial Entitlement Share.** Each Project Participant's initial Entitlement Share as of the Effective Date shall be set forth in Column B of the Table provided in Exhibit B of this Agreement (entitled "Schedule of Project Participant Entitlement Shares and Step-Up Allocation Caps"). Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

4.2. **Change of Entitlement Share.** Any Project Participant may reduce its Entitlement Share of the Project pursuant to the process set forth in Exhibit C.

4.3. **Reduction of Entitlement Share to Zero.** If any Project Participant's Entitlement Share is reduced to zero through any process specified in Exhibit C, such Project Participant shall remain a Party to this Agreement and shall be subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Monthly Capacity Payments, Annual Excess Cycle Payments, Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the ESSA.

ARTICLE 5 **OBLIGATIONS OF CCP; ROLE OF CCP BOARD AND CCP MANAGER**

5.1. **Obligations of CCP.**

(a) CCP shall take such commercially reasonable actions or implement such commercially reasonable measures as may be necessary or desirable for the utilization, maintenance, or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Project Committee or CCP Board deems to be in the Project Participants' best interests. To the extent not inconsistent with the ESSA or other applicable agreements, CCP may also be authorized by the Project Participants to assume responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating, and maintaining the Project to effectuate the conveyance of the Product to Project Participants in accordance with Project Participants' Entitlement Shares.

(b) To the extent such services are available and can be carried forth in accordance with the ESSA, CCP shall also provide such other services, as approved by the Project Committee or CCP Board, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the ESSA.

(c) **Adoption of Annual Budget.** The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with this Section 5.1(c).

(i) The CCP Manager will prepare and submit to the Project Committee a proposed Annual Budget at least ninety (90) days prior to the beginning of each Contract Year during the term of this Agreement. The proposed Annual Budget shall be based on the prior Contract Year's actual costs and shall include reasonable estimates of the costs CCP expects to incur during the applicable Contract Year in association with the administration of the ESSA, including the cost of insurance coverages that are determined to be attributable to the Project by action of the CCP Board. Upon approval of the proposed Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Annual Budget to the CCP Board. The CCP Board shall adopt the Annual Budget no later than thirty (30) days prior to the beginning of such Contract Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant.

(ii) At any time after the adoption of the Annual Budget for a Contract Year, the CCP Manager may prepare and submit to the Project Committee a proposed Amended Annual Budget for and applicable to the remainder of such Contract Year. The proposal shall (A) explain why an amendment to the Annual Budget is needed, (B) compare estimated costs against actual costs, and (C) describe the events that triggered the need for additional funding. Upon approval of the proposed Amended Annual Budget by a Normal Vote of the Project Committee, the CCP Manager shall present the proposed Amended Annual Budget to the CCP Board. Upon adoption of the Amended Annual Budget by the CCP Board, such Amended Annual Budget shall apply to the remainder of the Contract Year and the CCP Board shall cause copies of such adopted Amended Annual Budget to be delivered to each Project Participant.

(iii) Reports. CCP will prepare and issue to Project Participants the following reports each quarter of a year during the Term:

(A) Financial and operating statement relating to the Project.

(B) Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.

(d) Records and Accounts. CCP will keep, or cause to be kept, accurate records and accounts of the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of CCP relating to the Project with respect to each Contract Year shall be subject to an annual audit. Each Project Participant shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.

(e) Information Sharing. Upon CCP's request, each Project Participant agrees to coordinate with CCP to provide such information, documentation, and certifications that are reasonably necessary for the design, financing, refinancing, development, operation, administration, maintenance, and ongoing activities of the Project, including information required to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(f) Consultants and Advisors Available. CCP shall make available to the Project Committee all consultants and advisors, including financial advisors and legal counsel that

are retained by CCP, and such consultants, counsel and advisors shall be authorized to consult with and advise the Project Committee on Project matters. CCP agrees to waive any conflicts of interest or any other applicable professional standards or rules as required by consultants, counsel, and advisors to advise the Project Committee on Project matters.

(g) Deposit of Insurance Proceeds. CCP shall promptly deposit any insurance proceeds received by CCP from any insurance obtained pursuant to this Agreement or otherwise associated with the Project into the Operating Accounts of the Project Participants based on each Project Participants' Entitlement Shares.

(h) Liquidated and Other Damages. Any amounts paid to CCP, or applied against payments otherwise due by CCP pursuant to the ESSA or each Project Participant's respective BLPTA, by the Project Developer shall be deposited on a pro rata share, based on each Project Participant's Entitlement Share into each Project Participant's Operating Account. Liquidated Damages include, but are not limited to Daily Delay Damages, RA Deficiency Amount, Damage Payment, and Termination Payment.

(i) Charging and Discharging Energy. Subject to the direction of the Project Committee, CCP shall reasonably coordinate, schedule, and do all other things necessary or appropriate, except as otherwise prohibited under this Agreement, to provide for the delivery of Charging Energy from the grid to the Point of Delivery to enable CCP to exercise its rights and obligations in connection with Charging Energy in accordance with the requirements of the ESSA. Subject to the direction of the Project Committee, CCP shall reasonably coordinate, schedule, and do all other things necessary or appropriate, except as otherwise prohibited under this Agreement, to provide for the delivery of Discharging Energy from the Point of Delivery to the grid to enable CCP to maximize the value of the ESSA to the Project Participants in accordance with the requirements of the ESSA.

(j) Resale of Product. Any Project Participant may direct CCP to remarket such Project Participant's Entitlement Share of the Product, or such Project Participant's Entitlement Share of any part of the Product. If CCP incurs any expenses associated with the remarketing activities pursuant to this Section 5.1(j), then CCP shall include the total amount of such expenses as a Monthly Cost on the Project Participant's next Billing Statement. Prior to offering the Project Participant's Entitlement Share of the Product, or the Project Participant's Entitlement Share of any part of the Product to any third party, CCP shall first offer the Product or portion of the Product to the other Project Participants. The amount of compensation paid to the selling Project Participant shall be negotiated and agreed to between the selling Project Participant and the purchasing Project Participant or third party. Any payments for any resold Product pursuant to this Section 5.1(j) shall be transmitted directly from the purchasing Project Participant or purchasing third party to the reselling Project Participant. Any such resale to a third party shall not convey any rights or authority over the operation of the Project, and the Project Participant shall not make a representation to the third party that the resale conveys any rights or authority over the operation of the Project.

(k) Uncontrollable Forces. CCP shall not be required to provide, and CCP shall not be liable for failure to provide, the Product, Replacement RA, or other service under this Agreement when such failure, or the cessation or curtailment of, or interference with, the

service is caused by Uncontrollable Forces or by the failure of the Project Developer, or its successors or assigns, to obtain any required governmental permits, licenses, or approvals to acquire, administer, or operate the Project; provided, however, that the Project Participants shall not thereby be relieved of their obligations to make payments under this Agreement except to the extent CCP is so relieved pursuant to the ESSA, and provided further that CCP shall pursue all applicable remedies against the Project Developer under the ESSA and distribute any remedies obtained pursuant to Section 5.1(h).

(l) Insurance. Within one hundred and eighty days (180) of the Effective Date of this Agreement, CCP shall secure and maintain, during the Term, insurance coverage as follows:

(i) Commercial General Liability. CCP shall maintain, or cause to be maintained, 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 CCP's obligations under this Agreement and including each Project Participant as an additional insured.

(ii) Employer's Liability Insurance. CCP, if it has employees, shall maintain Employers' Liability insurance with limits of not 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.

(iii) Workers' Compensation Insurance. CCP, if it has employees, shall also maintain at all times during the Term workers' compensation and employers' liability insurance coverage in accordance with statutory amounts, with employer's liability limits of not less than One Million Dollars (\$1,000,000.00) for each accident, injury, or illness; and include a blanket waiver of subrogation.

(iv) Business Auto Insurance. CCP shall maintain at all times during the 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 CCP's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name each Project Participant as an additional insured and contain standard cross-liability and severability of interest provisions.

(v) Public Entity Liability Insurance. CCP shall maintain public entity liability insurance, including public officials' liability insurance, public entity reimbursement insurance, and employment practices liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim, and an annual aggregate of not less than One Million Dollars (\$1,000,000) and CCP shall maintain such coverage for at least two (2) years from the termination of this Agreement.

(m) Evidence of Insurance. Within ten (10) days after the deadline for securing insurance coverage specified in Section 5.1(l), and upon annual renewal thereafter, CCP shall deliver to each Project Participant certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of

California, in a form evidencing all coverages set forth above. Such certificates shall specify that each Project Participant shall be given at least thirty (30) days prior Notice by CCP in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of each Project Participant. Any other insurance maintained by CCP not associated with this Agreement is for the exclusive benefit of CCP and shall not in any manner inure to the benefit of Project Participants. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of each Project Participant for all work performed by CCP, its employees, agents and sub-contractors.

5.2. Role of CCP Board.

(a) The rights and obligations of CCP under the ESSA shall be subject to the ultimate control at all times of the CCP Board. The CCP Board, shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

(i) Dispute Resolution. The CCP Board shall review, discuss and attempt to resolve any disputes among CCP, any of the Project Participants, and the Project Developer relating to the Project, the operation and management of the Facility, and CCP's rights and interests in the Facility.

(ii) ESSA. The CCP Board shall have the authority to review, modify, and approve, as appropriate, all amendments, modifications, and supplements to the ESSA.

(iii) Capital Improvements. The CCP Board shall review, modify, and approve, if appropriate, all Capital Improvements undertaken with respect to the Project and all financing arrangements for such Capital Improvements. The CCP Board shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development associated with the Project.

(iv) Committees. The CCP Board shall exercise such review, direction, or oversight as may be appropriate with respect to the Project Committee and any other committees established pursuant to this Agreement.

(v) Budgeting. Upon the submission of a proposed Annual Budget or proposed Amended Annual Budget, approved by a Normal Vote of the Project Committee, the CCP Board shall review, modify, and approve each Annual Budget and Amended Annual Budget in accordance with Section 5.1(c) of this Agreement.

(vi) Early Termination of ESSA. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(ii) of this Agreement, as to an early termination of the ESSA pursuant to Section 11.2 of the ESSA.

(vii) Assignment by Project Developer. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iii) of this Agreement, as to any assignment by Project Developer pursuant to Section 14.1 of the ESSA other than any assignment pursuant to Sections 14.2 or 14.3 of the ESSA.

(viii) Buyer Financing Assignment. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(iv) of this Agreement, as to an assignment by CCP to a financing entity.

(ix) Change of Control. The CCP Board shall review, modify, and approve the recommendations of the Project Committee, made pursuant to Section 6.4(b)(v) of this Agreement, as to any Change of Control requiring CCP's consent, as specified in Section 14.1 of the ESSA.

(x) Supervening Authority of the Board. The CCP Board has complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Project Committee or which is specified as being within the authority of the Project Committee pursuant to the provisions of this Agreement.

(xi) Other Matters. The CCP Board is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Project Committee or CCP Manager as may be provided for under this Agreement and under the ESSA, or as may otherwise be appropriate.

(xii) Periodic Audits. The CCP Board or the Project Committee may arrange for the annual audit by certified accountants, selected by the CCP Board and experienced in electric generation or electric utility accounting, of the books and accounting records of CCP, the Project Developer to the extent authorized under the ESSA, and any other counterparty under any agreement to the extent allowable, and such audit shall be completed and submitted to the CCP Board as soon as reasonably practicable after the close of the Contract Year. CCP shall promptly furnish to the Project Participant copies of all audits. No more frequently than once every calendar year, each Project Participant may, at its sole cost and expense, audit, or cause to be audited the books and cost records of CCP, and/or the Project Developer to the extent authorized under the ESSA.

(xiii) Scheduling Coordinator Services Agreement. Upon a recommendation by Normal Vote of the Project Committee pursuant to Section 6.4(b)(vi), the CCP Board shall review, modify, and approve, or delegate the authority to approve, a Scheduling Coordinator Services Agreement or amendment thereto.

(b) Pursuant to Section 5.06 of the Joint Powers Agreement, this Agreement modifies the voting rules of the CCP Board for purposes of approving or acting on any matter identified in this Agreement, as follows:

(i) Quorum. A quorum shall consist of a majority of the CCP Board members that represent Project Participants.

(ii) Voting. Each CCP Board member that represents a Project Participant shall have one vote for any matter identified in this Agreement. Any CCP Board member representing a CCP member that is not a Project Participant shall abstain from voting on any matter identified in this Agreement. A vote of the majority of the CCP Board members representing Project Participants that are in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

5.3. Role of CCP Manager.

(a) In addition to the duties and responsibilities set forth elsewhere in this Agreement, the CCP Manager is delegated the following authorities and responsibilities:

(i) Request for Tax Documentation. Respond to any requests for tax-related documentation by the Project Developer.

(ii) Request for Financial Statements. Provide the Project Developer with Financial Statements as may be required by the ESSA.

(iii) Request for Information by Project Participant. Respond to any request by a Project Participant for information or documents that are reasonably available to allow the Project Participant to respond to requests for such information from any federal, state, or local regulatory body or other authority.

(iv) Coordinate Response to a Request for Confidential Information. Upon a request or demand by any third person that is not a Party to the ESSA or a Project Participant, for Confidential Information as described in Section 18.2 of the ESSA, the CCP Manager shall notify the Project Developer and coordinate the response of CCP and Project Participants.

(v) Invoices. The CCP Manager shall review each invoice submitted by Project Developer and shall request such other data necessary to support the review of such invoices.

ARTICLE 6 **PROJECT COMMITTEE**

6.1. Establishment and Authorization of the Project Committee. The Project Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided for in this Section 6 for the purpose of (a) providing coordination among, and information to, the Project Participants and CCP, (b) making any recommendations to the CCP Board regarding the administration of the Project, and (c) execution of the Project Committee responsibilities set forth in Section 6.4.

6.2. Project Committee Membership. The Project Committee shall consist of one representative from each Project Participant. The CCP Manager shall be a non-voting member of the Project Committee. Within thirty (30) days after the Effective Date, each Project Participant shall provide notice to each other of such Project Participant's representative on the Project Committee. Alternate representatives may be appointed by similar written notice to act on the Project Committee, or on any subcommittee established by the Project Committee, in the absence of the regular representative. An alternate representative may attend all meetings of the Project Committee but may vote only if the representative for whom they serve as alternate for is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant which they represent.

6.3. Project Committee Operations, Meetings, and Voting. Project Committee operations, meetings, and voting shall be in accordance with the procedures and requirements specified in Exhibit D.

6.4. Project Committee Responsibilities. The Project Committee shall have the following responsibilities:

(a) General Responsibilities of the Project Committee.

(i) Provide a liaison between CCP and the Project Participants with respect to the ongoing administration of the Project.

(ii) Exercise general supervision over any subcommittee established pursuant to Section 6.5.

(iii) Oversee, as appropriate, the completion of any Project design, feasibility, or planning studies or activities.

(iv) Review, discuss, and attempt to resolve any disputes among the Project Participants relating to this Agreement or the ESSA.

(v) Perform such other functions and duties as may be provided for under this Agreement, the ESSA, or as may otherwise be appropriate or beneficial to the Project or the Project Participants.

(b) Recommendations to the CCP Board by a Normal Vote.

(i) Budgeting. Review, modify, and approve by a Normal Vote each proposed Annual Budget and proposed Amended Annual Budget for submission to the CCP Board for final approval.

(ii) Early Termination of ESSA. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an early termination of the ESSA pursuant to Section 11.2 of the ESSA.

(iii) Assignment by Project Developer. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any assignment by Project Developer pursuant to Section 14.1 of the ESSA other than any assignment pursuant to Sections 14.2 or 14.3 of the ESSA.

(iv) Buyer Financing Assignment. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding an assignment by CCP to a financing entity.

(v) Change of Control. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding any Change of Control requiring CCP's consent, as specified in Section 14.1 of the ESSA.

(vi) Scheduling Coordinator. Review, modify, and approve by a Normal Vote a recommendation to the CCP Board regarding the selection of a Scheduling Coordinator and the form of the Scheduling Coordinator Services Agreement, including any amendments thereto. Such Scheduling Coordinator Services Agreement shall: (i) require that the scheduling and dispatch of the Project is in accordance with the criteria set forth in Exhibit C of the Coordinated Operations Agreement; (ii) include the Scheduling Coordinator responsibilities specified in Exhibit D of the Coordinated Operations Agreement; and (iii) address requirements relating to CAISO settlements, the Operating Restrictions, and communications and reporting from the Scheduling Coordinator to the Project Participants.

(c) Actions Delegated to the Project Committee by this Agreement Subject to a Unanimous Vote.

(i) Project Design. Review, modify, and approve by a Unanimous Vote any recommendations to the Project Developer on the design of the Project.

(ii) Extension of Guaranteed Construction Start Date and Guaranteed Commercial Operation Date. Review and confirm that requirements of Exhibit B of the ESSA have been satisfied, such that the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date has been extended.

(iii) Event of Default. Direct CCP to exercise its rights under the ESSA if an Event of Default has occurred under Section 11.1 of the ESSA or under the Scheduling Coordinator Services Agreement.

(d) Actions Delegated to the Project Committee by this Agreement Subject to a Normal Vote.

(i) Make recommendations to the CCP Manager, the CCP Board, the Project Participants or to the Project Developer, as appropriate, with respect to the development, operation, and ongoing administration of the Project.

(ii) Review, develop, and, if appropriate, modify and approve rules, procedures, and protocols for the administration of the Project, including rules, procedures, and protocols for the management of the costs of the Facility and the scheduling, handling, tagging, dispatching, and crediting of the Product, the handling and crediting of Environmental Attributes associated with the Facility and the control and use of the Facility.

(iii) Review, develop, and, if appropriate, modify rules, procedures, and protocols for the monitoring, inspection, and the exercise of due diligence activities relating to the operation of the Facility.

(iv) Review, and, if appropriate, modify or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, Facility-related data and storage information, technical information, facility reliability data, transmission information, forecasting, scheduling, dispatching, tagging, parking, firming, exchanging, balancing, movement, or other delivery information, and similar information and records, or matters pertaining to the

Project which are furnished to the Project Committee by the CCP Manager, the Project Developer, experts, consultants or others.

(v) Review, formulate, and, if appropriate, modify, or otherwise act upon, practices and procedures to be followed by Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale, or disposition of the Product, including the control and use of the Facility, and the supply, scheduling, and use of Charging Energy.

(vi) Review and act upon any matters involving any arrangements and instruments entered into by the Project Developer or any affiliate thereof to, among other things, secure certain performance requirements, including, but not limited to, the ESSA, the Development Security or the Performance Security and any other letter of credit delivered to, or for the benefit of, CCP by the Project Developer and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.

(vii) Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by CCP or Project Developer for determining or estimating storage resources or the values, quantities, volumes, or costs of the Product from the Facility.

(viii) Review, and where appropriate, recommend the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of the Product to the Point of Delivery (directly or through the Facility).

(ix) Review, to the extent permitted by this Agreement, the ESSA, or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, or any other matters with respect to the Facility.

(x) Review and approve any Remedial Action Plan submitted by Project Developer to CCP pursuant to Section 2.4 of the ESSA.

(xi) Review and approve the submission of the written acknowledgement of the Commercial Operation Date in accordance with Section 2.2 of the ESSA.

(xii) Review and approve the return of the Development Security to Project Developer in accordance with Section 8.7 of the ESSA.

(xiii) Review and approve the return of any unused Performance Security to Project Developer in accordance with Section 8.8 of the ESSA.

(xiv) Review Progress Reports provided by Project Developer to CCP pursuant to Section 2.3 of the ESSA and participate in any associated regularly scheduled meetings with Project Developer to discuss construction progress.

(xv) Direct CCP to collect any liquidated damages owed by Project Developer to CCP under the ESSA, and to the extent authorized by ESSA, draw upon the Development Security or Performance Security.

(xvi) Review invoices received by CCP from the Project Developer and, if appropriate, direct CCP to dispute an invoice pursuant to Section 8.5 of the ESSA.

(xvii) Review invoices received by CCP from the Scheduling Coordinator and, if appropriate, direct CCP to collect any damages owed by the Scheduling Coordinator to CCP under the Scheduling Coordinator Services Agreement or to take any action permitted by law to enforce its rights under the Scheduling Coordinator Services Agreement, including but not limited to bringing any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement, or obligation against the Scheduling Coordinator.

6.5. Subcommittees. The CCP Manager may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorological, operating, insurance, governmental relations, environmental, and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the CCP Manager; provided, however, such authority, membership or duties shall not conflict with the provisions of the ESSA or this Agreement.

6.6. Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Project Committee or any other committee in connection with their duties on such committee shall be the responsibility of the Project Participant which they represent and shall not be an expense payable under this Agreement.

6.7. Inaction by Committee. It is recognized by CCP and Project Participants that if the Project Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time specified herein or in the ESSA, then CCP may take such commercially reasonable action as CCP determines is necessary for its timely performance under any requirement pursuant to the ESSA or this Agreement, pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to allow CCP to act in violation of the express terms of the ESSA or this Agreement.

6.8. Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical, and other matters which may arise from time to time in connection with administration of the ESSA, in appropriate cases, duties and responsibilities of the CCP Board or the Project Committee, as the case may be under this Section 6, may be delegated to the CCP Manager by the CCP Board upon notice to the Project Participants.

ARTICLE 7

OPERATING COMMITTEE

7.1. Operating Committee. The Operating Committee is established through the Coordinated Operations Agreement, as may be subsequently amended.

7.2. Operating Committee Responsibilities. In addition to any specific roles and responsibilities identified in the Coordinated Operations Agreement, the Project Committee may, through a Normal Vote, assign additional tasks to the Operating Committee as long as such

additional tasks are within the scope of the Operating Committee's authority set forth in the Coordinated Operations Agreement.

ARTICLE 8

OPERATING ACCOUNT

8.1. Calculation of Estimated Monthly Project Cost.

(a) No later than one hundred and eighty (180) days after the Effective Date, the CCP Manager shall present to the Project Committee a proposed Estimated Monthly Project Cost, which shall be equal to a forecast of expected Monthly Capacity Payments over an entire Contract Year, divided by twelve (12). The Project Committee shall review, and, if appropriate, recommend, modify, or approve through a Normal Vote, the proposed Estimated Monthly Project Cost.

8.2. Operating Account. CCP shall establish an Operating Account for each Project Participant that is accessible to and can be drawn upon by both CCP and the applicable Project Participant. Such Operating Accounts are for the purpose of providing a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.

(a) Operating Account Amount. The Operating Account Amount for each Project Participant shall be an amount equal to the Estimated Monthly Project Cost multiplied by three, the product of which is multiplied by such Project Participant's Entitlement Share ("**Operating Account Amount**").

(b) Initial Funding of Operating Account. By no later than three hundred and sixty-five (365) days after the Effective Date, each Project Participant shall deposit into such Project Participant's Operating Account an amount equal to that Project Participant's Operating Account Amount.

(c) Use of Operating Account. CCP shall draw upon each Project Participant's Operating Account each month in an amount equal to the Monthly Costs multiplied by such Project Participant's Entitlement Share. As required by Section 9.5, each Project Participant must deposit sufficient funds into such Project Participant's Operating Account by the deadline specified in Section 9.5.

(d) Final Distribution of Operating Account. Following the expiration or earlier termination of the ESSA, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the Project Participants under this Agreement and upon satisfaction of all remaining costs and obligations of CCP under the ESSA, any amounts then remaining in any Project Participant's Operating Account shall be paid to the associated Project Participant.

ARTICLE 9

BILLING

9.1. **Monthly Costs.** The amount of Monthly Costs for a particular Month shall be the sum of the Project Participant's Entitlement Share multiplied by the Monthly Capacity Payments for the Product, as specified in Section 8.2 of the ESSA for such Month and to the extent such payment is made by CCP to the Project Developer, plus the Project Participant's Entitlement Share multiplied by the Annual Excess Cycle Payment that is included in the invoice for such Month, if any, plus the Project Participant's Entitlement Share multiplied by the Operating Cost for such Month and subtracting the Project Participant's Entitlement Share multiplied by the positive revenue associated with the sale of any Facility Energy or Ancillary Services net of any CAISO costs or Scheduling Coordinator costs for such Month, as shown in the following formula:

Monthly Cost = ((Project Participant's Entitlement Share) × (Monthly Capacity Payments)) + ((Project Participant's Entitlement Share) × (Annual Excess Cycle Payment)) + ((Project Participant's Entitlement Share) × (Operating Costs)) – ((Project Participant's Entitlement Share) × (revenue from sale of Facility Energy or Ancillary Services, net of any CAISO costs or Scheduling Coordinator costs))

9.2. **Billing Statements.** By no later than ten (10) calendar days after CCP receives an invoice from Project Developer for the prior Month of each Contract Year pursuant to Section 8.1 of the ESSA, CCP shall issue to each Project Participant a copy of the invoice and a "Billing Statement," which specifies such Project Participant's Monthly Costs, itemized by each part of such Monthly Cost. The amount of Monthly Costs attributable to a Project Participant, and specified in such Billing Statement, shall be the "**Invoice Amount.**"

9.3. **Disputed Monthly Billing Statement.** A Project Participant may dispute, by written Notice to CCP, any portion of any Billing Statement submitted to that Project Participant by CCP pursuant to Section 9.2, provided that the Project Participant shall pay the full amount of the Billing Statement when due. If CCP determines that any portion of the Billing Statement is incorrect, CCP will deposit the difference between such correct amount and such full amount, if any, including interest at the rate received by CCP on any overpayment into the Project Participant's Operating Account. If CCP and a Project Participant disagree regarding the accuracy of a Billing Statement, CCP will give consideration to such dispute and will advise all Project Participants with regard to CCP's position relative thereto within thirty (30) days following receipt of written Notice by Project Participant of such dispute.

9.4. **Payment Adjustments; Billing Errors.** If CCP or Project Developer determines that a prior invoice or Billing Statement was inaccurate, CCP shall credit against or increase as appropriate each Project Participant's subsequent Monthly Costs according to such adjustment. The accompanying Billing Statement shall describe the cause of such adjustment and the amount of such adjustment.

9.5. **Payment of Invoice Amount.** Each Project Participant shall deposit the Invoice Amount for the applicable Month into such Project Participant's Operating Account by no later than the twentieth (20th) calendar day of the following Month after the Billing Statement is issued, unless CCP has failed to issue the Billing Statement by the deadline specified in Section 9.2, in which case, each Project Participant shall deposit the Invoice Amount for the applicable Month by no later than thirty (30) days after the date on which CCP issues the Billing Statement to the Project Participant.

9.6. Withdrawal of Invoice Amount from Operating Account. No sooner than five (5) calendar days after CCP issues a Billing Statement to a Project Participant or a Step-Up Invoice to a Project Participant, CCP shall withdraw the Invoice Amount or the Step-Up Invoice Amount from each Project Participant's Operating Account. If the Monthly Cost attributable to such Project Participant is a negative number, CCP shall deposit such funds into the Operating Account of that Project Participant.

9.7. Late Payments.

(a) If any Project Participant fails to deposit the Invoice Amount into the Project Participant's Operating Account by the deadline specified in Section 9.5, then CCP will issue such Project Participant a Late Payment Notice within five (5) days of the deadline specified in Section 9.5 directing the Project Participant to immediately deposit the Invoice Amount into the Project Participant's Operating Account and informing the Project Participant that such Project Participant must pay a charge ("**Late Payment Charge**"). Upon issuing a Late Payment Notice to any Project Participant, CCP shall promptly provide Notice of such occurrence to all other Project Participants.

(b) The Late Payment Charge shall be equal to the Invoice Amount minus any partial payment that was deposited into such Project Participant's Operating Account multiplied by the Interest Rate specified in Section 8.2 of the ESSA for the period from the deadline specified in Section 9.5 until the date on which the Project Participant deposits the Invoice Amount plus the Late Payment Charge into such Project Participant's Operating Account. Upon payment, CCP shall withdraw the full amount of such Late Payment Charge from the Project Participant's Operating Account and deposit any such Late Payment Charge into the Operating Accounts of all other Project Participants on a pro rata share, based on such other Project Participants' Entitlement Shares.

ARTICLE 10
UNCONDITIONAL PAYMENT OBLIGATIONS; AUTHORIZATIONS; CONFLICTS;
LITIGATION.

10.1. Unconditional Payment Obligation. Beginning with the earliest of (i) the date CCP is obligated to pay any portion of the costs of the Project, (ii) the date of the COD, or (iii) the date of the first delivery of the Product to Project Participants and continuing through the term of this Agreement, Project Participants shall pay CCP the amounts of Monthly Costs set forth in the Billing Statements submitted by CCP to Project Participants in accordance with the provisions of Section 9, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output or the provision of Facility products are suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever, provided that the obligation of Project Participants to pay amounts associated with the Monthly Capacity Payment or Annual Excess Cycle Payment shall be limited to the amount of Monthly Capacity Payment or Annual Excess Cycle Payment charged by the Project Developer to CCP and paid by CCP to the Project Developer.

10.2. Authorizations. Each Project Participant hereby represents and warrants that no order, approval, consent, or authorization of any governmental or public agency, authority, or person, is required on the part of such Project Participant for the execution and delivery by the Project Participant, or the performance by the Project Participant of its obligations under this Agreement except for such as have been obtained.

10.3. Conflicts. Each Project Participant represents and warrants to CCP as of the Effective Date that, to the Project Participant's knowledge, the execution and delivery of this Agreement by the Project Participants and the Project Participants' performance hereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on the Project Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of the Project Participant.

10.4. Litigation. Each Project Participant represents and warrants to CCP that, as of the Effective Date, to the Project Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against the Project Participant (service of process on the Project Participant having been made) in any court that questions the validity of the authorization, execution or delivery by the Project Participant of this Agreement, or the enforceability on the Project Participant of this Agreement.

10.5. San José Clean Energy.

(a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City of San José to appropriate funds for purposes of the Agreement; provided, however, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this Agreement.

(b) Limited Obligations. The City of San José's payment obligations under this Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

10.6. Clean Power San Francisco. With regard to Clean Power San Francisco only, (1) obligations under this Agreement are special limited obligations of Clean Power San Francisco payable solely from the revenues of Clean Power San Francisco, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-Clean Power San Francisco moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San

Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount.

ARTICLE 11
PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANTS' RIGHTS AND OBLIGATIONS UNDER THE ESSA.

11.1. CCP Rights and Obligations under the ESSA. Notwithstanding anything to the contrary contained in this Agreement: (i) the obligation of CCP to cause the delivery of the Project Participants' Entitlement Shares of the Product during the Delivery Term of this Agreement is limited to the Product which CCP receives from the Facility (or the Project Developer, as applicable); (ii) the obligation of CCP to pay any amount to Project Participants hereunder or to give credits against amounts due from Project Participants hereunder is limited to amounts CCP receives in connection with the transaction to which the payment or credit relates (or is otherwise available to CCP in connection with this Agreement for which such payment or credit relates); (iii) any purchase costs, operating costs, energy costs (including costs related to Charging Energy), capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which CCP is responsible under the ESSA shall be considered purchase costs, operating costs, energy costs, capacity costs, Facility costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by CCP and payable by Project Participants as provided in this Agreement; (iv) CCP shall carry out its obligations and exercise its rights under the ESSA in a commercially reasonable manner; (v) all remedies provided to CCP pursuant to the ESSA or the Scheduling Coordinator Services Agreement shall be provided to Project Participants in accordance with Section 5.1(h); and (vi) any Force Majeure under the ESSA or other event of force majeure affecting the delivery of Product pursuant to applicable provisions of the ESSA shall be considered an event caused by Uncontrollable Forces affecting CCP with respect to the delivery of the Product hereunder and CCP forwarding to Project Participants notices and information from the Project Developer concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a Notice that Uncontrollable Forces have occurred pursuant to Section 5.1 of this Agreement. Any net proceeds received by CCP from the sale of the Product by the Project Developer to any third-party as a result of a Force Majeure event or failure by CCP to accept delivery of Product pursuant to the ESSA and any reimbursement received by CCP for purchase of Replacement RA shall be remitted by CCP to the Project Participants in accordance with their respective Entitlement Shares.

ARTICLE 12
NONPERFORMANCE AND PAYMENT DEFAULT.

12.1. Nonperformance by Project Participants. If a Project Participant fails to perform any covenant, agreement, or obligation under this Agreement or shall cause CCP to be in default with respect to any undertaking entered into for the Project or to be in default under the ESSA ("**Defaulting Project Participant**"), CCP may, in the event the performance of any such obligation remains unsatisfied after thirty (30) days' prior written notice thereof to such Project Participant and a demand to so perform, take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of such Project Participant's rights under

this Agreement including any rights to its Entitlement Share of the Product, and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Project Participant with regard to its failure to so perform. Any Project Participant that is not the Defaulting Project Participant (“**Non-Defaulting Project Participant**”) may submit Notice directly to the CCP Board, if such Non-Defaulting Project Participant determines that CCP is or may not be fully taking appropriate actions to enforce CCP’s rights under this Agreement against a Defaulting Project Participant. The CCP Board shall consider such Notice and direct CCP to take appropriate action, if any.

12.2. **Payment Default.** If any Project Participant fails to deposit the Invoice Amount into the Project Participant’s Operating Account by the deadline specified in Section 9.5, and if such Participant has not deposited the Invoice Amount plus the Late Payment Charge into such Project Participant’s Operating Account within ten (10) calendar days of the issuance of the Late Payment Notice to such Project Participant by CCP, then such occurrence shall constitute a “**Payment Default.**”

12.3. **Payment Default Notice.** Upon the occurrence of a Payment Default, CCP shall issue a Notice of Payment Default to the Project Participant notifying such Project Participant that as a result of a Payment Default, it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that such Defaulting Project Participant’s Project Revenue Rights have been suspended and that such Defaulting Project Participant’s Project Rights are subject to termination and disposal in accordance with Sections 12.6 and 12.8 of this Agreement. CCP shall provide a copy of such Notice of Default to all other Project Participants within five (5) calendar days after the issuance of the written Notice of Payment Default by CCP to the Defaulting Project Participant.

12.4. **Cured Payment Default.** If after a Payment Default, the Defaulting Project Participant cures such Payment Default within forty-five (45) calendar days after the issuance of the Late Payment Notice by CCP, the Defaulting Project Participant’s Project Revenue Rights shall be reinstated and its Project Rights shall not be subject to termination and disposal as provided for in Sections 12.6 and 12.8. In order to cure a Payment Default, the Defaulting Project Participant must deposit the full amount of any unpaid Invoice Amounts and any associated Late Payment Penalties into its Operating Account.

12.5. **Suspension of Project Participant’s Project Revenue Rights and Treatment of Capacity Attributes.**

(i) Upon the occurrence of a Payment Default, the Defaulting Project Participant’s Project Revenue Rights shall be suspended until such time as such Defaulting Project Participant cures the Payment Default pursuant to the requirements of Section 12.4. Any revenue associated with the Facility Energy or Ancillary Services associated with the Facility shall be deposited by CCP into the Step-Up Reserve Account, as specified in Section 12.7.

(ii) For any Month where the funds remaining in a Defaulting Project Participant’s Operating Account are sufficient to pay the entire Invoice Amount, CCP shall withdraw the Invoice Amount from such Defaulting Project Participant’s Operating Account and shall cause the delivery of the Defaulting Project Participant’s Entitlement Share of the Capacity

Attributes and Environmental Attributes associated with the Facility or otherwise provided for pursuant to the ESSA. For any Month where the funds remaining in a Defaulting Project Participant's Operating Account are less than the amount necessary to pay the entire Invoice Amount, CCP shall withdraw all remaining funds from the Defaulting Project Participant's Operating Account, and to the extent reasonably possible, in CCP's sole discretion, CCP shall cause the delivery of a quantity of Capacity Attributes and Environmental Attributes proportionate to the portion of the Invoice Amount that the remaining funds were sufficient to pay for. For any Month where the Defaulting Project Participant's Operating Account has no funds remaining, the Defaulting Project Participant shall have no right to any such Capacity Attributes or Environmental Attributes associated with the Facility or otherwise provided for under the ESSA.

12.6. Termination and Disposal of Project Participant's Project Rights. If a Defaulting Project Participant has not cured a Payment Default within forty-five (45) calendar days after the payment deadline specified in Section 9.5 by CCP ("**Payment Default Termination Deadline**"), then all Project Rights and Obligations pursuant to this Agreement shall be terminated and disposed in accordance with Sections 12.6 and 12.8 of this Agreement; provided, however, that the Defaulting Project Participant shall be liable for all outstanding payment obligations accrued prior to the Payment Default Termination Deadline and shall remain subject to all rights, obligations, and liabilities of this Agreement, including but not limited to any liabilities for Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts under the ESSA. CCP shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations of such Defaulting Project Participant. CCP shall immediately notify the other Project Participants of such termination of the Defaulting Project Participant's Project Rights and Obligations.

12.7. Step-Up Invoices.

(a) Upon the occurrence of a Payment Default, CCP shall, concurrently with the Late Payment Notice issued pursuant to Section 9.7(a), issue a Step-Up Invoice to each Non-Defaulting Project Participant that specifies such Non-Defaulting Project Participant's pro rata payment obligation, calculated based on the Entitlement Share of such Non-Defaulting Project Participant, of the amount of the Payment Default for the Defaulting Project Participant (the "**Step-Up Invoice Amount**"); provided, however, that a Non-Defaulting Project Participant's Step-Up Invoice Amount shall not exceed twenty-five percent (25%) of such Non-Defaulting Project Participant's Invoice Amount for the same month for which the Payment Default occurred (the "**Step-Up Invoice Amount Cap**").

(i) Each Non-Defaulting Project Participant shall deposit the Step-Up Invoice Amount into such Non-Defaulting Project Participant's Operating Account by the later of the twentieth (20th) calendar day of the following Month or thirty (30) days after the date on which CCP issues the Step-Up Invoice to the other Project Participants. No sooner than five (5) calendar days after CCP issues the Step-Up Invoice, CCP may withdraw the amount of the Step-Up Invoice from each Project Participant's Operating Account and deposit such funds in a separate account ("**Step-Up Reserve Account**"), which shall be accessible only by CCP, and which CCP may in its sole discretion draw upon in order to ensure that CCP can meet the payment obligations of the ESSA. CCP first shall withdraw all funds from a Defaulting Project Participant's Operating Account before withdrawing funds from the Step-Up Reserve Account.

(ii) Application of Moneys Received from a Defaulting Project Participant. If a Defaulting Project Participant cures a Payment Default on or before the Payment Default Termination Deadline, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the other Project Participants on a pro rata share, based on the Entitlement Share of such other Project Participant. If a Defaulting Project Participant fails to cure a Payment Default and the Defaulting Project Participant's Project Rights and Obligations are terminated and disposed of in accordance with Section 12.8, any funds remaining in the Step-Up Reserve Account shall be deposited into the Operating Accounts of the Non-Defaulting Project Participants on a pro rata share, based on the Entitlement Share, subject to the Step-Up Invoice Amount Cap, of such other Project Participant. If any Non-Defaulting Project Participant has not deposited the full amount of its share of the Step-Up Invoice Amount into its Operating Account by the deadline specified in Section 12.7(a)(i), then such occurrence shall be a Late Payment as specified in Section 9.7(a) and is subject to a Late Payment Charge pursuant to Section 9.7(b), and any such Non-Defaulting Project Participant shall not be entitled to its share of any moneys received from the Defaulting Project Participant or any funds remaining in the Step-Up Reserve Account in accordance with this Section 12.7(a)(ii) until such Non-Defaulting Project Participant has deposited the full amount of its Step-Up Invoice Amount and the Late Payment Charge into its Operating Account.

12.8. Step-Up Allocation of Project Participant's Project Rights. In the event that a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to the other Project Participants ("**Step-Up Allocation**") pursuant to the process set forth in this Section 12.8.

(a) Step-Up Allocation Cap. If a Defaulting Project Participant's Entitlement Share is allocated to the Non-Defaulting Project Participants pursuant to this Section 12.8, no individual Non-Defaulting Project Participant shall be obligated to assume an allocation that exceeds that Project Participant's Step-Up Allocation Cap set forth in Column E of the Table in Exhibit B of this Agreement. Each Non-Defaulting Project Participant's initial Step-Up Allocation Cap shall be equal to the Non-Defaulting Project Participant Entitlement Share as of the Effective Date and set forth in Column B of the Table in Exhibit B of this Agreement, multiplied by one hundred and twenty-five percent (125%). If a Project Participant modifies its Entitlement Share pursuant to Section 4.2 of this Agreement, then that Project Participant's Step-Up Allocation Cap shall be equal to the Project Participant's Entitlement Share as modified pursuant to Section 4.2 multiplied by one hundred and twenty-five percent (125%). Upon a modification of a Project Participant's Entitlement Share pursuant to Section 4.2, the CCP Manager shall cause the Step-Up Allocation Cap specified in Column E of the Table in Exhibit B of this Agreement to be modified in accordance with this Section 12.8(a). For avoidance of doubt, if a Project Participant's Entitlement Share is increased pursuant to Section 12.8(b) or (c), then such Project Participant's Step-Up Allocation Cap shall not be modified.

(b) Step-Up Allocation Share. If a Defaulting Project Participant's Project Rights are terminated pursuant to Section 12.6, then such Defaulting Project Participant's Entitlement Share shall be allocated to each Non-Defaulting Project Participant based on such Non-Defaulting Project Participant's pro rata share, calculated based on its Entitlement Share of the entire project minus the Entitlement Share of the Defaulting Project Participant, unless such allocation would cause any individual Non-Defaulting Project Participant to exceed its Step-Up

Allocation Cap, in which case Section 12.8(c) shall apply. Upon allocation of a defaulting Project Participant's Entitlement Share pursuant to this Section 12.8(b), the CCP Manager shall cause each affected Project Participant's Entitlement Share specified in Column D of the Table in Exhibit B to be modified in accordance with this Section 12.8.

(c) Voluntary Allocation of Project Rights in Excess of the Step-Up Allocation Caps. If the allocation of a Defaulting Project Participant's Entitlement Share pursuant to Section 12.8(b) would cause any Non-Defaulting Project Participant's Entitlement Share to exceed its Step-Up Allocation Cap, then no allocation shall occur pursuant to Section 12.8(b). In such case, the CCP Manager shall oversee the offering of the total amount of the Defaulting Project Participant's Entitlement Share to the Non-Defaulting Project Participants on a voluntary basis. The initial offering shall be to each Non-Defaulting Project Participant on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Defaulting Project Participant's Entitlement Share. If any portion of the Defaulting Project Participant's Entitlement Share remains unclaimed after the initial offering, then the remaining portion shall be offered to any Non-Defaulting Project Participant that accepted its full share of the Defaulting Project Participant's Entitlement Share in the initial offering on a pro rata share, based on such Non-Defaulting Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that are participating in the subsequent round of offerings. The CCP Manager shall conduct subsequent offering rounds until either the total amount of the Defaulting Project Participant's Entitlement Share is accepted by one or more of the Non-Defaulting Project Participants or some portion of the Defaulting Project Participant's Entitlement Share remains, but all Non-Defaulting Project Participants have rejected such remaining amount.

(d) Step-Up Allocation Damage Payment. A Defaulting Project Participant shall owe to each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) a "**Step-Up Allocation Damage Payment**" equal to the Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Project Participant's Costs and Losses exceed its Gains, then the Step-Up Allocation Damage Payment shall be an amount owing to such Non-Defaulting Project Participant. If the Non-Defaulting Project Participant's Gains exceed its Costs and Losses, then the Step-Up Allocation Damage Payment shall be zero dollars (\$0). A Defaulting Project Participant shall not be entitled to any Step-Up Allocation Damage Payment or any other damages otherwise authorized under this Agreement from any other Project Participant. The Step-Up Allocation Damage Payment does not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages. Each Non-Defaulting Project Participant that assumes any portion of the Defaulting Project Participant's Entitlement Share pursuant to the process set forth in Section 12.8(b) or 12.8(c) shall calculate, in a commercially reasonable manner, the Step-Up Allocation Damage Payment for the Defaulting Project Participant's Entitlement Share assumed by the Non-Defaulting Project Participant as of the effective date of such Step-Up Allocation. 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. If the Defaulting Project Participant disputes the Non-Defaulting Project Participant's calculation of the Step-Up Allocation Damage Payment, in whole or in part, the Defaulting Project Participant shall, within five (5) Business Days of receipt of the Non-Defaulting Project Participant's calculation of the Step-Up Allocation

Damage Payment, provide to the Non-Defaulting Project Participant a detailed written explanation of the basis for such dispute. Disputes regarding the Step-Up Allocation Damage Payment shall be determined in accordance with Article 16. Each Party agrees and acknowledges that (i) the actual damages that the other Project Participant would incur in connection with a Step-Up Allocation would be difficult or impossible to predict with certainty, (ii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is a reasonable and appropriate approximation of such damages, and (iii) the Step-Up Allocation Damage Payment described in this Section 12.8(d) is the exclusive remedy of a Project Participant in connection with a Step-Up Allocation pursuant to the process set forth in Sections 12.8(b) or 12.8(c) against a Defaulting Project Participant but shall not otherwise act to limit any of the Non-Defaulting Project Participant's rights or remedies under this Agreement.

(e) Remarketing of Unclaimed Defaulting Project Participant's Entitlement Share. If after the process set forth in Section 12.8(c), some portion of the Defaulting Project Participant's Entitlement Share remains unclaimed, the CCP Manager, in their discretion or as directed by the Non-Defaulting Project Participants, may take any action to generate revenue from such unclaimed Entitlement Share in order to meet CCP's payment obligation under the ESSA. For avoidance of doubt, the CCP Manager shall not be limited by the requirements of Section 4.2 or 5.1(j) of this Agreement in remarketing or generating revenue base on the unclaimed share.

12.9. Elimination or Reduction of Payment Obligations. Notwithstanding anything to the contrary in this Agreement, upon termination of a Defaulting Project Participant's Project Rights pursuant to Section 12.6 and the disposal of such Defaulting Project Participant's Project Rights and Obligations pursuant to Section 12.8, such Defaulting Project Participant's obligation to make payments under this Agreement (notwithstanding anything to the contrary herein) shall not be eliminated or reduced; provided, however, such payment obligations for the Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement.

ARTICLE 13 **LIABILITY**

13.1. Project Participants' Obligations Several. No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant or for the obligations of CCP incurred on behalf of other Project Participants. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of Project Participants to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

13.2. No Liability of CCP or Project Participants, Their Directors, Officers, Etc.; CCP, The Project Participants' and CCP Manager's Directors, Officers, Employees Not Individually Liable. Except as provided for under Section 13.5 herein, the Parties agree that neither CCP, Project Participants, nor any of their past, present or future directors, officers, employees, board members, agents, attorneys or advisors (collectively, the "**Released Parties**") shall be liable to any other of the Released Parties for any and all claims, demands, liabilities, obligations, losses,

damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise (including, without limitation, death, bodily injury or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons) suffered by any Released Party as a result of the action or inaction or performance or non-performance by the Project Developer under the ESSA. Except as provided for under Section 13.5 herein, each Party shall release each of the other Released Parties from any claim or liability that such Party may have cause to assert as a result of any actions or inactions or performance or non-performance by any of the other Released Parties under this Agreement (excluding gross negligence and willful misconduct, which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order). Notwithstanding the foregoing, no such action or inaction or performance or non-performance by any of the Released Parties shall relieve CCP or any Project Participants from their respective obligations under this Agreement, including, without limitation, the Project Participants' obligation to make payments required under Section 9.5 of this Agreement and CCP's obligation to make payments under Section 8.2 of the ESSA. The provisions of this Section 13.2 shall not be construed so as to relieve the CCP or the Project Developer from any obligation or liability under this Agreement or the ESSA.

13.3. Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, any Party may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of any other Party, and each Party shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment, underpayment or other monetary damages owed by the other Party in accordance with the terms of this Agreement.

13.4. No General Liability of CCP. The undertakings under this Agreement by CCP shall not constitute a debt or indebtedness of CCP within the meaning of any provision or limitation of the Constitution or statutes of the State of California, and shall not constitute or give rise to a charge against its general credit.

13.5. Indemnification. Each Party shall indemnify, defend, protect, hold harmless, and release the other Parties, their directors, board members, officers, employees, agents, attorneys and advisors, past, present or future, from and against any and all claims, demands, liabilities, obligations, losses, damages (whether direct, indirect or consequential), penalties, actions, loss of profits, judgments, orders, suits, costs, expenses (including attorneys' fees and expenses) or disbursements of any kind or nature whatsoever in law, equity or otherwise, which include, without limitation, death, bodily injury, or personal injury to any person or damage or destruction to any property of Project Participants, CCP, or third persons, that may be imposed on, incurred by or asserted against any Party arising by manner of any breach of this Agreement, or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of any Party or any Party's directors, board members, officers, employees, agents and advisors, past, present or future.

ARTICLE 14
NOTICES

14.1. 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 A or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

14.2. Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5:00 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 15
ASSIGNMENT

15.1. General Prohibition on Assignments. No Party may assign this Agreement, or its rights or obligations under this Agreement, without the prior written consent of all other Parties, in each Party's sole discretion.

ARTICLE 16
GOVERNING LAW AND DISPUTE RESOLUTION

16.1. 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. The Parties agree that any suit, action, or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by all Parties, or in the absence of mutual agreement, the County of San Francisco.

16.2. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate, and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law or in equity.

ARTICLE 17
MISCELLANEOUS

17.1. Entire Agreement; Integration; Exhibits. This Agreement, together with the Exhibits attached hereto constitutes the entire agreement and understanding by and among the Parties 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. 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.

17.2. Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of all Parties; *provided*, this Agreement may not be amended by electronic mail communications. Any revisions to the Entitlement Share specified in Exhibit B pursuant to Section 4.2. or Section 12.8 shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

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

17.4. 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.

17.5. 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.

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

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

17.8. Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that the Parties 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.

17.9. City of San Francisco Standard Provisions.

(a) False Claims. Pursuant to San Francisco Administrative Code § 21.35, any Party to this Agreement who submits a false claim shall be liable to the City and County of San Francisco for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City and County of San Francisco if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City and County of San Francisco a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City and County of San Francisco; (c) conspires to defraud the City and County of San Francisco by getting a false claim allowed or paid by the City and County of San Francisco; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City and County of San Francisco; or (e) is a beneficiary of an inadvertent submission of a false claim to the City and County of San Francisco, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City and County of San Francisco within a reasonable time after discovery of the false claim.

(b) Political Activity. In performing its responsibilities under this Agreement, CCP shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City and County of San Francisco for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.

(c) Non-discrimination Requirements.

(i) Non-discrimination in Contracts. CCP shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. CCP shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. CCP is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(ii) Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. CCP does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

(d) Consideration of Criminal History in Hiring and Employment Decisions. CCP agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to CCP’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

(e) MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(f) Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, CCP shall not provide any items to the City in performance of this Agreement which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of CCP to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

17.10. City of San José Standard Provisions.

(a) Nondiscrimination/Non-Preference. The Parties shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. The Parties will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Parties from providing a reasonable accommodation to a person with a disability; (ii) the City of San José’s Compliance Officer may require the Parties to file, and cause any Party’s subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form

and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

(b) Conflict of Interest. The Parties represent that they are familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Parties certify that, as of the Effective Date, are unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Parties shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Parties have the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and a Party shall immediately notify the City of San José in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. A Party's violation of this Section 17.10(b) is a material breach.

(c) Environmentally Preferable Procurement Policy. Parties shall perform its obligations under this Agreement in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 17.10(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle the City of San José to terminate this Agreement.

(d) Gifts Prohibited. The Parties represent that they are familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. The Parties shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. A Party's violation of this Section 17.10(d) is a material breach.

(e) Disqualification of Former Employees. The Parties represent that they are familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Parties shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

17.11. 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.

<p>California Community Power</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Clean Power San Francisco</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>
<p>Redwood Coast Energy Authority</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>	<p>San José Clean Energy</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>

<p>Silicon Valley Clean Energy</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Sonoma Clean Power</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>
<p>Valley Clean Energy</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form by Counsel</p> <p>By:</p> <p>Name: _____</p> <p>Title: _____</p>	<p>_____</p>

APPROVAL DRAFT

EXHIBIT A
NOTICES

Party	<i>All Notices</i>	<i>Invoices</i>
California Community Power	<p>California Community Power Tim Haines _____ _____ timhaines@powergridsymmetry.com</p>	
Clean Power San Francisco	<p>Clean Power San Francisco Barbara Hale, Assistant General Manager, Power San Francisco Public Utilities Commission 525 Golden Gate Ave, 13th Floor San Francisco, CA 94102 bhale@sflower.org</p>	
Redwood Coast Energy Authority	<p>Redwood Coast Energy Authority Matthew Marshall, CEO Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 mmarshall@redwoodenergy.org</p>	
San José Clean Energy	<p>San José Clean Energy Lori Mitchell, Director cc: Luisa Elkins, Senior Deputy City Attorney San José Clean Energy 200 E. Santa Clara Street, 14th Floor San José, CA 95113 Lori.Mitchell@sanjoseca.gov Luisa.Elkins@sanjoseca.gov</p>	

Party	All Notices	Invoices
Silicon Valley Clean Energy	Silicon Valley Clean Energy Girish Balachandran, CEO Silicon Valley Clean Energy Authority 333 W. El Camino Real, Suite 330 Sunnyvale, CA 94087 girish@svcleanenergy.org	
Sonoma Clean Power	Sonoma Clean Power Geof Syphers, CEO Sonoma Clean Power 50 Santa Rosa Avenue, 5th Floor Santa Rosa, CA 95404 gsyphers@sonomacleanpower.org	
Valley Clean Energy	Valley Clean Energy Gordon Samuel Assistant General Manager & Director of Power Resource 604 2nd Street Davis, CA 95616 gordon.samuel@valleycleanenergy.org	

EXHIBIT B

**SCHEDULE OF PROJECT PARTICIPANT ENTITLEMENT SHARES
AND STEP-UP ALLOCATION CAPS**

Dated: _____

A	B	C	D	E
Project Participant	Entitlement Share <i>As of Effective Date</i>	Entitlement Share <i>As Modified Pursuant to Section 4.2</i>	Entitlement Share <i>As Modified Pursuant to Section 12.8(b) or 12.8(c)</i>	Step-Up Allocation Cap <i>125% multiplied by Column B or C as applicable</i>
Clean Power San Francisco	21.50%			
Redwood Coast Energy Authority	4.00%			
San José Clean Energy	24.22%			
Silicon Valley Clean Energy	28.42%			
Sonoma Clean Power	17.36%			
Valley Clean Energy	4.50%			
Total	100%			

Instructions: If the CCP Manager modifies one or more Project Participant’s Entitlement Share pursuant to Section 4.2, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or D) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column C. If the CCP Manager modifies one or more Project Participant’s Entitlement Share pursuant to Section 12.8, the CCP Manager shall prepare an updated Exhibit B that shows the prior Entitlement Share (Column B or Column C) in ~~strikeout~~ and specifies the new Entitlement Share values and the effective date of such modification in Column D.

EXHIBIT C

PROCEDURE FOR VOLUNTARY REDUCTION OF PROJECT PARTICIPANT'S ENTITLEMENT SHARE

(a) Offer to Other Project Participants. A Project Participant proposing to reduce its Entitlement Share of the Project shall provide Notice to all other Project Participants and CCP specifying the quantity of the proposed reduction of Entitlement Share ("**Entitlement Share Reduction Amount**") and the first Month for which the Project Participant Proposes that the change of Entitlement Share would become effective (such Notice referred to as the "**Entitlement Share Reduction Notice**").

(i) Upon receiving an Entitlement Share Reduction Notice from any Project Participant, the CCP Manager shall promptly do all of the following:

(A) Establish Entitlement Share Reduction Compensation Amount. The CCP Manager shall secure at least one (1), but no more than three (3), valuations of the net present value of the Entitlement Share Reduction Amount over the remaining term of the ESSA from one or more qualified firm(s) with the requisite experience to determine such valuation. The valuation, or if more than one valuation is obtained, the average of all valuations received, shall be the "**Proposed Entitlement Share Reduction Compensation Amount.**" The CCP Manager shall call a meeting of the Project Committee and present the Proposed Entitlement Share Reduction Compensation Amount to the Project Committee. The Project Committee shall by a Normal Vote either approve the Proposed Entitlement Share Reduction Compensation Amount or direct the CCP Manager to secure additional valuations. The Proposed Entitlement Share Reduction Compensation Amount approved by the Project Committee shall be the "**Entitlement Share Reduction Compensation Amount.**" The Project Participant proposing to reduce its Entitlement Share may modify the quantity of the Entitlement Share Reduction Amount associated with its proposal or withdraw its proposal at any time prior to the initiation of the process set forth in paragraph (a)(i)(B).

(B) Oversee the Offering of the Entitlement Share Reduction Amount to Other Project Participants. The CCP Manager shall facilitate the offering of the Entitlement Share Reduction Amount to the other Project Participants through multiple rounds of offerings.

a) The initial offering shall be to each Project Participant on a pro rata share, based on such Project Participant's Entitlement Share. Each Project Participant may accept or reject the portion of the Entitlement Share Reduction Amount offered to the Project Participant through this process. If any portion of the Entitlement Share Reduction Amount remains after the initial offering, then the remaining portion shall be offered to any Project Participant that accepted the share of the Entitlement Share Reduction Amount offered in the initial offering on a pro rata share, based on such Project Participant's Entitlement Share as a percentage of the total Entitlement Shares of all Project Participants that accepted the portion of the Entitlement Share Reduction Amount offered to them in the initial offering.

b) The CCP Manager shall conduct subsequent offering rounds until either the total Entitlement Share Reduction Amount is accepted by one or more of the other Project Participants or some portion of the Entitlement Share Reduction Amount remains, but all Project Participants have rejected such amount.

c) Any Project Participant accepting a share of the offered Entitlement Share Reduction Amount shall either pay the offering Project Participant or be compensated by the offering Project Participant at the Entitlement Share Reduction Compensation Amount multiplied by the quantity of the portion being accepted.

d) Before a transfer of all or a portion of any Project Participant's Entitlement share to another Project Participant can become effective, the proposed transfer must be submitted to and approved by the Project Committee through a Normal Vote.

e) After acceptance and payment for such portion of the Entitlement Share Reduction Amount, and upon approval of such transfer by the Project Committee, the CCP Manager shall cause the Entitlement Share specified in Exhibit B to be modified accordingly, and such modification shall be considered an element of the administration of this Agreement and shall not require the consent of the Parties hereto.

(C) Oversee the Offering of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in paragraph (a)(i)(B) is complete, then the Project Participant proposing to reduce its Entitlement Share may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to CCP Members that are not Project Participants. If any CCP Member wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the CCP Member to become a Project Participant through an amendment to this Agreement, which shall be subject to the consent and approval of all Parties to this Agreement and the CCP Member becoming a Project Participant. The compensation amount associated with the CCP Member accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the CCP Member and the offering Project Participant.

(D) Oversee the Offering of the Entitlement Share Reduction Amount to a Community Choice Aggregator that is not a CCP Member. If there is any portion of the Entitlement Share Reduction Amount that remains unaccepted after the process specified in both paragraphs (a)(i)(B) and (a)(k)(C) is complete, then the Project Participant proposing to reduce its Entitlement Share, may request that the CCP Manager offer the remaining portion of the Entitlement Share Reduction Amount to a community choice aggregator that is not a CCP Member. If any community choice aggregator wishes to accept any or all of the remaining portion of the Entitlement Share Reduction Amount, such action shall require the community choice aggregator to become a CCP Member, and subsequent to becoming a CCP Member, to become a Project Participant through an amendment to this Agreement that is subject to the consent and approval of all Parties to this Agreement and the community choice aggregator becoming a Project Participant. The compensation amount associated with the community choice aggregator accepting the remaining portion of the Entitlement Share Reduction Amount shall be negotiated between the community choice aggregator and the offering Project Participant.

EXHIBIT D

PROJECT COMMITTEE OPERATIONS, MEETINGS, AND VOTING

(a) Chairperson of Project Committee. The chairperson of the Project Committee (“**Chairperson**”) shall be the CCP Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Project Committee in a manner and to the extent permitted by law.

(b) Conducting Meetings. Conducting of Project Committee meetings and actions taken by the Project Committee may be taken by vote given in an assembled meeting, by telephone, by video conferencing, or by any combination thereof, to the extent permitted by law.

(c) Calling of Meetings.

(i) The Chairperson may call a meeting of the Project Committee at their discretion.

(ii) The Chairperson shall promptly call a meeting of the Project Committee at the request of any representative of a Project Participant.

(d) Unanimous Votes. Certain actions, as designated in Section 6.4(c), require a unanimous affirmative vote by all Project Participants (“**Unanimous Vote**”). No such vote may be taken unless a representative from every Project Participant is present at the meeting of the Project Committee. If any Project Participant’s Entitlement Share is reduced to zero through the process specified in Exhibit C, such Project Participant shall not be required to be present or be entitled to vote in order for such vote to be a Unanimous Vote.

(e) Normal Votes. All actions not designated as requiring unanimous vote, shall proceed pursuant to the “**Normal Vote**” process set forth in this paragraph (e).

(i) Quorum. No Normal Vote of the Project Committee shall be taken unless a representative is present for at least fifty percent (50%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share.

(ii) Initial Normal Vote. Unless a representative requests an Alternate Normal Vote, pursuant to paragraph (e)(iii), all actions requiring a Normal Vote, as specified in Section 6.4(b) or 6.4(d), shall require an affirmative vote of at least fifty-one percent (51%) of the total number of Project Participants, without regard to each Project Participant’s Entitlement Share.

(iii) Alternate Normal Vote. Any representative may request that any Normal Vote be taken on an Entitlement Share basis (referred to as an “**Alternate Normal Vote**”). If a representative requests an Alternate Normal Vote, then the following vote requirements shall apply:

(A) If any individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require that the Project Participant with an Entitlement Share exceeding fifty percent (50%) plus any other Project Participant vote in the affirmative.

(B) If no individual Project Participant has an Entitlement Share exceeding fifty percent (50%), then all actions for which an Alternate Normal Vote is taken shall require an affirmative vote of Project Participants having Entitlement Shares aggregating at least fifty-one percent (51%) of the total Entitlement Shares.

APPROVAL DRAFT

EXECUTION VERSION

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: Goal Line BESS 1, LLC, a Delaware limited liability company

Buyer: California Community Power, a California joint powers authority

Description of Facility: A grid-connected 50 MW/400 MWh battery energy storage facility, located in Escondido, CA, as further described in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	██████████
Conditional Use Permit obtained	██████████
Phase I and Phase II Interconnection study results obtained	██████████
Interconnection Agreement executed	██████████
Major equipment procurement agreements executed	██████████
Federal and state discretionary permits issued	██████████
Expected Construction Start Date	██████████
Guaranteed Construction Start Date	██████████
Initial Synchronization	██████████
Full Capacity Deliverability Status or Interim Deliverability Status obtained	██████████
Expected Commercial Operation Date	██████████
Guaranteed Commercial Operation Date	6/1/2025

Delivery Term: 15 Contract Years

Guaranteed Capacity: 50 MW of Installed Capacity at eight (8) hours of continuous discharge

Dedicated Interconnection Capacity: 50 MW

Guaranteed Efficiency Rate: [REDACTED]

Contract Price & Excess Cycle Price:

Contract Year	Contract Price & Excess Cycle Price
1 – 15	Contract Price: [REDACTED] (flat) with no escalation and subject to adjustments in <u>Exhibit C</u> Excess Cycle Price: [REDACTED]

Product:

- Discharging Energy
- Installed Capacity and Effective Capacity
- Ancillary Services
- Capacity Attributes

Scheduling Coordinator:

Prior to Commercial Operation Date: Seller

From Commercial Operation Date through the Delivery Term: Buyer

Security Amount:

Development Security: [REDACTED] of Guaranteed Capacity

Performance Security: [REDACTED] of Guaranteed Capacity

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	1
1.1 Contract Definitions	1
1.2 Rules of Interpretation	22
ARTICLE 2 TERM; CONDITIONS PRECEDENT	23
2.1 Contract Term	23
2.2 Commercial Operation; Conditions Precedent	23
2.3 Development; Construction; Progress Reports	24
2.4 Remedial Action Plan	25
2.5 Pre-Commercial Operation Actions	25
ARTICLE 3 PURCHASE AND SALE	25
3.1 Product	25
3.2 Discharging Energy	26
3.3 Capacity Attributes	26
3.4 Ancillary Services; Environmental Attributes	26
3.5 Resource Adequacy Failure	27
3.6 Buyer's Re-Sale of Product	28
3.7 Pre-COD Operations	28
3.8 Compliance Expenditure Cap	28
ARTICLE 4 OBLIGATIONS AND DELIVERIES	30
4.1 Delivery	30
4.2 Interconnection	30
4.3 Performance Guarantees	30
4.4 Facility Testing	30
4.5 Testing Costs and Revenues	31
4.6 Facility Operations	32
4.7 Dispatch Notices	32
4.8 Facility Unavailability to Receive Dispatch Notices	32
4.9 Energy Management	33
4.10 Capacity Availability Notice	35
4.11 Daily Operating Report	35
4.12 Outages	35
ARTICLE 5 TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS	37
5.1 Allocation of Taxes and Charges	37
5.2 Cooperation	37
5.3 Environmental Costs	37
ARTICLE 6 MAINTENANCE AND REPAIR OF THE FACILITY	37
6.1 Maintenance of the Facility	37
6.2 Maintenance of Health and Safety	38
6.3 Shared Facilities	38

ARTICLE 7 METERING	38
7.1 Metering.....	38
7.2 Meter Verification.....	39
ARTICLE 8 INVOICING AND PAYMENT; CREDIT	39
8.1 Invoicing.....	39
8.2 Payment.....	39
8.3 Books and Records.....	40
8.4 Payment Adjustments; Billing Errors.....	40
8.5 Billing Disputes.....	40
8.6 Netting of Payments.....	40
8.7 Seller’s Development Security.....	41
8.8 Seller’s Performance Security.....	41
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.....	41
8.10 Buyer Credit Arrangements.....	42
ARTICLE 9 NOTICES.....	43
9.1 Addresses for the Delivery of Notices.....	43
9.2 Acceptable Means of Delivering Notice.....	43
ARTICLE 10 FORCE MAJEURE	43
10.1 Definition.....	43
10.2 No Liability If a Force Majeure Event Occurs.....	44
10.3 Notice.....	45
10.4 Termination Following Force Majeure Event.....	45
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION	45
11.1 Events of Default.....	45
11.2 Remedies; Declaration of Early Termination Date.....	48
11.3 Damage Payment; Termination Payment.....	48
11.4 Notice of Payment of Termination Payment or Damage Payment.....	49
11.5 Disputes With Respect to Termination Payment or Damage Payment.....	49
11.6 [REDACTED].....	50
11.7 Rights And Remedies Are Cumulative.....	50
11.8 Mitigation.....	50
11.9 Pass Through of Buyer Liability.....	50
11.10 Seller Pre-COD Liability Limitations.....	50
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	51
12.1 No Consequential Damages.....	51
12.2 Waiver and Exclusion of Other Damages.....	51
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; COVENANTS	52
13.1 Seller’s Representations and Warranties.....	52
13.2 Buyer’s Representations and Warranties.....	53

13.3	General Covenants	54
13.4	Seller's Covenants	54
ARTICLE 14 ASSIGNMENT		55
14.1	General Prohibition on Assignments	55
14.2	Collateral Assignment.....	55
14.3	Permitted Assignment.....	55
14.4	Portfolio Financing	56
ARTICLE 15 DISPUTE RESOLUTION		56
15.1	Governing Law.	56
15.2	Dispute Resolution.....	57
15.3	Attorneys' Fees.	57
ARTICLE 16 INDEMNIFICATION.....		57
16.1	Indemnification	57
16.2	Claims.	58
ARTICLE 17 INSURANCE.....		58
17.1	Insurance	58
ARTICLE 18 CONFIDENTIAL INFORMATION		60
18.1	Definition of Confidential Information.....	60
18.2	Duty to Maintain Confidentiality	60
18.3	Irreparable Injury; Remedies	61
18.4	Further Permitted Disclosure.....	61
18.5	Press Releases	61
ARTICLE 19 MISCELLANEOUS		62
19.1	Entire Agreement; Integration; Exhibits	62
19.2	Amendments	62
19.3	No Waiver.....	62
19.4	No Agency, Partnership, Joint Venture or Lease.....	62
19.5	Severability	62
19.6	Mobile-Sierra	62
19.7	Counterparts	63
19.8	Electronic Delivery	63
19.9	Binding Effect.....	63
19.10	No Recourse to Members of Buyer	63
19.11	Forward Contract	63
19.12	Change in Electric Market Design	63
19.13	Further Assurances.....	64

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 Monthly Expected Available Capacity Report
Exhibit G	Form of Daily Availability Notice
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Capacity and Efficiency Rate Test Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Buyer Liability Pass Through Agreement
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Capacity and Efficiency Rate Tests
Exhibit P	Facility Availability Calculation
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Form of Daily Operating Report
Exhibit T	Form of Collateral Assignment Agreement
Exhibit U	Material Permits
Exhibit V	Project Participants and Liability Shares

APPROVAL DRAFT

ENERGY STORAGE SERVICE AGREEMENT

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

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.8(c).

“**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. Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Buyer the public entities designated as members or participants under the Joint Powers Agreement creating Buyer shall not constitute or otherwise be deemed an “Affiliate” for purposes of this Agreement.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Alternative Dispatches**” has the meaning set forth in Section 4.6(b).

“**Ancillary Services**” means frequency regulation, spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services, in each case as defined in the CAISO Tariff from time to time, that the Facility is at the relevant time actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q, which may be updated to add new Ancillary Services pursuant to Section 3.4.

“**Annual Excess Cycle Payment**” has the meaning set forth in Exhibit C.

“**Approval Period**” has the meaning in Section 2.1(b).

“**Approved Maintenance Hours**” means up to [REDACTED] hours per Contract Year for Facility maintenance scheduled in accordance with Section 4.12, calculated on a *pro rata* basis based upon the time period of such Facility maintenance and the Available Capacity. [REDACTED]

“**Automated Dispatches**” has the meaning set forth in Section 4.6(b).

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

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

“**Availability Adjustment**” has the meaning set forth in Exhibit C.

“**Availability Notice**” has the meaning set forth in Section 4.10.

“**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.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to charge and discharge Energy and provide Ancillary Services.

“**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.

“**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 Default**” means any breach or an Event of Default of Buyer.

“**Buyer Dispatched Test**” has the meaning in Section 4.4(c).

“**Buyer’s Indemnified Parties**” has the meaning set forth in Section 16.1(a).

“**Buyer Liability Pass Through Agreement**” means the form set forth in Exhibit L.

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

“**CAISO Balancing Authority Area**” has the meaning set forth in the CAISO Tariff.

“**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 that the Facility can provide, 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 or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“**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.

“**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 charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

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

“**Capacity Test**” or “**CT**” means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, Efficiency Rate or any other test conducted pursuant to Exhibit O.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**Change in Law**” means the enactment, adoption, promulgation, modification, suspension, repeal, or judicial determination, after the Effective Date, by any Governmental Authority of any Law, including a change in interpretation or enforcement of any existing Law.

“**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*, 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 the Energy delivered to the Facility pursuant to a Charging Notice as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff. Any instruction to charge the Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice.

“**Collateral Assignment Agreement**” has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit T.

“**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 of the same to Buyer; *provided* Commercial Operation shall occur no sooner than one hundred eighty (180) days prior to the Expected Commercial Operation Date.

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

“**Commercial Operation Date**” or “**COD**” means the date on which Commercial Operation is achieved.

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

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

“Compliance Actions” has the meaning set forth in Section 3.8(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.8.

“Compliant Project Participant” means a Project Participant that is not a Defaulted Project Participant.

“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.

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

“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 Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

“CPUC” means the California Public Utilities Commission, or any successor entity performing similar functions.

“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 Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO operating order, to curtail deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (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;

(b) a curtailment 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 ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under the Interconnection Agreement with the Transmission Provider or distribution operator.

“Cycles” means the number of equivalent charge/discharge cycles of the Facility during a specified time period, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy discharged from the Facility (expressed in MWh) divided by (b) eight (8) hours times the average Effective Capacity for such time period.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED].

“Daily Operating Report” has the meaning in Section 4.11.

“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 set forth in Section 11.3(a).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

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

“Dedicated Interconnection Capacity” means the maximum instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under the Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

“Defaulted Liability Share” means the Liability Share of a Defaulted Project Participant.

“Defaulted Project Participant” means a Project Participant that has incurred but not cured a Project Participant Payment Default, including any Project Participant whose rights under

the Project Participation Share Agreement have been suspended or terminated.

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

“**Delivery Point**” means the Interconnection Point.

“**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 the Energy delivered from the Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses.

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

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

“**Dispatch Notice**” means any Charging Notice, Discharging Notice and any subsequent updates thereto, given by the CAISO, Buyer or Buyer’s SC, to Seller, directing the Facility to charge or discharge Energy at a specific MWh rate to a specified Storage Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff.

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Capacity**” means the lesser of (a) PMAX, and (b) the Effective Capacity determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test), and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Capacity (with respect to any other Capacity Test).

“**Effective Date**” has the meaning set forth on the Preamble.

“**Effective Flexible Capacity**” or “**EFC**” has the meaning set forth in the CAISO Tariff.

“Efficiency Rate” means the rate calculated pursuant to Sections II.I(2) and III(A) of Exhibit O by dividing Discharging Energy by Charging Energy and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Efficiency Rate Adjustment” has the meaning set forth in Exhibit C.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Delivery Point and the Facility Metering Point associated with delivery of Charging Energy, and (b) between the Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

“Emission Reduction Credits” or **“ERCs”** means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

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

“Energy Level” means the actual amount of Energy (expressed in MWh) physically stored in the Facility at any moment in time. The Facility’s EMS shall provide a continuous monitoring and read out of the Energy Level.

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

“Energy Ratio” means the ratio of the Energy Level to the actual full storage capacity of the Facility, expressed as a percentage as shown on the EMS.

“Environmental Attributes” shall mean any and all attributes under the RPS regulations 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) that are attributable, now, or in the future to the Facility and its displacement of conventional energy generation, but excluding Tax Credits.

“Environmental Cost” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment,

costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

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

“Excess Cycle Discharging Energy” has the meaning set forth in Exhibit C.

“Excess Cycle Price” has the meaning set forth on the Cover Sheet.

“Excused Event” has the meaning set forth in Exhibit P.

“Expected Commercial Operation Date” means the date set forth on the Cover Sheet.

“Facility” means the energy storage 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 Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Facility Meter” means a CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), CAISO-approved 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 Facility Metering Point and the amount of Discharging Energy delivered to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

“Federal Investment Tax Credit Legislation” means validly enacted federal legislation that either (a) applies the ITC in its current form to the Facility without regard to the source of energy used to charge the Facility, or (b) extends federal Tax Credits associated with capital investment in the construction of energy storage facilities or equipment used to store energy for which Seller, as the owner of the Facility, is eligible.

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

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

“Flexible Capacity Ratio” has the meaning set forth in Section 3.5(b)(i)(B).

“**Flexible RAR**” means the flexible capacity 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.

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

“**Forced Labor**” has the meaning set forth in Section 13.4(c).

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

“**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 Environmental Attributes and Capacity Attributes.

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

“**Guaranteed Availability**” has the meaning set forth in Section 4.3(a).

“**Guaranteed Amount**” has the meaning set forth in each Project Participant’s Buyer Liability Pass Through Agreement, which amount may be different for each Project Participant given each Project Participant’s Liability Share.

“**Guaranteed Capacity**” means the Guaranteed Capacity set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“**Guaranteed Efficiency Rate**” means the minimum guaranteed Efficiency Rate of the Facility in each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“**Guaranteed Flexible Capacity**” means, at any point in time, the maximum quantity of Effective Flexible Capacity (in MWs) for which a storage facility having a storage capacity of 50

MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

“Guaranteed Net Qualifying Capacity” means, at any point in time, the maximum quantity of Net Qualifying Capacity (in MWs) for which a storage facility having a storage capacity of 50 MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy deviates from the applicable amount of Energy in a CAISO Dispatch.

“Indemnified Party” shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Indemnifying Party” shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

“Initial Liability Share” means the Liability Share of each Project Participant shown on Exhibit V as of the Effective Date.

“Initial Synchronization” means the commencement of Trial Operations (as defined in the CAISO Tariff).

“Installed Capacity” means the lesser of (a) PMAX, and (b) Installed Capacity that achieves Commercial Operation, as determined pursuant to the most recent Commercial Operation

Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, but in either case (a) or (b) up to but not in excess of the Guaranteed Capacity. It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Guaranteed Capacity; *provided*, for all purposes of this Agreement the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the Effective Capacity or (ii) charge the Facility to a level in excess of 100% Storage Level.

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

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

“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.

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

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

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

“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 January 29, 2021, 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 (a) 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 or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Liability Share” means the percentage amount set forth for each Project Participant in Exhibit V.

“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.

“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 Environmental Attributes and Capacity Attributes.

“Marketable Emission Trading Credits” means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code

Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

“Master Data File” has the meaning set forth in the CAISO Tariff.

“Material Permits” means all permits required for Seller to commence construction, as set forth on Exhibit U.

“Maximum Charging Capacity” means the highest charging rate at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q, at a specific SOC.

“Maximum Discharging Capacity” means the highest discharging rate at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q, at a specific SOC.

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

“Monthly Capacity Availability” has the meaning set forth in Exhibit P.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning in Section 4.10(a).

“Monthly RA Replacement Adjustment” has the meaning set forth in 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.

“NERC” means the North American Electric Reliability Corporation, or any successor entity performing similar functions.

“Net Qualifying Capacity” or **“NQC”** 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).

“Notification Deadline” in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

“NP-15” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

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

“Outage Schedule” has the meaning set forth in Section 4.12(a)(i).

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

“Participating Transmission Owner” or **“PTO”** means an 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 where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is San Diego Gas & Electric.

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

“Payment Demand” has the meaning set forth in Exhibit L.

“Performance Guarantees” has the meaning set forth in Section 4.3(b).

“Performance Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person (on a consolidated basis with its Affiliates) 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 or Baa3 from Moody’s; and

(b) At least one (1) year of experience in the ownership and operations of energy storage facilities similar to the Facility, or (failing such operations experience) 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 4.12(a).

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

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

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

“**Point of Change of Ownership**” has the meaning set forth in Exhibit A.

“**Portfolio**” means the single portfolio of electrical energy generating, electrical 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 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.

“**Prevailing Wage Requirement**” has the meaning set forth in Section 13.4(b).

“**Pro Rata**” means, for purposes of calculating a Project Participant’s Revised Liability Share, the ratio of (i) such Project Participant’s Initial Liability Share to (ii) the sum of the Initial Liability Shares of all of the Compliant Project Participants.

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

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

“**Project Labor Agreement**” has the meaning set forth in Section 13.4(b).

“**Project Participant**” means each Person identified in Exhibit V that shall execute a Buyer Liability Pass Through Agreement in the form set forth in Exhibit L.

“**Project Participant Approval**” means each Project Participant has obtained all necessary approvals from its board or governing authority necessary to execute a Buyer Liability Pass Through Agreement and the Project Participation Share Agreement, and that Buyer has delivered to Seller Buyer Liability Pass Through Agreements and the Project Participation Share Agreement executed by each Project Participant and countersigned by Buyer.

“**Project Participant Payment Default**” means any failure by a Project Participant to pay any material amount under the Project Participation Share Agreement as and when due (without giving effect to any extensions of time, waivers or late notices), including monthly amounts collected to fund, or to reserve funds for, payment of Buyer’s obligations under this Agreement.

“**Project Participation Share Agreement**” means that certain Goal Line Storage Project

Participation Share Agreement executed by and among Buyer and all of the Project Participants relating to their allocation among themselves of Buyer's responsibilities and liabilities under this Agreement, and any successor agreement.

"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 independent power producers within the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (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 energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and 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.

"RA Change in Law" means any Change in Law which results in a reduction of the maximum quantity of Effective Flexible Capacity or Net Qualifying Capacity that a storage capacity of 50 MW with at least eight (8) hours of continuous discharging at the maximum rate of discharge, and a minimum ramp rate of 100 MW/minute, having achieved FCDS, and performing with operational characteristics equal to or better than those required by the Guaranteed Availability and Guaranteed Efficiency Rate may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources.

"RA Compliance Showing" means the (a) System RAR compliance or advisory showings (or similar or successor showings) and (b) 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 3.5(b).

"RA Guarantee Date" means the Commercial Operation Date, which is the date by which the Facility is expected to have achieved Full Capacity Deliverability Status or Interim Deliverability Status.

"RA Penalties" means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to

reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

“RA Shortfall Month” means any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which either:

(a) the Facility has not achieved FCDS (unless the Facility has achieved Interim Deliverability Status); or

(b) the Net Qualifying Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month (other than due to Buyer’s action or inaction), or (ii) was less than the then applicable Guaranteed Net Qualifying Capacity of the Facility for such Showing Month; or

(c) the Effective Flexible Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month (other than due to Buyer’s action or inaction), or (ii) was less than the then applicable Guaranteed Flexible Capacity of the Facility for such Showing Month.

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

“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 in Section 2.4.

“Replacement RA” means Resource Adequacy Benefits, if any, (a) 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 (b) located within the CAISO Balancing Authority Area.

“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 Requirements, as those obligations are set forth in any ruling issued by a Governmental Authority, including the Resource Adequacy Rulings and shall include Flexible Capacity and 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“Revised Liability Share” means the sum of a Project Participant’s Initial Liability Share plus its Pro Rata portion of all Defaulted Liability Shares, not to exceed [REDACTED].

“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”** and **“Scheduling”** have a corollary meaning.

“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.

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

“Seller’s Indemnified Parties” has the meaning set forth in Section 16.1(b).

“Seller Initiated Test” has the meaning set forth in Section 4.4(c).

“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 zero dollars (\$0). 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 Discharging Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

“Showing Month” shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a 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 Affiliates: (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.

“State of Charge” or **“SOC”** means, at a particular time, the Storage Level in the Facility divided by the Effective Capacity multiplied by eight (8), expressed as a percentage.

“Station Use” means the Energy that is used within the Facility as defined by the retail energy provider and CAISO Tariff in accordance with applicable CPUC rules and decisions regarding such station use, except during periods in which the Facility is charging or discharging pursuant to a Charging Notice, Discharging Notice, Buyer Dispatched Test or Seller Initiated Test.

“Step-Up Event” means the forty-fifth (45th) day following the occurrence of a Project Participant Payment Default if such Project Participant Payment Default has not been cured by that date, regardless of whether or not notice was given to the Defaulted Project Participant under the Project Participation Share Agreement or otherwise or by Buyer hereunder.

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

“Subsequent Purchaser” means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

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

“Supply Plan” has the meaning set forth in the CAISO Tariff.

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

“System RAR” means the 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. “System RAR” may also be known as system area reliability, system resource adequacy, system resource adequacy procurement requirements, or system capacity requirement in other regulatory proceedings or legislative actions.

“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 any (i) federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit, including the ITC, specific to investments in renewable energy facilities and/or energy storage facilities and (ii) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (i).

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

“Termination Payment” has the meaning set forth in Section 11.3.

“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 Discharging 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 the Facility’s Energy onto the Transmission System.

“Ultimate Parent” means Onward [REDACTED].

“Unplanned Outage” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

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, including Section 2.1(b) (“**Contract Term**”); *provided*, 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) Notwithstanding anything to the contrary in this Agreement, if Project Participant Approval of this Agreement is not obtained within ninety (90) days following the Effective Date (the “**Approval Period**”), then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(c). During the Approval Period, Seller or Seller’s Affiliates may at their sole discretion actively market and negotiate to sell, transfer or assign the Facility and any Product associated with or attributable thereto, provided that neither Seller nor Seller’s Affiliates may enter into any agreement to sell, transfer or assign the Facility and any Product associated with or attributable thereto to a party other than Buyer prior to the expiration of the Approval Period.

(c) 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 three (3) years following the termination of this Agreement.

2.2 **Commercial Operation; Conditions Precedent.** Seller shall provide Notice to Buyer of the Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer’s receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller’s request for Commercial Operation. Upon Buyer’s approval of Seller’s achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(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 setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date;

(b) Seller or its Affiliates, as applicable, shall have executed the Interconnection Agreement with the Transmission Provider, which shall be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(c) Seller has provided Buyer with a copy of written notice from CAISO that the Facility has achieved Full Capacity Deliverability Status or Interim Deliverability Status, as applicable. If the Seller provides written notice that it has achieved Interim Deliverability Status, Seller shall also provide a timeline under which Full Capacity Deliverability Status is expected to be obtained and an explanation of any required transmission upgrades;

(d) A Participating Generator Agreement and a Meter Service Agreement shall have been executed by Seller or its Affiliates, as applicable, with CAISO, which shall be in full force and effect and a copy of each such agreement delivered to Buyer;

(e) Seller has obtained CAISO Certification for the Facility;

(f) The Facility has successfully completed all testing required by any requirement of Law to operate the Facility;

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

(h) Seller or its Affiliates, as applicable, shall have obtained Site Control;

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

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1; and

(k) 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 (i) 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 agrees 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 a Milestone is missed by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, 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, as such date may be extended pursuant to Exhibit B; *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 (to the extent not addressed in an earlier Remedial Action Plan) 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, or causes any of its Affiliates to comply, with the 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(s); *provided*, in the event any Milestone is missed by more than sixty (60) days and Seller cannot reasonably demonstrate a plan for achieving Commercial Operation by the Guaranteed Commercial Operation Date, as such date may, or is reasonably expected to, be extended pursuant to Exhibit B, Buyer shall have the right to terminate this Agreement pursuant to Section 11.1(a)(iii) (following notice and expiration of any applicable cure periods).

2.5 **Pre-Commercial Operation Actions.** The Parties agree that, in order for Seller to achieve the Commercial Operation Date, Seller will need to conduct operational testing of the Facility (including charging and discharging the Facility), and the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date, including, without limitation, Seller’s delivery of an Availability Notice for the Commercial Operation Date, and delivery of Charging Energy and Dispatch Notices consistent with Seller’s reasonable requests to enable Facility operational testing and nominating and scheduling the Facility, in advance of the Commercial Operation Date. The Parties shall cooperate with each other to facilitate the foregoing and to avoid delaying the Commercial Operation Date, including Buyer’s use of commercially reasonable efforts to provide Scheduling Coordinator services prior to the Commercial Operation Date for the limited purpose of aiding Seller in achieving Commercial Operation of the Facility under this Agreement.

ARTICLE 3 PURCHASE AND SALE

3.1 **Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall have the exclusive right to the Installed Capacity and Effective Capacity, as applicable, and all Product associated therewith. Seller shall operate the Facility and make available, charge and discharge, deliver, and sell the Product therefrom to Buyer when and as the Facility is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or

purchase any energy storage capacity, Energy, Ancillary Services or Capacity Attributes (except for Replacement RA) from any other energy storage resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement.

3.2 **Discharging Energy.** Seller commits to make available the Discharging Energy to Buyer during the Delivery Term, and Buyer shall have the exclusive rights to all such Discharging Energy, subject to the Operating Restrictions. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

3.3 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the Guaranteed Capacity in the CAISO generator interconnection process. 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 or Partial Capacity Deliverability Status.

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

(b) Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits, including Flexible Capacity, to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, 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.

3.4 **Ancillary Services; Environmental Attributes.**

(a) **Ancillary Services.** Buyer shall have the exclusive rights to all Ancillary Services with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Capacity. Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the 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 conducting such additional CAISO Certification.

(b) **Environmental Attributes.** Buyer shall have the exclusive rights during the Delivery Term to any Environmental Attributes existing on the Effective Date or that may come into existence during the Contract Term. Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Environmental

Attributes. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

3.5 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.5(b), and/or provide Replacement RA, as set forth in Section 3.5(c), as the exclusive 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:

(i) The greater of:

(A) the difference, expressed in kW, of the quantity of the then applicable Guaranteed Net Qualifying Capacity of the Facility, minus the then applicable Net Qualifying Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month (other than due to Buyer's action or inaction), plus any Replacement RA that was able to be included in Supply Plans for the Showing Month by Buyer; and

(B) the difference, expressed in kW, of the quantity of the then applicable Guaranteed Flexible Capacity of the Facility, minus the then applicable Effective Flexible Capacity of the Facility that may be included in Supply Plans by Buyer, which shall be deemed to be zero (0) MW if the Effective Flexible Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month (other than due to Buyer's action or inaction), plus any Effective Flexible Capacity that was provided as Replacement RA that was able to be included in Supply Plans in the Showing Month by Buyer, divided by the ratio of Guaranteed Flexible Capacity to Guaranteed Net Qualifying Capacity (the "**Flexible Capacity Ratio**");

(ii) [REDACTED]

[REDACTED]

(c) If Seller anticipates that it will have an RA Shortfall Month, Seller may provide Replacement RA in the amount of (i) the Guaranteed Net Qualifying Capacity of the Facility with respect to such Showing Month, minus (ii) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month; provided that any Replacement RA provided pursuant to this Section 3.5 is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the RA Shortfall Month.

3.6 **Buyer's Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion and at its sole cost and expense to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right at its sole cost and expense to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable administrative actions (at Buyer's cost and expense) and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 **Pre-COD Operations.** Prior to the Commercial Operation Date, and notwithstanding anything in Exhibit D or elsewhere under this Agreement, Seller shall have the right to operate the Facility and sell Products therefrom for its own account, so long as such operation does not interfere with Seller's ability to perform its obligations under this Agreement. Subject to Section 2.5, 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 Facility, and Seller shall be entitled to all revenues and other amounts paid by CAISO for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

3.8 **Compliance Expenditure Cap.** If a Change in Law (excluding any RA Change in Law) occurring after the Effective Date (1) results in or gives rise to any increase in Seller's costs, liabilities or obligations to comply with its obligations under this Agreement exceeding the cost, liabilities or obligations that Seller incurred or expected to incur as of the Effective Date to comply with Seller's obligations under this Agreement, or (2) precludes or prohibits Seller from performing any of its obligations under this Agreement, in each case of clause (1) and (2) above with respect to obtaining, maintaining, conveying or effectuating Buyer's use of any Product or any obligation under Sections 3.1 through 3.4, 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 (i) [REDACTED] per MW of Guaranteed Capacity in the aggregate over the Delivery Term ("**Compliance Expenditure**

Cap”). For the avoidance of doubt, the requirements of this Section 3.8 do not apply to any RA Change in Law that impacts RA Deficiency Amounts that Seller may owe under Section 3.5(b).

(a) Any actions required for Seller to comply with any Change(s) in Law the cost of which is included in the Compliance Expenditure Cap as set forth in the first paragraph above, shall be referred to collectively as the “**Compliance Actions**”; provided that notwithstanding anything to the contrary hereunder, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage 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.

(b) If Seller reasonably anticipates the need to incur costs and expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated costs and 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 3.8 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 notwithstanding anything to the contrary hereunder, if Buyer waives or is so deemed to have waived Seller’s obligation to take such Compliance Actions, Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions for the remainder of the Delivery Term (and there shall be no reduction in Seller’s compensation hereunder or imposition of any damages, penalties or fees hereunder as a result of Seller’s failure to take any Compliance Actions).

(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 in a commercially reasonable timeframe 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; provided that notwithstanding anything to the contrary hereunder, any such Compliance Actions implemented by Seller shall not reduce Seller’s compensation hereunder or cause Seller to incur any damages, penalty or fee hereunder, including for the avoidance of doubt, that if any Compliance Action causes the Facility to have reduced Monthly Capacity Availability, Efficiency Rate or Effective Capacity for any period of time, then such reduced availability or capacity shall be excluded for purposes of calculating Seller’s compensation hereunder.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.** 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 Discharging 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 Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Commencing as of the Commercial Operation Date, the Charging Energy and Discharging Energy will be Scheduled to the CAISO by Buyer in accordance with Exhibit D.

4.2 **Interconnection.** Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall maintain the Dedicated Interconnection Capacity for the Facility's sole use.

4.3 **Performance Guarantees.**

(a) During the Delivery Term, the Facility shall maintain a Monthly Capacity Availability during each month of no less than [REDACTED] (the "**Guaranteed Availability**"), which Monthly Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate, which Efficiency Rate shall be calculated in accordance with Exhibit O. The Guaranteed Availability and Guaranteed Efficiency Rate are collectively the "**Performance Guarantees**".

(c) Buyer's remedies for Seller's failure to achieve the Performance Guarantees are: (i) for the Guaranteed Availability, (1) the Availability Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C, and (2) the Seller Event of Default as set forth in Section 11.1(b)(iii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, the Efficiency Rate Adjustment to the Monthly Capacity Payment, as set forth in Exhibit C.

4.4 **Facility Testing.**

(a) **Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate determined pursuant to such Capacity Test shall become the new Effective 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 Facility is functioning properly and the Facility is able to respond to Dispatch Notices pursuant to Section 4.6(b).

(c) Any testing of the Facility requested by Buyer after the Commercial Operation 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 Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation), any Commercial Operation Capacity Test, any Capacity Test conducted if the Effective Capacity immediately prior to such Capacity Test [REDACTED], 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 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 a Capacity Test 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 Dispatch Notices shall be issued during any Seller Initiated Test. Dispatch Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Monthly Capacity Availability.

4.5 Testing Costs and Revenues.

(a) Buyer shall be responsible for paying for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for paying for all Energy to charge the Facility and shall be entitled to all CAISO revenues associated with a Seller Initiated Test. 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.

(b) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(c) Except as set forth in Sections 4.5(a) and (b), all other costs of any testing of the Facility shall be borne by Seller.

4.6 **Facility Operations.**

(a) Seller shall operate the Facility in accordance with Prudent Operating Practices.

(b) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the 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 Dispatch Notices (“**Alternative Dispatches**”).

(c) Seller shall maintain in accordance with Prudent Operating Practices a daily operations log for the Facility which shall include but not be limited to information on Energy charging and discharging, electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 4.6(c) shall be provided to Buyer within fifteen (15) days of Buyer’s request.

(d) Seller shall maintain in accordance with Prudent Operating Practices accurate records with respect to all Capacity Tests.

(e) Seller shall maintain in accordance with Prudent Operating Practices and make available to Buyer upon request records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and upon request permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

4.7 **Dispatch Notices.** Buyer shall have the right to dispatch the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Subject to the Operating Restrictions, each Dispatch Notice shall be effective unless and until such Dispatch Notice is modified by the CAISO, Buyer or Buyer’s SC. If Automated Dispatches are not possible for reasons beyond Buyer’s control, Alternative Dispatches may be provided pursuant to Section 4.6(b).

4.8 **Facility Unavailability to Receive Dispatch Notices.** To the extent the Facility is unable to receive or respond to Dispatch Notices either through Automated Dispatches or Alternative Dispatches during any Settlement Interval or Settlement Period, then as an exclusive remedy, the time period corresponding to such Settlement Interval or Settlement Period shall be

deemed unavailable for purposes of calculating the Monthly Capacity Availability.

4.9 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take all action necessary to deliver the Charging Energy to the Facility in order to deliver the 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 Delivery Point to the Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy during the Delivery Term. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(b) **Charging Notices.** Buyer shall have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Charging Notices to be issued; provided Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the provisions of Section 4.9(a). Each Charging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Facility during the Delivery Term other than 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 or the CAISO Tariff), or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider or any Governmental Authority. If, during the Delivery Term, Seller charges the Facility (i) to a Storage Level greater than the Storage Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.9(c), then (i) Seller shall pay to Buyer all Energy costs associated with such charging of the Facility, and (ii) Buyer shall be entitled to discharge such Energy and shall be entitled to all of the benefits (including Product) associated with such discharge.

(d) **Discharging Notices.** Buyer shall have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays) during the Delivery Term, by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Facility. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) **No Unauthorized Discharging.** Seller shall not discharge the 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 the CAISO Tariff), or in connection with a Seller Initiated Test

(including Facility maintenance or a storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider or any Governmental Authority.

(f) Unauthorized Charges and Discharges. If Seller or anyone under Seller's control charges, discharges or otherwise uses the Facility other than as permitted hereunder, or as is expressly addressed in this Section 4.9, Seller shall reimburse Buyer for all FERC, CPUC or CAISO charges or penalties 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 (following notice and applicable cure periods) 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 4.9 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. Except to the extent otherwise expressly stated herein, Buyer shall be liable for all CAISO charges, penalties and costs, including any imbalance charges and penalties, provided that during any time interval during the Delivery Term in which the Facility is capable of responding to a CAISO Dispatch, but the Facility deviates from a CAISO Dispatch solely due to (i) Seller's violation of the CAISO Tariff, (ii) Seller's breach of this Agreement or (iii) operating or performance deficiencies or defects of Seller or the Facility (except to the extent arising from a Force Majeure Event), 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 Facility as set forth in Section 4.9(c)).

(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 Facility.

(i) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Dispatch Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.9 or any Dispatch Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer (or Buyer's SC) shall have the right, but not the obligation, to provide Seller with updated Dispatch Notices during any Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(j) 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 used to serve Station Use during periods in which the Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice), (ii) Energy supplied from Charging Energy or Discharging Energy during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice or Seller Initiated Test shall not be considered Station Use, and (iii) Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and

shall take any additional measures to ensure Station Use (other than that supplied from Charging Energy or Discharging Energy as provided in clause (ii)) is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.10 **Capacity Availability Notice.**

(a) No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Available Capacity for each day of the following month in a form substantially similar to Exhibit F ("**Monthly Forecast**").

(b) During the Delivery Term, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with CAISO scheduling practices, Seller shall provide Buyer and the SC (if applicable) with an hourly schedule of the Available Capacity that the Facility is expected to have for each hour of such schedule day (the "**Availability Notice**"). Seller shall provide Availability Notices (including updated Availability Notices) using the form attached in Exhibit G, or other form as reasonably requested by Buyer, by (in order of preference) electronic mail or telephonically to Buyer personnel or its Scheduling Coordinator designated to receive such communications.

(c) Seller shall notify Buyer and the SC (if applicable) immediately with an updated Monthly Forecast and Availability Notice, as applicable, if the Available Capacity of the Facility changes or is expected to change after Buyer's receipt of a Monthly Forecast or Availability Notice. Seller shall accommodate Buyer's reasonable requests for changes in the time of delivery of Availability Notices.

4.11 **Daily Operating Report.** Upon Buyer's request, Seller shall, on each day immediately after each operating day, provide Buyer an operating report for the Facility substantially in the form attached in Exhibit S (the "**Daily Operating Report**").

4.12 **Outages**

(a) **Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's reasonable requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of applicable 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 4.12(a)(i); *provided* that 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), and Seller shall (A) reimburse Buyer for any costs, penalties or charges imposed by CAISO in connection therewith, (B) provide Buyer with Replacement RA corresponding to such time period to the extent required by the CAISO and (C) subject to Prudent Operating Practices, use commercially reasonable efforts to limit maintenance repairs performed pursuant to this Section 4.12(a)(ii) to periods reasonably acceptable to Buyer.

(b) **No Planned Outages During Summer Months.** Except as scheduled by the Parties under Section 4.12(a), during the months of June through September, Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Facility by more than [REDACTED], unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside of the months of June through September, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) **Planned Outage Timing.** To the fullest extent practical and without limiting Seller’s rights pursuant to Section 4.12(a)(ii), Seller shall schedule maintenance outages, (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) **Notice of Unplanned Outages.** Seller shall notify Buyer by telephoning Buyer’s Scheduling Coordinator no later than ten (10) minutes following Seller becoming aware of the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(e) **Inspection.** In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) **Reports of Outages.** Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

ARTICLE 5
TAXES, GOVERNMENTAL AND ENVIRONMENTAL COSTS

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.

5.3 **Environmental Costs.** Seller shall be solely responsible for all Environmental Costs, excluding, however, environmental related costs of any type arising out of or related to Charging Energy or Discharging Energy where such costs are assessed or arise at, or on the grid side of, the Delivery Point, all of which costs shall (as between Seller and Buyer) be the sole responsibility of Buyer.

ARTICLE 6
MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility.**

(a) Seller shall construct, operate, and maintain the Facility so that Buyer may dispatch the Facility within the operating parameters of the Operating Restrictions.

(b) Seller shall, as between Seller and Buyer, be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(c) Subject to Article 10 and the other provisions hereof, Seller shall promptly make all necessary repairs to the Facility, and any portion thereof, and take all actions necessary

in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

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 Discharging 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 Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements. Seller agrees that any such agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility; (iii) shall not limit Buyer's ability to charge or discharge the Facility up to the Dedicated Interconnection Capacity; (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (v) shall provide that any curtailment or restriction of Shared Facility capacity shall be allocated to all generating or energy storage facilities using the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses. Seller shall separately meter all Station Use. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Each meter shall be kept under seal, such seals to be broken only when the Facility 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 Facility 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 shall cooperate to allow both Parties to retrieve the meter reads from the CAISO market results interface - settlements (MRI-S) web 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 Facility Meter malfunction, or upon Buyer's reasonable request, Seller shall request permission from CAISO to test the Facility Meter. 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 Facility 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 Facility Meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last Facility Meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period if such adjustments are accepted by CAISO; *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 reflect (a) 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 Charging Energy and the amount of Discharging Energy, in each case as read by the Facility Meter, and the amount of Replacement RA delivered to Buyer (if any) and (ii) data showing a calculation of the Annual Excess Cycle Payment (if any), 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. Beginning on the Commercial Operation Date, 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 of Monthly Capacity Payments for Product (and any other amounts due, including, if applicable, the Annual Excess Cycle Payment) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within (30) days of Buyer's receipt of Seller's invoices; *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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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 Facility 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 thirty (30) days after Project Participant Approval of this Agreement is obtained. Seller shall maintain the Development Security in full force and effect. Subject to Section 11.10, within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the applicable amount. 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. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. 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. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form.

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):

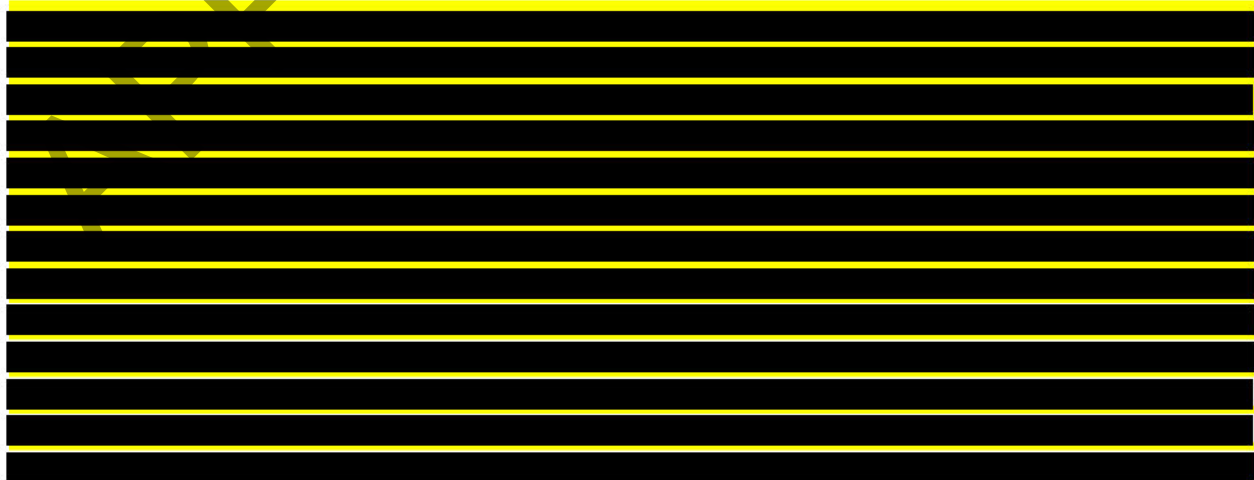
(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(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 Credit Arrangements.** To secure its obligations under this Agreement, Buyer shall deliver to Seller, within ninety (90) days after the Effective Date, Buyer Liability Pass Through Agreements from the Project Participants with Liability Shares as set forth on Exhibit V. Seller shall countersign each Buyer Liability Pass Through Agreement within ten (10) days of receipt of Buyer's delivery of each such Buyer Liability Pass Through Agreement executed by Buyer and the applicable Project Participant. Buyer shall maintain such Buyer Liability Pass Through Agreements in full force and effect until both of the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Buyer due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Buyer may propose amendments to Exhibit V, including with respect to the identity of Project Participants and the amount of each Project Participant's Liability Share. Seller shall have ten (10) Business Days to evaluate any such proposed amendments to Exhibit V in its sole but good faith discretion. If Seller approves such proposed amendments to Exhibit V, Buyer shall have thirty (30) days to provide Seller with replacement Buyer Liability Pass Through Agreements executed by Buyer and the Seller-approved Project Participants and incorporating the revised Liability Shares set forth in the amended Exhibit V. Seller shall countersign each Buyer Liability Pass Through Agreement executed by Buyer and such Seller-approved Project Participants within ten (10) Business Days after Buyer's delivery of such Buyer Liability Pass Through Agreements to Seller; *provided* that no delay in countersigning any such Buyer Liability Pass Through Agreement shall affect Seller's, Buyer's or the Project Participant's rights or obligations thereunder.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Following the occurrence of a Step-Up Event, Seller and Buyer will amend Exhibit V to set forth the Revised Liability Shares of the remaining Project Participants.

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); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; any Change in Law that renders 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 any Change 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order, except to the extent such Curtailment Order 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; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under this Agreement; or (ix) 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 or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall

not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

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) promptly 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) promptly 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.** 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(c), 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), 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:

■ [REDACTED]

■ [REDACTED]

■

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

APPROPRIATE

[REDACTED]

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*, 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 by Seller Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date with Seller as the Defaulting Party, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) [REDACTED]

[REDACTED]

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.

[REDACTED]

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other express remedy or measure of damages are provided herein 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 **Pass Through of Buyer Liability.** Notwithstanding any other provision of this Agreement, if Buyer fails 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, Seller may, without waiving any of its rights with respect to Buyer except as expressly provided herein, pursue remedies under any or all of the Buyer Liability Pass Through Agreements as provided therein. Seller hereby waives the right to recover directly from Buyer any Damage Payment or Termination Payment owed by Buyer that is not paid by Buyer pursuant to Sections 11.3 and 11.4, but the foregoing waiver does not apply to any other right or remedy of Seller under this Agreement, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under this Agreement or any other amounts incurred or accrued prior to termination of this Agreement, and the right to terminate the ESSA as the result of an Event of Default by Buyer.

11.10 **Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of

this Agreement, Seller's aggregate liability under or arising out of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to [REDACTED]

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.

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. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 3.5, 4.3, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, 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; COVENANTS

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware 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) Any and all permits and approvals necessary for the construction and operation of the Facility shall be obtained and maintained as and when needed by Seller or its Affiliates, as applicable, including without limitation, environmental clearance under CEQA or

other environmental law, as applicable, from the local jurisdiction where the Facility is or will be constructed.

(f) Site Control shall be maintained by Seller or its Affiliates, as applicable, throughout the Delivery Term.

(g) Neither Seller nor its Affiliates have received notice from, or been advised by, any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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, 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 is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

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 or its Affiliates, as applicable, 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 **Seller’s Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) **Compliance with Laws.** 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 those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees. Seller shall not discriminate against any employee or applicant for employment on the basis of the fact or perception of that person’s race, color, religion, ancestry, national origin, age, sex (including pregnancy, childbirth or related medical conditions), legally protected medical condition, family care status, veteran status, sexual orientation, gender identity, transgender status, domestic partner status, marital status, physical or mental disability, or AIDS/HIV status.

(b) **Workforce Development.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws. Although the Facility is not a public work as defined by California Labor Code section 1720, any construction work contracted by Seller in furtherance of this Agreement shall (i) comply with California prevailing wage provisions applicable to public works projects, including but not limited to those set forth in California Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6, as they may be amended from time to time (“**Prevailing Wage Requirement**”); and (ii) 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 (“**Project Labor Agreement**”). Seller shall use best efforts to include the following language in any Project Labor Agreement: “Union members agree not to

make any written or verbal statements about CC Power or its members that are disparaging, untrue or inaccurate.”

(c) **Prohibition Against Forced Labor.** Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any Person under the threat of a penalty and for which the Person has not offered himself or herself voluntarily (“**Forced Labor**”). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may 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. The assigning Party shall pay the other Party’s reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, 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 without the consent of Buyer. 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**”), which shall be substantially in the form of Exhibit T and shall include any revisions and comments reasonably required by the Lender and reasonably acceptable to Buyer. Seller shall pay Buyer’s reasonable expenses, including attorneys’ fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller’s financing of the Facility. Buyer shall have no obligation to agree to any revisions by the Lender to the Collateral Assignment Agreement that materially and adversely affect any of Buyer’s rights, benefits, risks or obligations under this Agreement.

14.3 **Permitted Assignment.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to:

- (i) an Affiliate of Seller; or
- (ii) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if (A) such Person is a Permitted

Transferee; (B) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and (C) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests pursuant to this Section 14.3(a)(ii) 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.

Notwithstanding the foregoing, 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.

(b) Buyer may, without the prior written consent of Seller, transfer or assign this Agreement to any Project Participant that (A) has, and has continued to maintain for at least one hundred eighty (180) consecutive days, a Credit Rating of at least BBB-(stable) from S&P or Baa3 from Moody's, (B) is a load serving entity, (C) has no pending or threatened actions, suits, proceedings or claims against Seller or Seller's Affiliates and (D) is not a competitor to Seller and poses no material business, legal or ethical conflict to Seller; *provided*, Buyer shall give Seller Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller a written agreement, in a form acceptable to Seller, signed by the Person to which Buyer wishes to assign its interests that provides that such Person will assume all of Buyer's obligations and liabilities under this Agreement upon such transfer or assignment. Notwithstanding the foregoing, any assignment by Buyer, its successors or assigns under this Section 14.3(b) shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **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. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the State of California in a location to be mutually chosen by Buyer and Seller, or in the absence of mutual agreement, the County of San Francisco.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

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) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any laws in constructing or operating the Facility, (ii) negligent or tortious acts, errors, or omissions by Seller or its Affiliates, or (iii) intentional acts or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

(b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Seller's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) a violation of applicable Laws by Buyer or its Affiliates, (ii) negligent or tortious acts, errors, or omissions by Buyer or its Affiliates, or (iii) intentional acts or willful misconduct by Buyer or its Affiliates, directors, officers, employees, or agents.

(c) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.

(d) 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 solely from its own 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 an 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*, 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, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall include Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] 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 statutory amounts, with employer's liability limits of not less than [REDACTED] for each accident, injury, or illness; and include a blanket waiver of subrogation.

(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 [REDACTED] 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 and shall include Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Insurance in the amount of [REDACTED] per occurrence and in the aggregate, including Seller (and Lender, if any) as additional insureds.

(f) Umbrella Liability Insurance. Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of [REDACTED] per occurrence and in the aggregate. Such insurance shall be in excess of the General Liability, Employer's Liability, and Business Auto Insurance coverages. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(g) 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.

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits with deductibles and sublimits in accordance with industry standards. Such insurance shall include business interruption coverage in an amount equal to [REDACTED] of expected revenue from this Agreement.

(i) 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 [REDACTED]; (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 [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (i)(i) and (i)(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(i).

(j) 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 with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are reasonably satisfactory to Buyer, in form evidencing all coverages set forth above. 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 provide a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(k) **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 members, employees, actual or prospective lenders or investors, counsel, accountants, contractors, vendors, 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 shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 and 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 or 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 an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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. Except as set forth in Section 11.9 and any Buyer Liability Pass Through Agreements issued by one or more Project Participants pursuant to Section 8.10, Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and 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 officers, directors, advisors, contractors, consultants or employees 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 a change in the CAISO Tariff (excluding any Change in Law governed by Section 3.8) renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of

such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, 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]

APPROVAL DRAFT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

GOAL LINE BESS 1, LLC

By: _____
Name: _____
Title: _____

CALIFORNIA COMMUNITY POWER,
a California joint powers authority

By: _____
Name: _____
Title: _____

APPROVAL DRAFT

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Goal Line BESS

Site includes all or some of the following APNs: [REDACTED]

City: Escondido

County: CA

Zip Code: 92025

Latitude and Longitude: GPS: [REDACTED]
[REDACTED]

Facility Description: Grid connected 50 MW/400 MWh battery energy storage facility as depicted in preliminary Site diagrams on the following pages.

Interconnection Point: See Note 1 below.

Point of Change of Ownership: See Note 1 below.

Facility Meter: See Note 1 below.

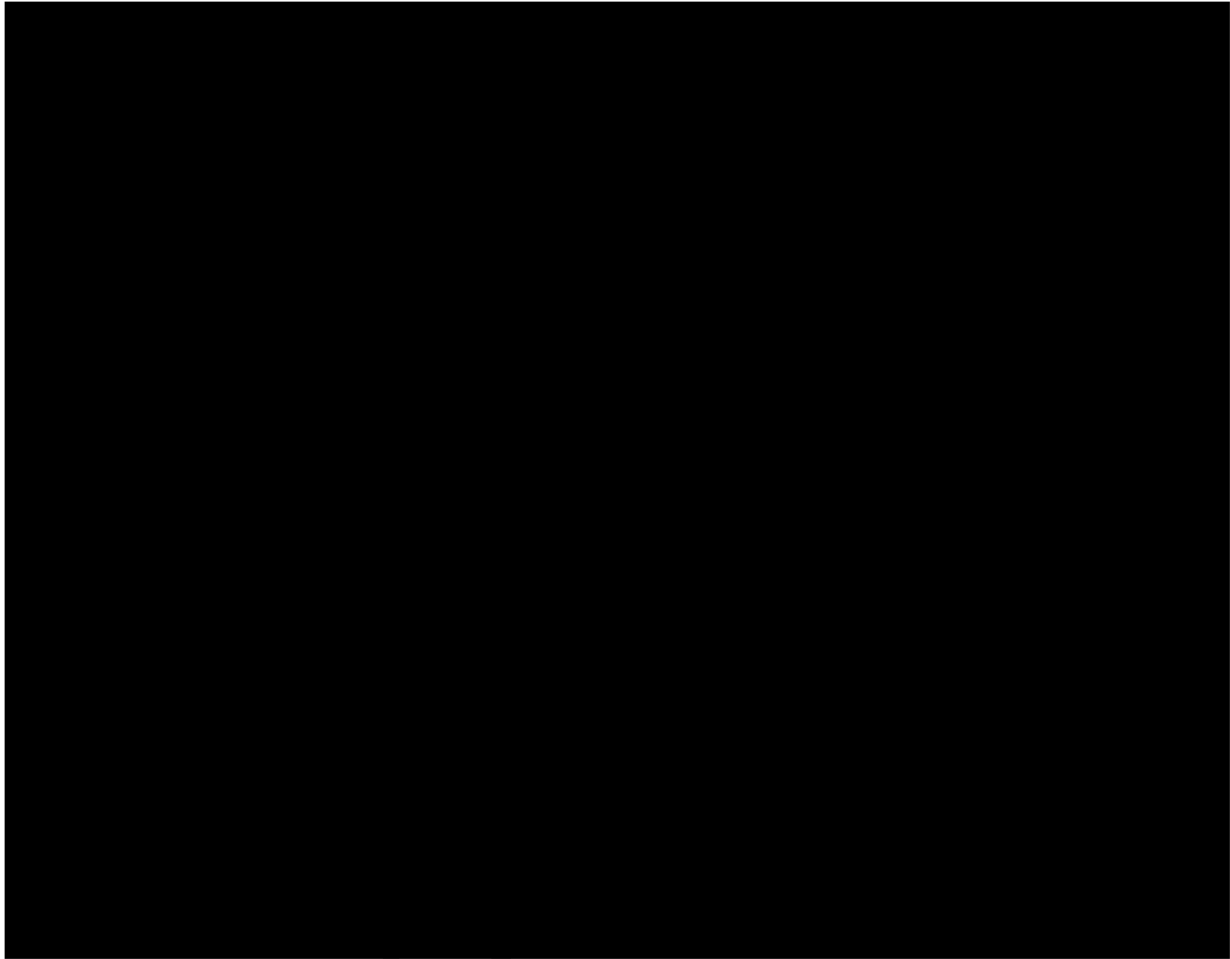
Facility Metering Points: See Note 1 below.

PNode: See Note 1 below.

Transmission Provider: San Diego Gas & Electric

Additional Information: none

Note 1: The Interconnection Point, Point of Change of Ownership, Facility Meter, Facility Metering Points, and PNode will be defined by Seller by written notice to Buyer following the execution of the Interconnection Agreement.



APPRO

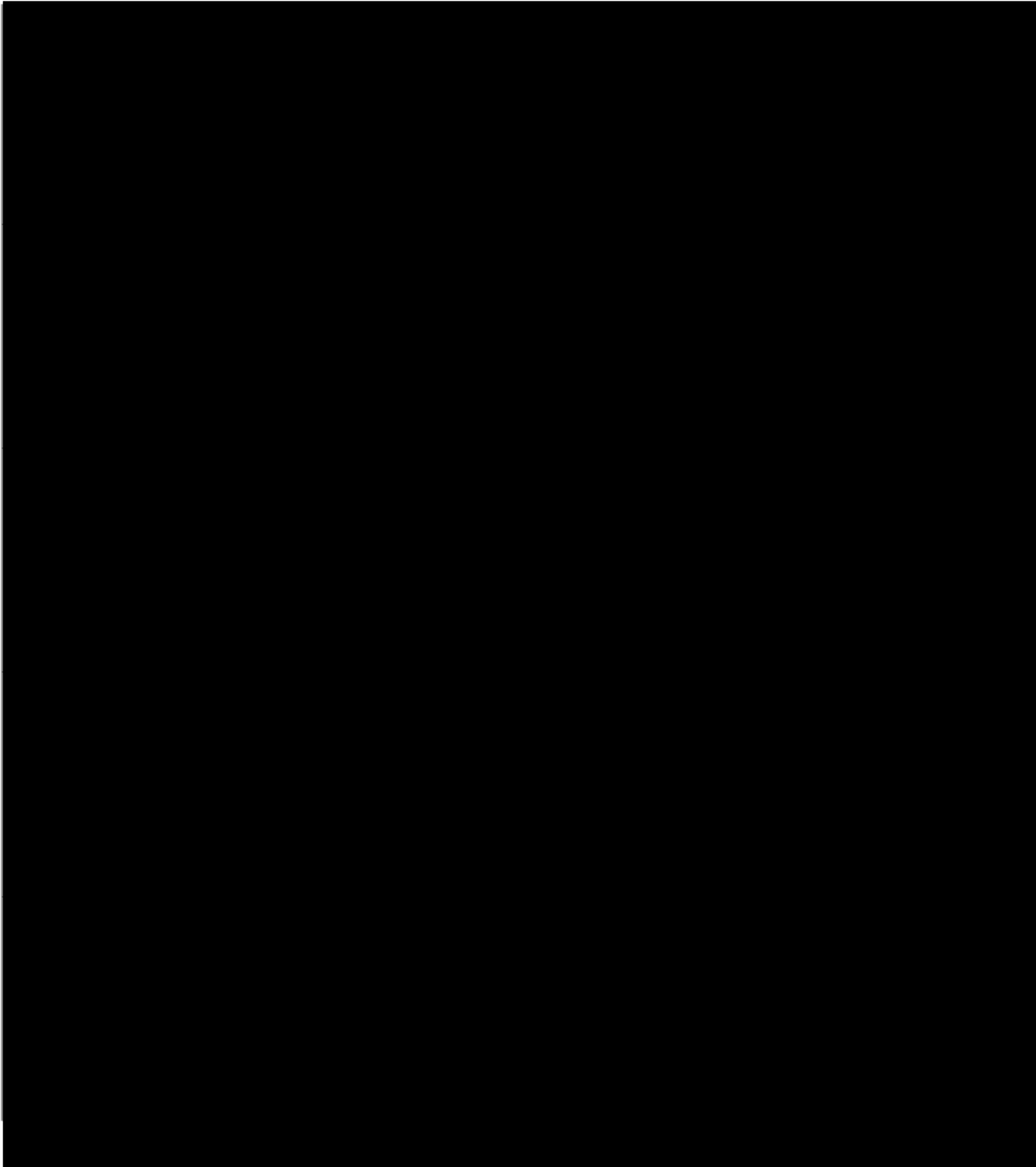


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. “**Construction Start**” will occur upon (i) acquisition by Seller or its Affiliate, as applicable, of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) the execution by Seller or its Affiliate, as applicable, of any engineering, procurement, or construction contract (or similar contract) with respect to the Facility and issuance of a notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto that authorizes the contractor to mobilize to Site and begin physical construction at the Site, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of a material duration. 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**.” Construction Start shall 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 [REDACTED] 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 may 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 Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

2. Commercial Operation of the Facility.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed 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 [REDACTED] 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 may 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. 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.** Independent of Seller's extension rights under Sections 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, both 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. neither Seller nor its Affiliate, as applicable, has acquired the Material Permits by the Guaranteed Construction Start Date despite the exercise of diligent and commercially reasonable efforts by Seller or its Affiliates, as applicable; or
 - b. a Force Majeure Event occurs; or
 - c. 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 original expected Initial Synchronization date as set forth in the Cover Sheet, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Discharging 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(d) above) shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and 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(d) above) shall not exceed [REDACTED]. 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 Capacity.** If, at Commercial Operation, the Installed Capacity [REDACTED], Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than (without limiting Seller's right to overbuild the Facility in accordance with the definition of "Installed Capacity")) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Daily Delay Damages, Commercial Operation 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

(a) Monthly Compensation. Each 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 sum of (x) Contract Price x Effective Capacity x Availability Adjustment x Efficiency Rate Adjustment and (y) Monthly RA Replacement Adjustment. If Buyer dispatches the Facility for more than [REDACTED] Cycles during a Contract Year, Buyer shall pay Seller the Annual Excess Cycle Payment calculated for such Contract Year in accordance with clause (e) below, which shall be included in Seller's invoice to Buyer following the end of such Contract Year in accordance with Section 8.1. All of such foregoing Monthly Capacity Payments and Annual Excess Cycle Payments constitute the entirety of the amount due to Seller from Buyer for the Product. If the Effective Capacity and/or Efficiency Rate are adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Capacity and/or Efficiency Rate are applicable.

(b) Availability Adjustment. The "Availability Adjustment" (or "AA") is calculated as follows:

[REDACTED]

(c) Efficiency Rate Adjustment. The "Efficiency Rate Adjustment" is calculated as follows:

[REDACTED]

[REDACTED]

(d) Monthly RA Replacement Adjustment. The “**Monthly RA Replacement Adjustment**” is calculated as follows: [REDACTED]

[REDACTED]

[REDACTED]

(e) Annual Excess Cycle Payment. The “**Annual Excess Cycle Payment**” is calculated as follows: [REDACTED]

[REDACTED]

(f) Tax Credits. Seller shall take commercially reasonable efforts to evaluate and determine whether to pursue Tax Credits available to Seller under any Federal Investment Tax Credit Legislation that is enacted after the Effective Date and prior to Commercial Operation Date [REDACTED]

[REDACTED]

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Subject to Section 2.5 with respect to pre-Commercial Operations, beginning on the Commercial Operation Date, 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 (as applicable) of Charging Energy, Discharging Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date, (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 Commercial Operation Date, 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 Commercial Operation Date. Buyer (or Buyer's SC) shall submit an NQC request to CAISO in relation to the Facility as early as is reasonably possible. Seller shall submit an NQC request to CAISO in relation to the Facility for purposes of inclusion on the annual RA plan as early as is reasonably possible. On and after the Commercial Operation Date, 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's SC (which may be Buyer) shall submit Schedules 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.

(b) Notices. Beginning on the Commercial Operation Date, Buyer's SC (which may be Buyer) 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 shall 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. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Beginning on the Commercial Operation Date, except as otherwise set forth in this part (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy, penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including Discharging Energy, credits, Imbalance Energy and Charging 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 Delivery Point; *provided, however,* Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i)

incurred by Buyer because of Seller's default, breach or other failure to perform as required by this Agreement, (ii) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) 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), or (iii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. 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, except to the extent any Non-Availability Charges arise from Scheduling Coordinator's violation of the CAISO Tariff. 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.

(d) CAISO Settlements. Beginning on the Commercial Operation Date, 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 shall 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 in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Beginning on the Commercial Operation Date, 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.

(f) 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.

(g) 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.

(h) NERC Reliability Standards. Beginning on the Commercial Operation Date, 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 any applicable NERC reliability standards. This cooperation shall include the provision of information in Buyer's or its designated SC's possession, as applicable, 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 applicable NERC reliability standards.

APPROVAL DRAFT

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 (including Material 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. If Network Upgrades are required by CAISO, a list of any such Network Upgrades and a status report of progress toward completion of such Network Upgrades as and when known by Seller; or if Network Upgrades are not required by CAISO, a notice of such outcome.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF MONTHLY EXPECTED AVAILABLE CAPACITY REPORT

[Available Capacity, MW Per Hour] – [Insert Month]

	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	
Day 1																									
Day 2																									
Day 3																									
Day 4																									
Day 5																									
[insert additional rows for each day in the month]																									
Day 29																									
Day 30																									
Day 31																									

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 G

FORM OF DAILY AVAILABILITY NOTICE

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity			Comments
	(MW)			
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				
0:00				

Comments: _____

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. The Facility has met all Interconnection Agreement requirements and is capable of receiving Charging Energy from, and delivering Discharging Energy to, the CAISO Balancing Authority.
3. The commissioning of the equipment has been completed in accordance with the applicable material requirements of the manufacturers’ specifications.
4. The Facility’s Installed Capacity is no less than _____ of the Guaranteed Capacity and the Facility is capable of charging, storing and discharging Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
6. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____ [DATE]_____.
7. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.
8. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its: _____

Date: _____

APPROVAL DRAFT

EXHIBIT I

FORM OF CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification (“**Certification**”) of Capacity and Efficiency Rate Test results is delivered by [licensed professional engineer] (“**Engineer**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service Agreement dated _____ (“**Agreement**”) by and between [SELLER ENTITY] 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 that a Capacity and Efficiency Rate Test conducted on [Date] demonstrated (i) an [Installed or Effective] Capacity of __ MW AC to the Delivery Point at eight (8) hours of continuous discharge, and (ii) an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Section 4.4 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

APPROVAL DRAFT

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to California Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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 _____.

[SELLER ENTITY]

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\$[XXXXXXXX]

Beneficiary:

California Community Power,
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 California Community Power, 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) (the “Available Amount”), pursuant to that certain Energy Storage [Service] Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in San Francisco, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed

documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the 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; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then current Expiration Date. 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.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: California Community Power, a California joint powers authority, [Title], [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]

APPROVAL DRAFT

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 California Community Power, [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 Energy Storage Service Agreement dated as of _____, 20__ (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) 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 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 [] 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 [] by wire transfer in immediately available funds to the following account:

[Specify account information]

[]

Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF BUYER LIABILITY PASS THROUGH AGREEMENT

This Buyer Liability Pass Through Agreement (this “**BLPTA**”) is entered into as of [____], 20__ (the “**BLPTA Effective Date**”) by and between [____], a [____] (together with its successors and permitted assigns “**Project Participant**”), California Community Power, a California joint powers authority (“**CC Power**”), and [____], a [____] (together with its successors and permitted assigns “**Seller**”). Seller, CC Power, and Project Participant are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

WHEREAS, CC Power and Seller have entered into that certain Energy Storage Service Agreement (as amended, restated or otherwise modified from time to time, the “**ESSA**”) dated as of [____], 20__;

WHEREAS, Project Participant is entering into this BLPTA to secure, in part, California Community Power’s obligations under the ESSA;

WHEREAS, Project Participant is named as a Project Participant under the ESSA and will derive substantial direct and indirect benefits from the execution and delivery of the ESSA;

WHEREAS, Seller and CC Power will derive substantial and direct benefits from the execution and delivery of this BLPTA; and

WHEREAS, initially capitalized terms used but not defined herein have the meaning set forth in the ESSA.

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:

AGREEMENT

1. Project Participant Covenants. For value received, Project Participant does hereby unconditionally, absolutely, and irrevocably guarantee, as obligor and not as a surety, to Seller the complete and prompt payment of [X%] (the “**Liability Share**”), as the same may be adjusted pursuant to Section 4, [*Note: Insert percentage from Exhibit V*] of all obligations and liabilities for payment now or hereafter owing from CC Power to Seller under the ESSA, including liabilities for Monthly Capacity Payments, the Damage Payment or Termination Payment, as applicable, and any other damage payments or reimbursement amounts (each such obligation or liability of CC Power under the ESSA, a “**Guaranteed Amount**”). Any payment made directly from CC Power to Seller under the ESSA shall reduce Project Participant’s liability hereunder by reducing the total amount that is used to calculate the Guaranteed Amount pursuant to the preceding sentence. This BLPTA is an irrevocable, absolute, unconditional, and continuing guarantee of the punctual payment and performance, and not of collection, of Project Participant’s

Liability Share of the Guaranteed Amount. In the event CC Power shall fail to duly, completely, or punctually pay any amount owed by Buyer pursuant to the terms and conditions of the ESSA, and such failure is not remedied within ten (10) Business Days after Notice thereof pursuant to Sections 11.1 or 11.4, as applicable, Project Participant shall promptly pay Project Participant's Liability Share of the Guaranteed Amount, as required herein.

2. **Seller Waiver.** In consideration of the foregoing, Seller unconditionally waives all right to recover directly from CC Power any Damage Payment or Termination Payment that is not paid by CC Power pursuant to Sections 11.3 and 11.4 of the ESSA, but the foregoing waiver does not apply to any other right or remedy of Seller under the ESSA, including the right to recover accrued Monthly Capacity Payments, other amounts payable or reimbursable under the ESSA or any other amounts incurred or accrued prior to termination of the ESSA and the right to terminate the ESSA as the result of an Event of Default by Buyer.

3. **Demand Notice.** For avoidance of doubt, Seller may demand payment from Project Participant for purposes of this BLPTA only when and if a payment is not duly, completely, or punctually paid by CC Power pursuant to the terms and conditions of the ESSA and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof is issued pursuant to Sections 11.1 or 11.4, as applicable. If CC Power fails to pay any amount when due pursuant to the ESSA, and such failure is not remedied by CC Power within ten (10) Business Days after Notice thereof, then Seller may exercise its rights under this BLPTA and make a payment demand upon Project Participant to pay Project Participant's Liability Share of the unpaid Guaranteed Amount (a "**Payment Demand**"). A Payment Demand shall be in writing and shall reasonably specify (a) in what manner and what amount CC Power has failed to pay, (b) an explanation of why such payment is due and owing, (c) a calculation of the Guaranteed Amount due from Project Participant, and (d) a specific statement that Seller is requesting that Project Participant pay its Guaranteed Liability Share of the unpaid Guaranteed Amount under this BLPTA. Project Participant shall, within fifteen (15) Business Days following its receipt of the Payment Demand, pay to Seller Project Participant's Liability Share of the unpaid Guaranteed Amount.

4. **Step-Up Events.** Within thirty (30) days after the occurrence of a Step-Up Event, Project Participant and CC Power will tender to Seller a duly executed and binding replacement Buyer Liability Pass Through Agreement in the same form as this Agreement, but for a Liability Share equal to the Project Participant's Revised Liability Share. Upon receipt of such executed replacement Buyer Liability Pass Through Agreement, Seller will cancel this Buyer Liability Pass Through Agreement, effective upon the effectiveness of the replacement Buyer Liability Pass Through Agreement. For the avoidance of doubt, the cancellation of an existing Buyer Liability Pass Through Agreement shall not be effective unless and until the replacement Buyer Liability Pass Through Agreement has become effective and binding. Following delivery of such replacement Buyer Liability Pass Through Agreement and cancellation of this Buyer Liability Pass Through Agreement, Exhibit V to the ESSA will be deemed amended to reflect the Project Participant's Revised Liability Share; [REDACTED]

5. **Scope and Duration of BLPTA.** The obligations under this BLPTA are independent of the obligations of CC Power under the ESSA, and an action may be brought to

enforce this BLPTA whether or not action is brought against CC Power under the ESSA. This BLPTA shall continue in full force and effect from the BLPTA Effective Date until both of the following have occurred: (a) the Delivery Term of the ESSA has expired or terminated early, and (b) either (i) all payment obligations of CC Power due and payable under the ESSA are paid in full (whether directly or indirectly such as through set-off or netting) or (ii) Project Participant has paid the maximum Guaranteed Amount (i.e. based on its maximum Revised Liability Share as provided in Section 4) in full. This BLPTA shall also continue to be effective or be reinstated, as the case may be, if at any time any payment of any Guaranteed Amount by CC Power is rescinded or must otherwise be returned by Seller upon the insolvency, bankruptcy or reorganization of CC Power or similar proceeding, all as though such payment had not been made, and Project Participant's Liability Share of such Guaranteed Amount shall be subject to payment following a Payment Demand issued pursuant to this BLPTA. Without limiting the generality of the foregoing, and to the extent that the Project Participant has not paid its maximum Guaranteed Amount in full, the obligations of the Project Participant hereunder shall not be released, discharged, or otherwise affected, and this BLPTA shall not be invalidated or impaired or otherwise affected for the following reasons:

- A. The extension of time for the payment of any Guaranteed Amount; or
- B. Any amendment, modification or other alteration of the ESSA; or
- C. Any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount; or
- D. Any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting CC Power, including but not limited to any rejection or other discharge of CC Power's obligations under the ESSA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding; or
- E. Any reorganization of CC Power or Project Participant, or any merger or consolidation of CC Power or Project Participant into or with any other Person; or
- F. The receipt, release, modification or waiver of, or failure to pursue or seek relief under or with respect to, any other BLPTA, guaranty, collateral, pledge or security device whatsoever; or
- G. CC Power's inability to pay any Guaranteed Amount or perform its obligations under the ESSA; or
- H. Any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction; *provided* that Project Participant reserves the right to assert for itself any defenses, setoffs or counterclaims that CC Power is or may be entitled to assert against Seller, including with respect to disputes regarding the calculation of a Guaranteed Amount.

6. Waivers by Project Participant. Project Participant hereby unconditionally

waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraphs 2 and 3, (a) notice of acceptance, presentment or protest, notice of any of the events described in Paragraph 5, or any other notice or demand of any kind with respect to the Guaranteed Amounts and this BLPTA, (b) any requirement that Seller pursue or exhaust any right, power or remedy or proceed against California Community Power under the ESSA or against any other Person, including any obligation to pursue any other BLPTAs, or to marshal assets, (c) any defense based on any of the matters described in Paragraph 4, (d) all rights of subrogation or other rights to pursue CC Power for payments made under this BLPTA until all amounts owing under the ESSA have been paid in full, and (e) any duty of Seller to disclose any information or other matters relating to the business, operations or finances or other condition of CC Power or any other Person who has provided a BLPTA or other security or guaranty with respect to the ESSA now or hereafter known to Seller. Project Participant further acknowledges and agrees that it is and will be bound by actions taken and elections made by CC Power under the ESSA and waives any defense based on CC Power's authority or lack thereof or the validity, regularity or advisability of the actions taken or elections made.

7. Project Participant Representations and Warranties. Project Participant hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Project Participant's organizational documents, any applicable Law or any contractual provisions binding on or affecting Project Participant, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Project Participant, threatened, against or affecting Project Participant or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Project Participant to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of the Project Participant), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Project Participant.

8. Seller Representations and Warranties. Seller hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene Seller's organizational documents, any applicable Law or any contractual provisions binding on or affecting Seller, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Seller, threatened, against or affecting Seller or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Seller to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no

consent of any other Person (including, any stockholder or creditor of the Seller), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by Seller.

9. California Community Power Representations and Warranties. California Community Power hereby represents and warrants that (a) it has all necessary and appropriate powers and authority and the legal right to execute and deliver, and perform its obligations under, this BLPTA, (b) this BLPTA constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this BLPTA does not and will not contravene California Community Power's organizational documents, any applicable Law or any contractual provisions binding on or affecting California Community Power, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the California Community Power, threatened, against or affecting California Community Power or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of California Community Power to enter into or perform its obligations under this BLPTA, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any member of California Community Power), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this BLPTA by California Community Power.

10. Notices. Notices under this BLPTA shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four (4) Business Days after mailing if sent by certified, first-class mail, return receipt requested. Any Party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Seller, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to Project Participant, to it at:

[____]
Attn: [____]
Fax: [____]

If delivered to CC Power, to it at:

[____]
Attn: [____]
Fax: [____]

11. Governing Law and Forum Selection. This BLPTA shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of

California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this BLPTA shall be brought in the federal courts of the United States or the courts of the State of California sitting in the county of [_____].

12. Miscellaneous. This BLPTA shall be binding upon the Parties and their respective successors and assigns and shall inure to the benefit of the Parties and their successors and permitted assigns. No provision of this BLPTA may be amended or waived except by a written instrument executed by Seller, CC Power, and Project Participant. No provision of this BLPTA confers, nor is any provision intended to confer, upon any third party (other than the Parties' successors and permitted assigns) any benefit or right enforceable at the option of that third party. This BLPTA embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this BLPTA is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the Parties hereto, and (ii) such determination shall not affect any other provision of this BLPTA and all other provisions shall remain in full force and effect. This BLPTA may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This BLPTA may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

13. Assignment. Except as provided below in this Paragraph 12, no Party may assign this BLPTA or its rights or obligations under this BLPTA, without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Project Participant and CC Power, transfer or assign this BLPTA to any Person to whom Seller may assign its rights or obligations under the ESSA, including assignments for financing purposes, including a Portfolio Financing; *provided*, Seller shall give Project Participant and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and, except in the case of a collateral assignment or other assignment for financing purposes, provide Project Participant and CC Power a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will fully assume all of Seller's obligations and liabilities under this BLPTA, including obligations and liabilities that arose prior to the date of transfer or assignment, upon such transfer or assignment. Project Participant may, without the prior written consent of Seller and CC Power, transfer or assign this BLPTA to any member of CC Power that (A) has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's, and (B) is a load serving entity; *provided*, Project Participant shall give Seller and CC Power Notice at least fifteen (15) Business Days before the date of such proposed assignment and provide to Seller and CC Power a written agreement signed by the Person to which Project Participant wishes to assign its interests that provides that such Person will fully assume all of Project Participant's obligations and liabilities, including obligations and liabilities that arose prior to the date of transfer or assignment, under this BLPTA upon such transfer or assignment.

14. No Recourse to Members of Project Participant. Project Participant 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. Project Participant shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA. Seller and CC Power shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Project Participant's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

15. Financing Cooperation. Project Participant agrees to provide reasonable cooperation to any Lender, including entering into a customary acknowledgment and consent to assignment and related documents and agreements as are reasonably necessary for obtaining and maintaining financing for the Project typical in non-recourse financing of power projects similar to the Project; *provided*, Project Participant shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Project Participant and all reasonable attorney's fees incurred by Project Participant in connection therewith shall be borne by Seller. Project Participant also agrees (i) to respond promptly to reasonable requests for information from any Lender, including financial statements for Project Participant (subject to a reasonably appropriate confidentiality agreement) and (ii) to deliver usual and customary legal opinions of counsel to Project Participant (regarding due authorization, enforceability and such other matters relating to such consent and this BLPTA as reasonably requested) and related certifications (including certificates of good standing and applicable authorizations for execution and delivery of the applicable agreements).

16. No Recourse to Members of CC Power. CC Power 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. Except as expressly set forth in the ESSA and this BLPTA, CC Power shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this BLPTA, and as such, Seller and Project Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CC Power's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Project Participant or its constituent members, in connection with this BLPTA.

17. CleanPowerSF as Project Participant. Paragraph 14 shall not apply if CleanPowerSF is the Project Participant, but the following shall apply:

a. **Designated Fund.** CleanPowerSF payment obligations under this BLPTA are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF's payment obligations under this BLPTA are not a charge upon the revenues or general fund of the San Francisco Public Utility Commission ("**SFPUC**") or the City and County of San Francisco or upon any non- CleanPowerSF moneys or other property of the SFPUC or the City and County of San Francisco.

b. **Controller Certification.** CleanPowerSF's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to

reimburse Seller for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

c. Biennial Budget Process. For each City and County of San Francisco biennial budget cycle during the term of this BLPTA, CleanPowerSF agrees to take all necessary action to include the maximum amount of its annual payment obligations under this BLPTA in its budget submitted to the City and County of San Francisco's Board of Supervisors for each year of that budget cycle.

d. Compliance with Laws. Each Party shall keep itself fully informed of all applicable federal, state, and local laws in any manner affecting the performance of its obligations under this BLPTA, and must at all times materially comply with such applicable laws as they may be amended from time to time.

e. Prohibition on Political Activity with City Funds. In performing any services required under this BLPTA, Seller shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this BLPTA from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco.

f. Non-discrimination in Contracts. Seller shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

g. Non-discrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Seller does not as of the date of this BLPTA, and will not during the term of this BLPTA, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

h. Submitting False Claims. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (1) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (2) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (3) conspires to defraud the City by getting a false claim allowed or paid by the City; (4) knowingly makes, uses, or causes to be made or used

a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (5) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

i. Consideration of Salary History. Seller shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or “Pay Parity Act.” Seller is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this BLPTA or in furtherance of this BLPTA, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property.

j. Consideration of Criminal History in Hiring and Employment Decisions. Seller agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The requirements of Chapter 12T shall only apply to Seller’s operations to the extent those operations are in furtherance of the performance of this BLPTA, shall apply only to applicants and employees who would be or are performing work in furtherance of this BLPTA, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

k. Conflict of Interest. By executing this BLPTA, Seller certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this BLPTA.

l. Campaign Contributions. By executing this BLPTA, Seller acknowledges its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Seller’s board of directors; Seller’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the bid or contract; and any committee that is sponsored or

controlled by Seller. Seller shall inform the relevant persons of the limitation on contributions imposed by Section 1.126.

m. MacBride Principles – Northern Ireland. Pursuant to San Francisco Administrative Code § 12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride principles.

n. Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Seller shall not provide any items to the City in performance of this BLPTA which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Seller to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

o. Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(n) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(d) through 17(n) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

18. City of San José (San José Clean Energy) as Project Participant. Paragraph 14 shall not apply if the City of San José, as administrator of San José Clean Energy ("**SJCE**") is the Project Participant, but the following shall apply:

a) Designated Fund. The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; *provided, however*, that the City of San José has created and set aside a designated fund (being the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et. seq.*) ("**Designated Fund**") for payment of its obligations under this BLPTA. Subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the SJCE's obligations, SJCE agrees to establish rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this BLPTA.

b) Limited Obligations. SJCE's payment obligations under this BLPTA are special limited obligations of the SJCE payable solely from the Designated Fund and are not a

charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

c) Nondiscrimination/Non-Preference. In performing its obligations under this BLPTA, Seller shall not, and shall not cause or allow its subcontractors to, discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability; (ii) the City's Compliance Officer may require Seller to file, and cause any Seller's subcontractor to file, reports demonstrating compliance with this section. Any such reports shall be filed in the form and at such times as the City's Compliance Officer designates. They shall contain such information, data and/or records as the City's Compliance Officer determines is needed to show compliance with this provision.

d) Conflict of Interest. Seller represents that it is familiar with the local and state conflict of interest laws and agrees to comply with those laws in performing this BLPTA. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all conflicts of interest or appearances of conflicts of interest in performing this BLPTA. Seller has the obligation of determining if the manner in which it performs any part of this BLPTA results in a conflict of interest or an appearance of a conflict of interest and shall immediately notify SJCE in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest. Seller's violation of this subsection (ii) is a material breach.

e) Environmentally Preferable Procurement Policy. Seller shall perform its obligations under this BLPTA in conformance with San José City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and San José City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy," as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this 13.1(g) be a material breach of this BLPTA or otherwise give rise to an Event of Default or entitle SJCE to terminate this BLPTA.

f) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller's violation of this subsection (iv) is a material breach.

g) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate

Chapter 12.10.

h) Effect on Payment Obligations. The Parties agree that, although breach of an obligation set forth in Sections 17(d) through 17(g) may result in Seller incurring liability for such breach, any such liability will be independent of Project Participant's liability hereunder, and no breach of or default by Seller under Sections 17(c) through 17(h) will relieve Project Participant of its liability for its Liability Share of all Guaranteed Amounts, nor may any such breach or default, or claim of breach or default, be permitted or asserted as a defense to or offset against payment of any amounts owed by Project Participant to Seller hereunder.

APPROVAL DRAFT

IN WITNESS WHEREOF, the Parties have caused this BLPTA to be duly executed and delivered by their duly authorized representatives on the date first above written.

By: _____

Printed Name: _____

Title: _____

**CALIFORNIA COMMUNITY POWER, a
California joint powers authority:**

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

APPROVAL DRAFT

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to [____], a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Energy Storage Service 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 3.5 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.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

APPROVAL DRAFT

EXHIBIT N

NOTICES

<p>Goal Line BESS 1, LLC ("Seller")</p>	<p>California Community Power, a California joint powers authority ("Buyer")</p>
<p>All Notices:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>All Notices:</p> <p>Street: 70 Garden Court, Suite 300 City: Monterey, CA 93940 Attn: Tim Haines</p> <p>Phone: 916-207-4078 Email: timhaines@powergridsymmetry.com</p>
<p>Scheduling: <i>[To be provided]</i> Attn: Phone: Email:</p>	<p>Scheduling: Attn: TBD Phone: TBD Email: TBD</p>
<p>Confirmations: <i>[To be provided]</i> Attn: Phone: Email:</p>	<p>Confirmations: Attn: TBD Phone: TBD Email: TBD</p>
<p>Invoices: <i>[To be provided]</i> Attn: Phone: E-mail:</p>	<p>Invoices: Attn: TBD Phone: TBD E-mail: TBD</p>
<p>Payments: <i>[To be provided]</i> Attn: Phone: E-mail:</p>	<p>Payments: Attn: TBD Phone: TBD E-mail: TBD</p>
<p>Wire Transfer: <i>[To be provided]</i></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>Wire Transfer: BNK: TBD ABA: TBD ACCT: TBD</p>
<p>Reference Numbers: <i>[To be provided]</i> Duns: Federal Tax ID Number:</p>	<p>Reference Numbers: Duns: Federal Tax ID Number:</p>
<p>Credit and Collections: <i>[To be provided]</i> Attn: Street: City: Phone: Email:</p>	<p>Credit and Collections: Attn: Street: City: Phone: Email:</p>

Goal Line BESS 1, LLC (“Seller”)	California Community Power, a California joint powers authority (“Buyer”)
With additional Notices of an Event of Default to: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	With additional Notices of an Event of Default to: Attn: Brittany Iles, Attorney Street: 555 Capitol Mall, Ste 570 City: Sacramento, CA 95814 Phone: 916 326-5812 Facsimile: 916 330-4337 Email: iles@braunlegal.com

APPROVAL DRAFT

EXHIBIT O

CAPACITY AND EFFICIENCY RATE TESTS

Capacity Test Notice and Frequency

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, 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 Capacity Test. Buyer shall have the right to require a 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 Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any 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 Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit to Buyer raw data and preliminary Capacity Test results. No later than ten (10) Business Days following any Capacity Test, Seller shall submit to Buyer a testing report detailing results and findings of the Capacity Test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Capacity Test(s), the Effective Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment 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 DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points. Communications protocols and communications connection requirements shall be modified, if necessary, to comply with NERC CIP standards.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA System data. Communications protocols and communications connection requirements shall be modified, if necessary, to comply with NERC CIP standards.
- (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) Additional Testing. The Seller shall have the right to conduct one or more preliminary runs as a part of any Capacity Test prior to the commencement of a Capacity Test to determine or adjust, as necessary, the then current Energy Ratio at 0% SOC and 100% SOC.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Guaranteed Capacity; provided, for all purposes of this Agreement, the amount of Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all Energy Level measurements associated with a Capacity Test shall be based on the Storage Level without taking into account any energy that exceeds 100% SOC.

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. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Total electrical energy discharged from the Facility, as recorded at the Facility Meter when Maximum Discharging Capacity is sustained for eight (8) continuous hours; and
- (2) Total electrical energy used to charge the Facility, as recorded at the Facility Meter when Maximum Charging Capacity is sustained until the SOC

reaches at least 90%, continued by electrical input at a rate up to the Maximum Charging Capacity and sustained until the SOC reaches 100%, not to exceed ten (10) hours of total charging time.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:

- (1) Time;
- (2) Total electrical energy discharged from the Facility, as recorded at the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
- (3) Total electrical energy used to charge the Facility, as recorded at the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);
- (4) Storage Level (MWh);
- (5) Energy Level (MWh); and
- (6) Energy Ratio.

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 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 nominal sustained discharging level for eight (8) consecutive hours pursuant to A(1) above;
- (3) The nominal sustained charging level for ten (10) consecutive hours pursuant to A(2) above;
- (4) Amount of time between the Facility's electrical output going from 0 to the Maximum Discharging Capacity during the CT (for purposes of calculating the ramp rate);

- (5) Amount of time between the Facility's electrical input going from 0 to the Maximum Charging Capacity during the CT (for purposes of calculating the ramp rate);
- (6) Energy Level (MWh) at 0% SOC and 100% SOC, to be used for the testing and operation of the Facility until the subsequent CT supersedes the values.
- (7) Total electrical energy used to charge the Facility, registered at the Facility Meter, to go from 0% SOC to 100% SOC;
- (8) Total electrical energy discharged from the Facility, registered at the Facility Meter, to go from 100% SOC to 0% SOC.
- (9) Amount of charging reactive energy in VARh, registered at the Facility Meter during the charging period
- (10) Amount of discharging reactive energy in VARh, registered at the Facility Meter during the discharging period.
- (11) Maximum, minimum, average, and standard deviation of the battery temperatures (°C)
- (12) Battery enclosure temperatures (°C).

E. Test Conditions.

- (1) General. At all times during a CT, the 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 Facility. Capacity Test shall be conducted within 10 C of the industry standard test conditions of 25 °C. If battery starting temperatures are not greater than 30 °C, preconditioning will be performed prior to the start of the CT. Capacity Tests conducted to determine Effective Capacity and Efficiency Rate shall be conducted at a power factor between 0.99 lagging and 0.99 leading.
- (2) Abnormal Conditions. If at any time any operating protocols including but not limited to current, voltage and temperature are exceeded, the test shall be immediately halted and the system placed into a safe mode. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, 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. The measurement uncertainty calculated in

the post-test measurement uncertainty analysis will be applied to the test results of the Capacity Test.

- F. Incomplete Test. 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 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 within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event 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 and all costs, expenses and fees payable as a result of such retest shall be borne or reimbursed by the Party that requested the initial incomplete CT; provided, however, that if Seller is unable to complete a CT due to any action or inaction of Buyer, all costs, expenses and fees payable as a result of such retest shall be borne or reimbursed by Buyer regardless of which Party requested the initial incomplete CT.
- G. Test Report. Within ten (10) 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 ten (10) 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 and provides data or reasons with such rejection reasonably indicating that the results were not in accordance with this agreement, or the Supplementary Capacity Test Protocol, such CT shall be repeated in accordance with Section 4.4 of the Agreement.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing 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 additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the 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 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 Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of electrical energy delivered to the Delivery Point (expressed in MWh AC) during the first eight (8) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Capacity (in the case of a Commercial Operation Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Capacity (in the case of any other Capacity Test), multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4(a)(ii) of the Agreement.
- (2) Total electrical energy discharged from the Facility (as reported under Section II.D(8) above) divided by the total electrical energy used to charge the Facility (as reported under Section II.D(7) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

• Procedure:

- (1) System Starting State: The Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Energy Ratio, Energy Level, the Storage Level, and the initial time.
- (3) Command a real power charge of Facility's Maximum Charging Capacity and begin the test period once the system has fully ramped. Continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours have elapsed since the Facility commenced charging.
- (4) Record and store the Energy Ratio, Energy Level, Storage Level, and time after the earlier of (a) the Facility has reached 100% SOC or (b) ten (10) hours of continuous charging.
- (5) Record and store the total electrical energy used to charge the Facility, registered at the Facility Meter, to go from 0% SOC to 100% SOC, Energy Level, and the Storage Level.

- (6) Following an agreed-upon rest period, command a real power discharge of the Facility's Maximum Discharging Capacity and begin the test period once the system has fully ramped. Maintain the discharging rate until the earlier of (a) the Facility has discharged for eight (8) consecutive hours, or (b) the Facility has reached 0% SOC.
 - (7) Record and store the Energy Ratio, Energy Level, Storage Level, and time after eight (8) hours of continuous discharging.
 - (8) Record and store the total electrical energy discharged from the Facility as measured at the Facility Meter. Such data point shall be used for purposes of calculation of the Effective Capacity.
 - (9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches 0% SOC or 0% Energy Ratio, whichever occurs first.
 - (10) Record and store the Storage Level, Energy Level, and the total electrical energy discharged from the Facility as measured at the Facility Meter from the commencement of discharging pursuant to Part III.A.6 until the Facility has reached 0% SOC or 0% Energy Ratio, whichever occurs first, pursuant to either Part III.A.7 or Part III.A.9, as applicable.
- Test Results:
 - (1) The resulting Effective Capacity measurement is the sum of the total electrical energy discharged from the Facility, as registered at the Facility Meter, divided by eight (8) hours.
 - (2) Total electrical energy discharged from the Facility (as reported under Section III.A(10) above) divided by the total electrical energy used to charge the Facility (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Facility's nominal discharging level within 8 seconds.
- System starting state: The Facility will be in the on-line state at 50% 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 Facility active power level at the Facility Meter.

- (2) Command the Facility to follow a simulated CAISO RIG signal of P_{MAX} at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The 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 facility's nominal charging level within 8 seconds.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
 - (1) Record the Facility active power level at the Facility Meter.
 - (2) Command the Facility to follow a simulated CAISO RIG signal of P_{MAX} at .95 power factor for ten (10) minutes.
 - (3) Record and store the Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. **Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Facility.
- System starting state: The Facility will be in the on-line state at 50% 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 an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 25 MW for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.

- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

- Purpose: This test will demonstrate the reactive power consumption capability of the facility.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
 - (1) Record the Facility reactive power level at the Facility Meter.
 - (2) Command the Facility to follow 25 MW for ten (10) minutes.
 - (3) Record and store the Facility reactive power response.
- System end state: The Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

APPROVAL DRAFT

EXHIBIT P

FACILITY AVAILABILITY CALCULATION

Monthly Capacity Availability Calculation. Seller shall calculate the “Monthly Capacity Availability” for a given month of the Delivery Term using the formula set forth below:

$$\text{Monthly Capacity Availability (\%)} = \frac{[\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{[\text{MONTHRS}_m]}$$

Where:

m = relevant month “ m ” in which Monthly Capacity Availability is calculated;

MONTHRS $_m$ is the total number of hours for the month;

AVAILHRS $_m$ is the total number of hours, or partial hours, in the month during which the Facility was available to charge and discharge Energy and to provide Ancillary Services at the Point of Change of Ownership (excluding, for avoidance of doubt, all circumstances on or beyond the PTO’s side of the Point of Change of Ownership). If the Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Effective Capacity, the AVAILHRS $_m$ for such time period shall be calculated by multiplying such AVAILHRS $_m$ by a percentage determined by the quotient of (a) divided by (b); where (a) is the lower of (i) such capacity amount reported as available by Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity.

EXCUSEDHRS $_m$ is the total number of hours, or partial hours, in the month during which the Facility is unavailable to charge and discharge Energy and to provide Ancillary Services at the Point of Change of Ownership due to Approved Maintenance Hours, Force Majeure Events [REDACTED], Buyer Dispatched Tests, Operating Restrictions in Exhibit Q, Buyer Default, or any circumstances arising on or beyond the PTO’s side of the Point of Change of Ownership that may limit Seller’s delivery of Product (each, an “Excused Event”). If an Excused Event results in less than the full amount of the Effective Capacity for the Facility being available during any applicable hour, or partial hour, the EXCUSEDHRS $_m$ for such time period shall be calculated by multiplying such EXCUSEDHRS $_m$ by a percentage determined by the quotient of (a) divided by (b); where (a) is the lower of such Effective Capacity amount that is not reported as available by (i) Seller’s real-time EMS data feed to Buyer for the Facility for such hours, or partial hours, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10(b)), and (b) is the Effective Capacity. For avoidance of doubt, the total of AVAILHRS $_m$ plus EXCUSEDHRS $_m$ for any hour, or partial hour, shall never exceed 1.

If the Facility or any component thereof was previously deemed unavailable for an

hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time Buyer is required to schedule or bid the Facility in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

APPROVAL DRAFT

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 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 Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Facility, and (iv) may include Facility Scheduling, operating restrictions, and communications protocols.

File Update Date:	[XX/XX/20XX]
Technology:	Lithium-ion
Facility Name:	[Name]
A. Contract Capacity	
Guaranteed Capacity (MW):	50
Effective Capacity (MW):	50
B. Total Unit Dispatchable Range Information	
	Operating Restrictions (Applicable to Buyer)
Interconnect Voltage (kV)	69
Maximum SOC during Charging	100%
Minimum SOC during Discharging	0%
Maximum Storage Level (MWh):	400
Minimum Storage Level (MWh):	0
Maximum Charging Capacity (MW):	50
Maximum Discharging Capacity (MW):	50
Maximum annual Cycles:	█
Energy Ramp Rate (MW/minute)	100
C. Ancillary Services	
Frequency regulation is included:	Yes
Spinning reserve is included:	Yes
Non-spinning reserve is included:	Yes
Regulation up is included:	Yes
Regulation down is included:	Yes
Black start is included:	No
Voltage support is included:	Yes

EXHIBIT R

[Redacted]

[Redacted]

[Redacted]

[Redacted]

EXHIBIT S
FORM OF DAILY OPERATING REPORT
DAILY OPERATING REPORT

for MM/DD/YY

Availability – Capacity - Generation

Plant Status at 0600 Hours:

Unit 1
<input type="checkbox"/> Operating
<input type="checkbox"/> Available
<input type="checkbox"/> Not Available
See significant events

Previous 24 Hours:

Unit 1
Operating Hours: <u> 0:00 </u> Hrs:Min (0001 – 2400 Total On Line Hours)
Net Generation: <u> 0.0 </u> MWhr (0001 – 2400 Total Net Generation)

Facility

<div style="border: 1px solid black; width: 100%; height: 15px; background-color: black;"></div>
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((On Line Hr + Off Line Available Hr)/24)

Period Availability:

Unit 1
M(onth)TD Availability <u>100.00</u> %
P(eak)TD Availability <u>100.00</u> %

State of Charge Ratio:

Unit 1
Initial SOC: __
Ending SOC: __
Battery String SOC: __

Significant Events

- No significant events, generation losses, major equipment out of service, accidents, injuries or operating anomalies.

Losses of Generation: (Include Date/Time Off Line; Date/Time On Line; Brief Narrative Description of Event.)

List Major Equipment Out of Service; Briefly Describe any Accidents or Injuries; Describe any Operating Anomalies

EXHIBIT T

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) California Community Power, a California joint powers authority (“CCP”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CCP, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the ESSA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CCP have entered into that certain Energy Storage Service Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“ESSA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility (the “Project”) and sell the Product to CCP, and CCP will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the ESSA, Project Company has agreed to provide to CCP certain collateral, which may include Performance Security and Development Security and other collateral described in the ESSA (collectively, the “ESSA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the ESSA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the ESSA that CCP and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CCP hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the ESSA (subject to CCP's rights and defenses under the ESSA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the ESSA or makes any claims with respect to payments or other obligations under the ESSA, the terms and conditions of the ESSA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that CCP is authorized to act in accordance with Collateral Agent's instructions, and that CCP shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the ESSA, or upon the occurrence or non-occurrence of any event or condition under the ESSA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CCP to terminate or suspend its performance under the ESSA (a "ESSA Default"), CCP will not terminate or suspend its performance under the ESSA until it first gives written notice of such ESSA Default to Collateral Agent and affords Collateral Agent the right to cure such ESSA Default within the applicable cure period under the ESSA, which cure period shall run concurrently with that afforded Project Company under the ESSA. In addition, if Collateral Agent gives CCP written notice prior to the expiration of the applicable cure period under the ESSA of Collateral Agent's intention to cure such ESSA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such ESSA Default) and is diligently proceeding to cure such ESSA Default, notwithstanding the applicable cure period under the ESSA, Collateral Agent shall have a period of sixty (60) days (or, if such ESSA Default is for failure by the Project Company to pay an amount to CCP which is due and payable under the ESSA other than to provide ESSA Collateral, thirty (30) days, or, if such ESSA Default is for failure by Project Company to provide ESSA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such ESSA Default from CCP to cure such ESSA Default; *provided*, (a) if possession of the Project is necessary to cure any such non-monetary ESSA Default and Collateral Agent has

commenced foreclosure proceedings within sixty (60) days after notice of the ESSA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the ESSA Default, to complete such proceedings and cure such ESSA Default, and (b) if Collateral Agent is prohibited from curing any such ESSA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a ESSA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CCP with reports concerning the status of efforts to cure a ESSA Default upon CCP's reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies (such notice, a "Financing Document Default Notice") CCP that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the ESSA, and, subject to Sections 1.7(b) and 1.7(c) below, CCP and Substitute Owner will recognize each other as counterparties under the ESSA and will continue to perform their respective obligations (including those obligations accruing to CCP and the Project Company prior to the existence of the Substitute Owner) under the ESSA in favor of each other in accordance with the terms thereof; *provided*, before CCP is required to recognize the Substitute Owner, the Substitute Owner must have provided reasonable evidence to CCP that the Substitute Owner is a Permitted Transferee (as defined below). For purposes of the foregoing, CCP shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the ESSA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

"Permitted Transferee" means any person or entity who is at least as creditworthy as the Project Company on the Effective Date (as defined in the ESSA) and has, or contracts with an operator that has, at least three (3) years of experience either owning or operating energy storage facilities. Collateral Agent may from time to time, following the occurrence of a Financing Document Event of Default, notify CCP in writing of the identity of a proposed transferee of the ESSA, which proposed transferee may include any Lender, in connection with the enforcement of Lender's rights under the Financing Documents, and CCP shall, within thirty (30) Business Days of its receipt of such written notice, confirm to Lender whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if CCP shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a "Permitted Transferee".

1.5 Replacement Agreements.

Subject to Section 1.7, if the ESSA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its

owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CCP shall, at Collateral Agent’s or any Replacement Owner’s request, enter into a new agreement with Collateral Agent or Replacement Owner, as applicable, for the balance of the obligations under the ESSA remaining to be performed having terms substantially the same as the terms of the ESSA with respect to the remaining Term (“Replacement ESSA”); *provided*, before CCP is required to enter into a Replacement ESSA, the Replacement Owner must have provided reasonable evidence to CCP that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CCP is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement ESSA, to the extent CCP is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the ESSA, CCP may suspend performance of its obligations under such Replacement ESSA, unless and until all ESSA Defaults of Project Company under the ESSA or Replacement ESSA have been cured other than any such ESSA Defaults that are personal to Project Company and not reasonably capable of cure (which shall not include any payment default).

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Project and the ESSA and a Replacement ESSA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Project is transferred; *provided*, the proposed transferee shall have provided reasonable evidence to CCP that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CCP all of the obligations of Project Company, Substitute Owner or Replacement Owner under the ESSA or Replacement ESSA, as applicable, including posting and collateral assignment of the ESSA Collateral. Upon such assignment and the cure of any outstanding ESSA Default other than any such ESSA Defaults that are personal to Project Company and not reasonably capable of cure (which shall not include any payment default), and payment of all other amounts due and payable to CCP in respect of the ESSA or such Replacement ESSA, the transferor shall be released from any further liability under the ESSA or Replacement ESSA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the ESSA other than any such ESSA obligations that are personal to Project Company and not reasonably capable of cure (which shall not include

any payment default), including posting and collateral assignment of the ESSA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the ESSA.

(c) No Liability.

CCP acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the ESSA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the ESSA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement ESSA, Collateral Agent shall not have any personal liability to CCP under the ESSA or Replacement ESSA and the sole recourse of CCP in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Project; *provided*, such limited recourse shall not limit CCP's right to seek equitable or injunctive relief against Collateral Agent, or CCP's rights with respect to any offset rights expressly allowed under the ESSA, a Replacement ESSA or the ESSA Collateral.

1.8 Delivery of Notices.

CCP shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CCP to Project Company pursuant to the ESSA relating to (a) a ESSA Default by Project Company under the ESSA, (b) any claim regarding Force Majeure by CCP under the ESSA, (c) any notice of dispute under the ESSA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CCP's obligation to give Collateral Agent a notice of ESSA Default under Section 1.3. Collateral Agent shall deliver to CCP, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CCP will, as and when reasonably requested by Project Company or Collateral Agent from time to time, confirm in writing matters relating to the ESSA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CCP is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CCP under the ESSA as between CCP and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CCP receives a Financing Document Default Notice, CCP shall deal exclusively with Project Company in connection with the performance of CCP's obligations under the ESSA. From and after such time as CCP receives

a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement ESSA is entered into or the ESSA is transferred to a Person to whom the Project is transferred pursuant to Section 1.6, CCP shall, until Collateral Agent confirms to CCP in writing that all obligations under the Financing Documents are no longer outstanding or that the Financing Document Default Notice has been withdrawn, deal exclusively with Collateral Agent in connection with the performance of CCP's obligations under the ESSA, and CCP may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CCP agrees that it will not, without the Project Company obtaining prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the ESSA (b) terminate or suspend its performance under the ESSA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the ESSA by Project Company.

SECTION 2. PAYMENTS UNDER THE ESSA

2.1 Payments.

Unless and until CCP receives written notice to the contrary from Collateral Agent, CCP will make all payments to be made by it to Project Company under or by reason of the ESSA directly to Project Company. CCP, Project Company, and Collateral Agent acknowledge that CCP will be deemed to be in compliance with the payment terms of the ESSA to the extent that CCP makes payments in accordance with Collateral Agent's instructions.

2.2 No Offset, Etc.

All payments required to be made by CCP under the ESSA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the ESSA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CCP

CCP makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CCP is a joint powers authority and community choice aggregator duly organized and validly existing 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. CCP has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CCP of this Consent and the ESSA have been duly authorized by all necessary corporate or other action on the part of CCP and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CCP which, if not obtained, will prevent CCP from performing its obligations hereunder or under the ESSA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the ESSA is in full force and effect, have been duly executed and delivered on behalf of CCP by the appropriate officers of CCP, and constitute the legal, valid and binding obligation of CCP, enforceable against CCP in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CCP nor, to CCP's actual knowledge, Project Company, is in default of any of its obligations under the ESSA; (b) CCP and, to CCP's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to CCP's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 No Previous Assignments.

CCP has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the ESSA, except as previously disclosed in writing and consented to by CCP.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CCP:

4.1 Organization.

Project Company is a *[Legal Status of Seller]* duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter

into and to perform its obligations hereunder and under the ESSA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the ESSA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CCP, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CCP, has complied with all conditions precedent to the effectiveness of its obligations under the ESSA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CCP or Project Company to terminate or suspend its obligations under the ESSA; and (d) the ESSA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the ESSA.

SECTION 5. RESERVED

SECTION 6. MISCELLANEOUS

6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the ESSA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CCP or Project Company, in accordance with *[Notice Section of the ESSA]* of the ESSA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[___]*, Fax:

[___], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the ESSA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CCP, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CCP has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the ESSA or any Replacement ESSA, its obligations under such ESSA or Replacement ESSA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CCP hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be

an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

[Remainder of Page Left Intentionally Blank.]

APPROVAL DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>	<p>CALIFORNIA COMMUNITY POWER, a California joint powers authority.</p>
<p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>	<p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>	

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

APPROVAL DRAFT

EXHIBIT U
MATERIAL PERMITS

■	■
■	■
■	■

APPROVAL DRAFT

EXHIBIT V

PROJECT PARTICIPANTS AND LIABILITY SHARES

Project Participant	Liability Share
Clean Power San Francisco	21.50%
Redwood Coast Energy Authority	4.00%
San Jose Clean Energy	24.22%
Silicon Valley Clean Energy	28.42%
Sonoma Clean Power	17.36%
Valley Clean Energy	4.50%

APPROVAL DRAFT

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022- _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING THE FOLLOWING AGREEMENTS AND ANY NECESSARY ANCILLARY DOCUMENTS FOR THE GOAL LINE LONG DURATION STORAGE PROJECT AND AUTHORIZING THE EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE AGREEMENTS: 1) PROJECT PARTICIPATION SHARE AGREEMENT BETWEEN VALLEY CLEAN ENERGY ALLIANCE, CALIFORNIA COMMUNITY POWER AND OTHER PARTICIPATING CCAs, 2) BUYER LIABILITY PASS THROUGH AGREEMENT BETWEEN VALLEY CLEAN ENERGY ALLIANCE, CALIFORNIA COMMUNITY POWER AND GOAL LINE BESS 1, LLC

WHEREAS, VCE is a member of California Community Power (CC Power) joint powers authority; and

WHEREAS, VCE in coordination with CC Power conducted a request for offers for long duration storage (LDS) projects and engaged in negotiations for the Goal Line project; and

WHEREAS, CC Power seeks to execute agreements to effectuate its purchase of its storage resource from the Goal Line storage project based on the project’s desirable offering of products, pricing and terms; and

WHEREAS, the Goal Line project will contribute to the regulatory requirement to procure LDS for each of the CCAs that are participating in this project through CC Power by providing energy storage resources for a term of fifteen years starting on or about June 1, 2025; and

WHEREAS, staff is presenting to the Board for its review the Energy Storage Services Agreement, Buyer Liability Pass Through Agreement and the Project Participation Share Agreement.

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

1. Executive Officer is authorized to execute the Agreements and any ancillary documents with the Goal Line BESS 1 LLC, California Community Power and participating CCAs with the terms generally consistent with those presented, in a form approved by legal counsel.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jesse Loren, VCE Chair

Alisa M. Lembke, VCE Board Secretary

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 17**

TO: Board of Directors

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

SUBJECT: Receive and approve audited December 31, 2021 financial statements presented by James Marta & Company

DATE: April 14, 2022

RECOMMENDATIONS:

1. Accept and approve the Audited Financial Statements for the period of July 1, 2021, to December 31, 2021;
2. Accept the Communication with Governance Letter; and
3. Accept the 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 the 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 a 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 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 July 1, 2021 to December 31, 2021
2. Communication with Governance Letter
3. Internal Control Letter



VALLEY CLEAN ENERGY

**VALLEY CLEAN ENERGY ALLIANCE
FINANCIAL STATEMENTS**

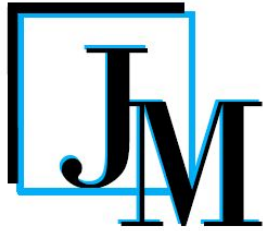
**FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE FISCAL
YEAR ENDED JUNE 30, 2021**

VALLEY CLEAN ENERGY ALLIANCE

TABLE OF CONTENTS

DECEMBER 31, 2021 AND JUNE 30, 2021

	<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, 2021 and June 30, 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 six months ended December 31, 2021 and the fiscal year ended June 30, 2021, and the results of its operations and its cash flows for the periods 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.

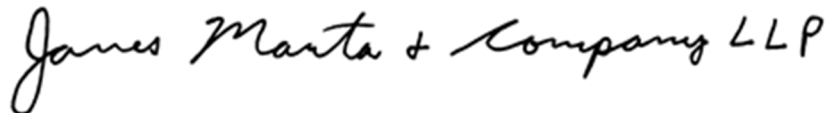
We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

Other Information

Valley Clean Energy Alliance changed its fiscal year end from June 30 to December 31 during this period to align with the calendar year. Accordingly, the financial statements presented comparatively show the year ended June 30, 2021 and the six-month period ended December 31, 2021.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated April 7, 2022 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.

A handwritten signature in black ink that reads "James Marta & Company LLP". The signature is written in a cursive, flowing style.

James Marta & Company LLP
Certified Public Accountants
Sacramento, California
April 7, 2022

MANAGEMENT DISCUSSION AND ANALYSIS

VALLEY CLEAN ENERGY ALLIANCE
MANAGEMENTS DISCUSSION AND ANALYSIS
FOR THE PERIODS ENDED DECEMBER 31, 2021 AND 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, 2021 and June 30, 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 PERIODS ENDED DECEMBER 31, 2021 AND 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, 2021	June 30, 2021	% change from June 30, 2021 to December 31, 2021	June 30, 2020	% change from June 30, 2020 to June 30, 2021
Current assets	\$14,853,514	\$21,175,913	-30%	\$22,407,057	-5%
Noncurrent assets	3,561,158	3,099,608	15%	2,445,520	27%
Total Assets	18,414,672	24,275,521	-24%	24,852,577	-2%
Current liabilities	8,728,436	11,531,607	-24%	6,914,208	67%
Noncurrent liabilities	-	-	0%	1,350,684	-100%
Total Liabilities	8,728,436	11,531,607	-24%	8,264,892	40%
Net Position					
Designated – Local Programs	224,500	224,500	0%	136,898	64%
Restricted	3,561,158	3,099,608	15%	2,345,520	32%
Unrestricted	5,900,578	9,419,806	-37%	14,105,267	-33%
Total Net Position	\$ 9,686,236	\$ 12,743,914	-24%	\$ 16,587,685	-23%

Assets

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 currents 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.

Current assets ended June 30, 2021 at approximately 21.2 million, a decrease of approximately \$1.2 million as compared to June 30, 2020. The contributor to the overall decrease in currents assets was an increase in receivables net of allowance for doubtful accounts of approximately \$2.02 million. The net accounts receivable increase was driven by state mandates during COVID-19. Since service to customers

VALLEY CLEAN ENERGY ALLIANCE
MANAGEMENTS DISCUSSION AND ANALYSIS
FOR THE PERIODS ENDED DECEMBER 31, 2021 AND JUNE 30, 2021

began, VCE has operated at a surplus which has resulted in the growth of current assets. Accrued revenue differs from accounts receivable in that it is the result of electricity use by VCE customers before invoicing to those customers has occurred.

Overall, noncurrent assets increased approximately \$0.65 million in June 30, 2021 due to an increase of in restricted cash for power purchase reserves.

Liabilities

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.

Current liabilities at June 30, 2021 were comprised primarily of accrued cost of electricity, accounts payable, other accrued liabilities, security deposits, and current portion of long-term debt. Current liabilities increased by \$4.6 million to \$11.5 million in the year ended June 30, 2021. The most significant contributors to the overall increase in current liabilities was an increase of \$1M in the outstanding balance to a term loan with an annual renewable requirement, and \$1.9M related to the receipt of supplier security deposits for energy supplies. Other significant increases for \$2M occurred in accrued cost of electricity.

Non-current liabilities decreased \$1.4 million in the year ended June 30, 2021 related to term loan described above in current liabilities.

The following table is a summary of VCE's results of operations:

	<u>December 31, 2021</u>	<u>June 30, 2021</u>	<u>% change from June 30, 2021 to December 31, 2021</u>	<u>June 30, 2020</u>	<u>% change from June 30, 2020 to June 30, 2021</u>
Operating revenues	\$29,357,623	\$54,656,880	-46%	\$55,248,868	-1%
Interest income	8,731	50,285	-83%	102,954	-51%
Total Income	<u>29,366,354</u>	<u>54,707,165</u>	<u>-46%</u>	<u>55,351,822</u>	<u>-1%</u>
Operating Expenses	32,401,487	58,494,704	-45%	45,887,956	27%
Interest and related expenses	22,545	56,232	-60%	98,613	-43%
Total Expenses	<u>32,424,032</u>	<u>58,550,936</u>	<u>-45%</u>	<u>45,986,569</u>	<u>27%</u>
Change in Net Position	<u>\$ (3,057,678)</u>	<u>\$ (3,843,771)</u>	<u>20%</u>	<u>\$ 9,365,253</u>	<u>-141%</u>

VALLEY CLEAN ENERGY ALLIANCE
MANAGEMENTS DISCUSSION AND ANALYSIS
FOR THE PERIODS ENDED DECEMBER 31, 2021 AND JUNE 30, 2021

Operating Revenues

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.

In fiscal year ended June 30, 2021, VCE's operating revenues decreased by \$0.8 million in fiscal year 2021, This decrease was primarily a result of increases in Power Charge Indifference Adjustment (PCIA), as well as slight decreases to generation rates. VCE's operating revenue is from the sale of electricity to its customer base, which consists of residential, commercial, industrial and agricultural customers.

Operating 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. 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 fiscal year ended June 30, 2021, VCE's operating expenses grew by \$12.6 million over the prior year of operations in the fiscal year ended June 30, 2020. This increase was primarily due to a \$12.7 million increase in cost of electricity, driven by increased load, addition of NEM customers and Winters. VCE procures energy from a variety of sources and focuses on purchasing at competitive costs and maintaining a balanced renewable power portfolio. The remaining operating expenses consists of contract services, staff compensation and other general administrative expenses.

ECONOMIC OUTLOOK

As a CCA in its fourth year of operations transitioning 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 over the next two years due to several regulatory and market factors, 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. VCE has projected a full recovery of cash reserves and increased credit lines for liquidity in 2022. Beginning March 1, 2022, PG&E's bundled rates increased by 33%, while PCIA decreased by 57%; these rates continue for a full 12 months. VCE adopted a 2022 budget based on matching PG&E's bundled rates to offset higher power costs, rebuild reserves, and allow VCE to implement limited customer programs in 2022. Longer-term, VCE continues to transition into its long-term fixed-price renewable PPA's that are scheduled to come online in 2022, 2023, and 2024. VCE has factored in a conservative increase of 25% in PCIA in 2023 and rate stabilization beginning in 2024.

VALLEY CLEAN ENERGY ALLIANCE
MANAGEMENTS DISCUSSION AND ANALYSIS
FOR THE PERIODS ENDED DECEMBER 31, 2021 AND JUNE 30, 2021

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
DECEMBER 31, 2021 AND JUNE 30, 2021

	<u>DECEMBER 31, 2021</u>	<u>JUNE 30, 2021</u>
ASSETS		
Current assets		
Unrestricted Cash	\$ 3,671,384	\$ 8,256,056
Accounts receivable, net of allowance	7,406,469	7,982,540
Accrued revenue	1,768,193	2,935,291
Prepaid expenses	9,192	15,143
Other current assets and deposits	1,998,276	1,986,883
Total Current Assets	<u>14,853,514</u>	<u>21,175,913</u>
Restricted assets:		
Cash in - debt service reserve fund	1,100,000	1,100,000
Cash in - power purchase reserve fund	2,461,158	1,999,608
Total Restricted assets	<u>3,561,158</u>	<u>3,099,608</u>
TOTAL ASSETS	<u>\$ 18,414,672</u>	<u>\$ 24,275,521</u>
LIABILITIES		
Current Liabilities		
Accounts payable	\$ 445,042	\$ 399,766
Accrued cost of electricity	4,580,941	6,649,130
Accrued payroll	63,909	43,705
Interest payable	2,786	3,259
Due to member agencies	117,945	123,406
Other accrued liabilities	2,364,787	2,961,654
Line of credit	1,153,026	1,350,687
Total Current Liabilities	<u>8,728,436</u>	<u>11,531,607</u>
NET POSITION		
Net position		
Designated - local program reserves	\$ 224,500	\$ 224,500
Restricted	3,561,158	3,099,608
Unrestricted	5,900,578	9,419,806
TOTAL NET POSITION	<u>\$ 9,686,236</u>	<u>\$ 12,743,914</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 SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 2021

	<u>DECEMBER 31, 2021</u>	<u>JUNE 30, 2021</u>
OPERATING REVENUE		
Electricity sales, net	\$ 29,357,623	\$ 54,441,240
Other revenue	-	215,640
TOTAL OPERATING REVENUES	<u>29,357,623</u>	<u>54,656,880</u>
OPERATING EXPENSES		
Cost of electricity	30,138,826	54,233,726
Contractors	1,383,829	2,609,080
Staff compensation	537,689	1,158,120
General and administrative	341,143	493,778
TOTAL OPERATING EXPENSES	<u>32,401,487</u>	<u>58,494,704</u>
TOTAL OPERATING INCOME (LOSS)	<u>(3,043,864)</u>	<u>(3,837,824)</u>
NONOPERATING REVENUES (EXPENSES)		
Interest income	8,731	50,285
Interest and related expenses	(22,545)	(56,232)
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>(13,814)</u>	<u>(5,947)</u>
CHANGE IN NET POSITION	<u>(3,057,678)</u>	<u>(3,843,771)</u>
Net position at beginning of period	12,743,914	16,587,685
Net position at end of period	<u>\$ 9,686,236</u>	<u>\$ 12,743,914</u>

The accompanying notes are an integral part of these financial statements.

VALLEY CLEAN ENERGY ALLIANCE

STATEMENT OF CASH FLOWS

FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 2021

	<u>DECEMBER 31, 2021</u>	<u>JUNE 30, 2021</u>
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 31,149,236	\$ 52,466,863
Payments for security deposits with energy suppliers	-	100,000
Payments to purchase electricity	(32,255,458)	(52,246,340)
Payments for contract services, general, and administration	(2,276,073)	(1,483,501)
Payments for staff compensation	(517,485)	(1,126,219)
Other cash payments	(11,393)	(1,768,703)
Net Cash Provided (Used) by Operating Activities	<u>(3,911,173)</u>	<u>(4,057,900)</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Loans from member agencies	-	(395,319)
Draw of line of credit	-	1,976,610
Principal payments of debt	(197,661)	(1,976,610)
Interest and related expense	(23,019)	(57,408)
Net Cash Provided (Used) by Non-Capital Financing Activities	<u>(220,680)</u>	<u>(452,727)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	8,731	50,285
Net Cash Provided (Used) by Investing Activities	<u>8,731</u>	<u>50,285</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	(4,123,122)	(4,460,342)
Cash and cash equivalents at beginning of period	11,355,664	15,816,006
Cash and cash equivalents at ending of period	<u>\$ 7,232,542</u>	<u>\$ 11,355,664</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Operating income (loss)	\$ (3,043,864)	\$ (3,837,824)
Adjustments to reconcile operating income to net cash provided (used) by operating activities:		
(Increase) decrease in net accounts receivable	576,071	(2,022,329)
(Increase) decrease in net accrued revenue	1,167,098	37,904
(Increase) decrease in prepaid expense	5,951	(14,518)
(Increase) decrease in other assets and deposits	(11,393)	(1,884,343)
Increase (decrease) in accounts payable	45,276	(242,634)
Increase (decrease) in accrued payroll	20,204	31,901
Increase (decrease) in due to member agencies	(5,461)	6,940
Increase (decrease) in accrued cost of electricity	(2,116,632)	1,987,385
Increase (decrease) in other accrued liabilities	(596,867)	1,869,570
Increase (decrease) in user taxes and energy surcharges	48,444	10,048
Net Cash Provided by Operating Activities	<u>\$ (3,911,173)</u>	<u>\$ (4,057,900)</u>

The accompanying notes are an integral part of these financial statements.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 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 SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 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, 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. As of June 30, 2021, \$6,578,919 was accrued as payable to SMUD, comprised of \$6,578,811 in accrued electricity costs and \$108 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 SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 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, 2021 and June 30, 2021.

	<u>December 31, 2021</u>	<u>June 30, 2021</u>
Designated - local program reserves	\$ 224,500	\$ 224,500
Restricted	3,561,158	3,099,608
Unrestricted	5,900,578	9,419,806
Totals	<u>\$ 9,686,236</u>	<u>\$ 12,743,914</u>

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 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, 2021</u>	<u>June 30, 2021</u>
Accounts receivable from customers	\$ 9,342,777	\$ 9,565,448
Allowance for uncollectible accounts	(1,936,308)	(1,582,908)
Accounts receivable, net	<u>\$ 7,406,469</u>	<u>\$ 7,982,540</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 six months ended December 31, 2021 were \$353,400 and for the year ended June 30, 2021 were \$537,500. Due to the ongoing pandemic, VCE has elected not to pursue collections, at this time, for any outstanding balances regardless of age, to alleviate the pressure on their customers.

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, 2021 and June 30, 2021 was \$1,768,193 and \$2,935,291, 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.

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

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 2021

loan and has paid the loan down to \$1,153,026 as of December 31, 2021.

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 \$7,000,000 for letters of credit, with the total of both to not exceed \$7,000,000. The interest rate on the line of credit was 2.03% at the close of business on December 31, 2021.

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.

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.

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>
Year Ended June 30, 2021				
River City Bank - Loan	1,746,006	3	(395,322)	1,350,687
Total	<u>\$ 1,746,006</u>	<u>\$ 3</u>	<u>\$ (395,322)</u>	<u>\$ 1,350,687</u>
Amounts due within one year				<u>(1,350,687)</u>
Amounts due after one year				<u>\$ -</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>

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,

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 2021

2021, 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 periods ended December 31, 2021 and June 30, 2021, VCE contributed \$30,072 and \$45,603, 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 \$7,951 and \$16,932 for the periods ending December 31, 2021 and June 30, 2021, respectively. The total for future minimum lease payments is \$16,560 for the calendar year ended December 31, 2022.

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 periods ending December 31, 2021 and June 30, 2021 totaled \$117,945 and \$123,406, 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.

VALLEY CLEAN ENERGY ALLIANCE

NOTES TO THE FINANCIAL STATEMENTS

FOR THE SIX MONTHS ENDED DECEMBER 31, 2021 AND THE YEAR ENDED JUNE 30, 2021

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 limit of \$1,000 per occurrence. For the period ended June 30, 2021 and 2021, VCE contributed \$9,206 and \$6,645 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, 2020
Total Assets	\$ 23,830,770
Deferred Outflows of Resources	\$ 244,686
Total Liabilities	\$ 20,106,930
Deferred Inflows of Resources	\$ 484,830
Net Position	\$ 3,483,696
Total Revenues	\$ 12,547,701
Total Expenses	\$ 13,429,777
Change in Net Position	\$ (882,076)

The June 30, 2020 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, 2021, VCE had outstanding non-cancelable commitments to SMUD for professional services to be performed estimated to be \$3.2 million.

10. SUBSEQUENT EVENTS

VCE's Board adopted a rate policy in November 2021 to set customer rates to recover operating costs and build reserve funds. VCE has projected a full recovery of cash reserves and increased credit lines for liquidity in 2022. Beginning March 1, 2022, PG&E's bundled rates increased by 33%, while the Power Charge Indifference Adjustment (PCIA) fee decreased by 57%; these rates continue for a full 12 months. VCE adopted a 2022 budget based on matching PG&E's bundled rates to offset higher power costs, rebuild reserves, and allow VCE to implement limited customer programs in 2022. Longer-term, VCE continues to transition into its long-term fixed-price renewable Power Purchase Agreements (PPE's) that are scheduled to come online in 2022, 2023, and 2024. VCE has factored in a conservative increase of 25% in PCIA in 2023 and rate stabilization beginning in 2024.

Management has reviewed its financial statements and evaluated subsequent events for the period of time from its period ended December 31, 2021 through April 7, 2022, the date the financial statements were issued. Management is not aware of any other 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 six months ended December 31, 2021 and the fiscal year ended June 30, 2021, and have issued our report thereon dated April 7, 2022. 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 November 30, 2021 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 April 7, 2022.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope previously communicated to you. The audit was not conducted consistent with the planned timing, as management did not provide all closing adjustments until the day of issuance of the report.

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. Management reported increased doubtful accounts for the year due to economic conditions as a result of the COVID-19 pandemic, but will continue to monitor as conditions improve. 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 2021. 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 (Attachment B, Proposed Journal Entries)

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. The attached journal entry listing presents adjustments and reclassifications that we identified as a result of our audit procedures, were brought to the attention of, and corrected by, management (Attachment B, Adjusting Journal Entries).

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 April 7, 2022.

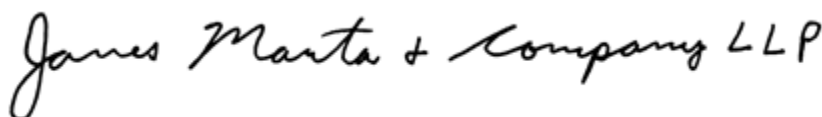
Management’s Consultations with Other Accountants

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.

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.



James Marta & Company LLP
Certified Public Accountants
Sacramento, California
April 7, 2022

The following pronouncements of the Governmental Accounting Standards Board (GASB) have been released recently and may be applicable to Valley Clean Energy Alliance in the near future. We encourage management to review the following information and determine which standard(s) may be applicable to the Valley Clean Energy Alliance. 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. 87, Leases

Effective for the fiscal year ending June 30, 2023

The objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments’ financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments’ leasing activities.

GASB Statement No. 89, Accounting for Interest Cost Incurred Before the End of a Construction Period

Effective for the fiscal year ending June 30, 2022

This Statement establishes accounting requirements for interest cost incurred before the end of a construction period. Such interest cost includes all interest that previously was accounted for in accordance with the requirements of paragraphs 5–22 of Statement No. 62, Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements, which are superseded by this Statement. This Statement requires that interest cost incurred before the end of a construction period be recognized as an expense in the period in which the cost is incurred for financial statements prepared using the economic resources measurement focus. As a result, interest cost incurred before the end of a construction period will not be included in the historical cost of a capital asset reported in a business-type activity or enterprise fund.

This Statement also reiterates that in financial statements prepared using the current financial resources measurement focus, interest cost incurred before the end of a construction period should be recognized as an expenditure on a basis consistent with governmental fund accounting principles.

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.

We do not expect GASB 91 to have any significant impact to Valley Clean Energy Alliance at this time.

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*

Certain provisions of GASB 92 may have a financial statement impact to Valley Clean Energy Alliance. VCE is currently assessing the financial statement impact of GASB 92.

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. 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.

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

Proposed Journal Entry

Proposed Journal Entries JE # 5

To adjust for underaccrual of December SMUD utilities expenses.

45323-0000	SMUD - OPERATIONAL SERVICES	15,803	
22210-0000	ACCOUNTS PAYABLE		15,803
Total		15,803	15,803

Proposed Journal Entries JE # 6

PBC to adjust Energy Resources Surcharge liability for payment made during the year.

23010-0000	ENERGY RESOURCES SURCHARGE	57,056	
30110-0000	RESIDENTIAL SALES		57,056
Total		57,056	57,056



MANAGEMENT REPRESENTATION LETTER

April 7, 2022

James Marta & Company LLP
Certified Public Accountants
Sacramento, CA 95825

This representation letter is provided in connection with your audit of the Statement of Net Position and the Statement of Revenues, Expenditures and Changes in Net Position and the statement of cash flows of Valley Clean Energy Alliance for the periods ended December 31, 2021 and June 30, 2021, and the related notes to the financial statements, for the purpose of expressing opinions on whether the basic financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows, where applicable, of the various opinion units of Valley Clean Energy Alliance in accordance with accounting principles generally accepted for governments in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm that, to the best of our knowledge and belief, having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves as of April 7, 2022:

Financial Statements

- We have fulfilled our responsibilities, as set out in the terms of the audit engagement dated November 30, 2021, for the preparation and fair presentation of the financial statements of the various opinion units referred to above in accordance with U.S. GAAP.
- We acknowledge our responsibility 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.
- We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
- We acknowledge our responsibility for compliance with the laws, regulations, and provisions of contracts and grant agreements.
- We acknowledge that we are responsible for distributing the issued report as well as the communication with governance letter and internal control letter to all governing board members.
- We have reviewed, approved, and taken responsibility for the financial statements and related notes.
- We have a process to track the status of audit findings and recommendations.
- We have identified and communicated to you all previous audits, attestation engagements, and other studies related to the audit objectives and whether related recommendations have been implemented.
- Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.
- Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed.
- The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.

- We have reviewed and approved the adjusting journal entries reflected in the audit statements and the proposed journal entry at Attachment 1.
- All component units, as well as joint ventures with an equity interest, are included and other joint ventures and related organizations are properly disclosed.
- All funds and activities are properly classified.
- All funds that meet the quantitative criteria in GASB Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*, GASB Statement No. 37, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments: Omnibus* as amended, and GASB Statement No. 65, *Items Previously Reported as Assets and Liabilities*, for presentation as major are identified and presented as such and all other funds that are presented as major are considered important to financial statement users.
- All components of net position, nonspendable fund balance, and restricted, committed, assigned, and unassigned fund balance are properly classified and, if applicable, approved.
- Our policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net position/fund balance are available is appropriately disclosed and net position/fund balance is properly recognized under the policy.
- All revenues within the statement of activities have been properly classified as program revenues, general revenues, contributions to term or permanent endowments, or contributions to permanent fund principal.
- All expenses have been properly classified in or allocated to functions and programs in the statement of activities, and allocations, if any, have been made on a reasonable basis.
- Deposit and investment risks have been properly and fully disclosed.
- Capital assets, including infrastructure assets, are properly capitalized, reported, and if applicable, depreciated.

Information Provided

- We have provided you with:
 - Access to all information, of which we are aware that is relevant to the preparation and fair presentation of the financial statements of the various opinion units referred to above, such as records, documentation, meeting minutes, and other matters;
 - Additional information that you have requested from us for the purpose of the audit; and
 - Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.
- All transactions have been recorded in the accounting records and are reflected in the financial statements.
- We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.
- We have no knowledge of any fraud or suspected fraud that affects the entity and involves:
 - Management;
 - Employees who have significant roles in internal control; or
 - Others where the fraud could have a material effect on the financial statements.
- We have no knowledge of any allegations of fraud, or suspected fraud, affecting the entity's financial statements communicated by employees, former employees, vendors, regulators, or others.
- We are not aware of any pending or threatened litigation, claims, and assessments whose effects should be considered when preparing the financial statements.
- We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.
- There have been no communications from regulatory agencies concerning noncompliance with or deficiencies in accounting, internal control, or financial reporting practices.
- Valley Clean Energy Alliance has no plans or intentions that may materially affect the carrying value or classification of assets and liabilities.
- We have disclosed to you all guarantees, whether written or oral, under which Valley Clean Energy Alliance is contingently liable.

- We have disclosed to you all nonexchange financial guarantees, under which we are obligated and have declared liabilities and disclosed properly in accordance with GASB Statement No. 70, *Accounting and Financial Reporting for Nonexchange Financial Guarantees*, for those guarantees where it is more likely than not that the entity will make a payment on any guarantee.
- For nonexchange financial guarantees where we have declared liabilities, the amount of the liability recognized is the discounted present value of the best estimate of the future outflows expected to be incurred as a result of the guarantee. Where there was no best estimate but a range of estimated future outflows has been established, we have recognized the minimum amount within the range.
- We have disclosed to you all significant estimates and material concentrations known to management that are required to be disclosed in accordance with GASB Statement No. 62 (GASB-62), *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1989 FASB and AICPA Pronouncements*. Significant estimates are estimates at the balance sheet date that could change materially within the next year. Concentrations refer to volumes of business, revenues, available sources of supply, or markets or geographic areas for which events could occur that would significantly disrupt normal finances within the next year.
- We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts, including legal and contractual provisions for reporting specific activities in separate funds.
- There are no:
 - Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.
 - Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62.
 - Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62
 - Continuing disclosure consent decree agreements or filings with the Securities and Exchange Commission and we have filed updates on a timely basis in accordance with the agreements (Rule 240, 15c2-12).
- Valley Clean Energy Alliance has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset or future revenue been pledged as collateral, except as disclosed to you.
- We have complied with all aspects of grant agreements and other contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

Mitch Sears, Executive Director

Edward Burnham, Director of Finance & Internal Operations

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

Proposed Journal Entry

Proposed Journal Entries JE # 5

To adjust for underaccrual of December SMUD utilities expenses.

45323-0000	SMUD - OPERATIONAL SERVICES	15,803	
22210-0000	ACCOUNTS PAYABLE		15,803
Total		15,803	15,803

Proposed Journal Entries JE # 6

PBC to adjust Energy Resources Surcharge liability for payment made during the year.

23010-0000	ENERGY RESOURCES SURCHARGE	57,056	
30110-0000	RESIDENTIAL SALES		57,056
Total		57,056	57,056



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 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 (VCE), which comprise the statement of financial position as of December 31, 2021 and June 30, 2021, and the related statements of activities, functional expenses, and cash flows for the six months and year ended, respectively, and the related notes to the financial statements, and have issued our report thereon dated April 7, 2022.

Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered VCE'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 opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of VCE's internal control. Accordingly, we do not express an opinion on the effectiveness of VCE'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 and therefore, material weaknesses or significant deficiencies may exist that have not been identified. We did identify certain deficiencies in internal control, described in the accompanying schedule of findings, that we consider to be a material weakness. See finding 2021-01, Closing Entries.

Compliance and Other Matters

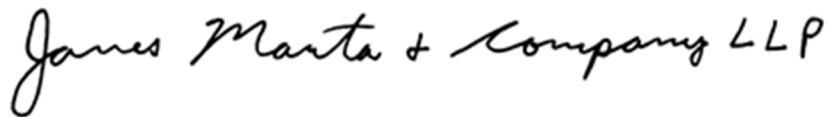
As part of obtaining reasonable assurance about whether VCE's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect 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 instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*, and which are described in the accompanying schedule of findings as item 2021-01.

Valley Clean Energy Alliance's Response to Findings

Valley Clean Energy Alliance's response to the findings identified in our audit are described in the accompanying schedule of findings. VCE's response was not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on it.

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 result 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 is not suitable for any other purpose.

A handwritten signature in black ink that reads "James Marta & Company LLP". The signature is written in a cursive, flowing style.

James Marta & Company LLO
Certified Public Accountants
Sacramento, California
April 7, 2022

ATTACHMENT I: SCHEDULE OF 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.

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.			
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22210-0000	ACCOUNTS PAYABLE	84,195	
45370-0000	BANKING FEES	1	
26310-0000	RETAINED EARNINGS - UNRESERVED		84,195
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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.			
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30120-0000	COMMERCIAL & INDUSTRIAL SALES	156,988	
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23020-0000	NEM CREDITS		99,037
Total		261,646	261,646
Adjusting Journal Entries JE # 7			
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Total		618,626	618,626