



**Meeting of the Board of Directors of the
Valley Clean Energy Alliance (VCEA)
Thursday, September 13, 2018
5:30 P.M.**

AMENDED AGENDA

Woodland City Council Chambers, 300 1st Street, Woodland, CA 95695

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

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

Board Members: Lucas Frerichs (Chair/City of Davis), Tom Stallard (Vice Chair/City of Woodland), Angel Barajas (City of Woodland), Duane Chamberlain (Yolo County), Don Saylor (Yolo County), and Dan Carson (City of Davis)

5:30 p.m. Call to Order

- 1. Welcome and Roll Call**
- 2. Approval of Agenda**
- 3. Public Comment**

This item is reserved for persons wishing to address the Board on any VCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, but an extension can be provided at the discretion of the Chair.

CONSENT AGENDA

- 4. Approval of Draft July 12, 2018 Meeting Minutes**
- 5. Receive Long Range Calendars**
- 6. Receive June 30, 2018 and July 31, 2018 draft unaudited Financial Statements**

7. **Approval of Retirement Plans: 401(a) Discretionary Defined Contribution Plan and 457(b) Deferred Compensation Plan**
8. **Approval of Contract Extensions LEAN Energy and Donald Dame**
9. **Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) Approval of Resolution authorizing Application to the Director of Industrial relations for a Certificate of Consent to Self-Insure Workers Compensation Liabilities**
10. **Receive Regulatory Update**
11. **Receive Customer Enrollment Update**
12. **Approve “Standard Green” as the name for VCEA’s standard electricity offering**
13. **Receive CAC Meeting Update and Recommendations**

REGULAR AGENDA

14. **Status Report on Pending Regulatory Actions (Informational)**
15. **Net Energy Metering (NEM) Policy Amendment (Action)**
16. **Joint Powers Agency New Member Application Policy (Action)**
17. **Update on Long Term Renewables Procurement Solicitation (Informational)**
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 at 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.

The next VCEA Board meeting: Thursday, October 11, 2018 at 5:30 p.m. at the City of Davis Community Chambers, 23 Russell Boulevard, Davis, CA 95616.

19. **Adjournment (Approximately 7:00pm)**

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. VCEA public records are available for inspection by contacting Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. Agendas and Board meeting materials can be inspected at VCEA’s offices located at 604 Second Street, Davis, California 95616; those interested in inspecting these materials are asked to call (530) 446-2750 to make arrangements. The documents are also available on the Valley Clean Energy website located at: <https://valleycleanenergy.org/about-us/meetings/>

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 4

TO: Valley Clean Energy Alliance Board of Directors
FROM: Alisa Lembke, VCEA Board Clerk/Administrative Analyst
SUBJECT: Approval of Minutes from July 12, 2018 Board Meeting
DATE: September 13, 2018

RECOMMENDATION

Receive, review and approve the attached draft Minutes from the July 12, 2018 Board meeting.



**MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS
July 12, 2018**

The Board of Directors of the Valley Clean Energy Alliance duly noticed their meeting scheduled for Thursday, July 12, 2018 at 5:30 p.m. at the Woodland City Council Chambers, located at 300 First Street, Woodland, CA 95695. Chairperson Lucas Frerichs established that there was a quorum present and began the meeting at 5:34 p.m. He welcomed the newest VCEA Board Member Dan Carson to his first meeting.

Board Members Present: Lucas Frerichs, Tom Stallard, Angel Barajas, Skip Davies, Dan Carson, Duane Chamberlain (*arrived at 5:58 p.m.), Don Saylor (**departed at 6:32 p.m.)

Board Members Absent: See above regarding Director Chamberlain.

Approval of Agenda Motion made by Director Barajas, seconded by Director Saylor to approve the Agenda. Motion passed unanimously with Director Chamberlain absent.

Public Comment Chairperson Frerichs opened the floor for public comment. Christine Shewmaker, Community Advisory Committee (CAC) Member, commented that VCEA launched on June 1st, filming the Board meetings is recommended for transparency purposes and to allow citizen input. The VCEA Board is making decisions and it is important for others to see and hear what the discussions were about. Gerry Braun, CAC Chair, stated that VCEA has turned the corner and the CAC will be coming back to the Board to recap and review their “charge”. The CAC Legislative / Regulatory (Leg. /Reg.) and Outreach Task Groups have been engaging Staff to help. Yvonne Hunter, Chair of Leg. /Reg. and Mark Aulman, Chair of Outreach and the members of each Task Group having been doing a great job.

Approval of Consent Agenda It was noted that minor corrections to the June 6, 2018 meeting Minutes have been identified by Director Stallard and those corrections have been made by the VCEA Board Clerk. Chairperson Frerichs also noted that the Customer Enrollment update would be reviewed during Board Member and Staff Announcements portion of the Agenda. Motion made by Director Stallard to approve the Consent Agenda with minor corrections made to the June 6, 2018 meeting Minutes, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent.

Approval of Minutes from June 6, 2018 Meeting Motion made by Director Stallard to approve the June 6, 2018 meeting Minutes with minor corrections made, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent.

Long Range Calendar Motion made by Director Stallard to approve the Long Range Calendar dated July 6, 2018, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent.



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| Approval of VCEA Budget Policy / Resolution 2018-019 | Motion made by Director Stallard to adopt the Resolution titled “Resolution of the Board of Directors of the Valley Clean Energy Alliance Adopting the Budget Policy”, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent. |
| Approval of Financial Auditor Contract with James Marta and Company for Auditing Services / Resolution 2018-020 | Motion made by Director Stallard to adopt the Resolution titled “Resolution of the Board of Directors of the Valley Clean Energy Alliance Approving Selection of James Marta & Company, LLC to Provide Audit Services and Authorizing the Engagement Letter and Letter Agreement between James Marta & Company, LLC and VCEA”, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent. |
| Regulatory and Legislative Update | Motion made by Director Stallard to receive the regulatory monitoring report from Keyes & Fox, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent. |
| Customer Enrollment Update | Motion made by Director Stallard to receive the Customer Enrollment update reviewed later in the Agenda during Board Member and Staff Announcements portion of the Agenda, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent. |
| Community Advisory Committee Meeting Update | Motion made by Director Stallard to receive the transmittal report of the Community Advisory Committee’s July 2, 2018 meeting, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent. |
| Receive May 31, 2018 Financial Statements | Motion made by Director Stallard to accept the financial statements (unaudited) for the period of January 1, 2017 (inception) to May 31, 2018, seconded by Director Saylor. Motion passed unanimously with Director Chamberlain absent. |
| Net Energy Metering (NEM) Policy – Approval of postponement of NEM Customer enrollment until 2019 and receive information on preliminary amendment concepts to the current NEM Policy | <p>*Director Duane Chamberlain arrived at 5:58 p.m.</p> <p>Mr. Sears gave a brief introduction regarding the Net Energy Metering (NEM) Policy and turned over the presentation to VCEA Staff Member Jim Parks. Mr. Parks reviewed the current NEM Policy, the Community Choice Aggregation (CCA) NEM Policy Comparison chart, NEM Feedback and Options, PG&E NEM True-up dates by Month, Current NEM Policy Example, then a PG&E Example. Mr. Parks has been working with the CAC Outreach Task Group to review recommendations, Policy amendment concepts, financial impacts and issues for the Board’s consideration. Proposed next steps are to have two NEM workshops: Monday, July 23rd in Davis and Wednesday, August 1st in Woodland. Thereafter, finalize the concepts for the CAC to review and make a recommendation to the VCEA Board at the Board’s September 2018</p> |



meeting. There is a letter prepared to be sent out along with an update to the VCEA website regarding the postponement, should the Board agree to postpone enrollment until 2019 and revisit the current Policy.

Chairperson Frerichs opened the floor for discussion. Board Members discussed the impacts on the budget, loss of customers and retention, risks of postponing enrollment of NEM Customers, how many NEM Customers will be affected and their reactions to the change of policy if it is determined necessary, transition issues, true up dates, and noticing requirements.

Mr. Sears stated that four (4) notices will be sent out to Customers about VCEA's launch/change with the 60 day "window" rolling throughout the year. Mr. Parks stated that two (2) additional notices will be sent to NEM Customers informing them of the enrollment delay (1st notice) then a second notice will be sent to them informing them about the policy.

Motion made by Director Barajas to:

1. postpone enrollment of NEM customers until early 2019 while NEM policy amendments are drafted and finalized and associated billing system modifications are completed and
2. review and provide feedback on preliminary concept amendments to the existing Net Energy Metering (NEM) policy for consideration at a future meeting.

Motion seconded by Director Saylor. Chairperson Frerichs opened the floor for discussion on the motion. Comments were made about it being a difficult issue, the belief that VCEA can handle the cash flow, the importance of communicating to the NEM Customers of what is going on with the Policy and getting Customer feedback. Motion passed unanimously by the following vote:

AYES: Frerichs, Stallard, Barajas, Saylor, Carson, Chamberlain

NOES: None

ABSENT: None

ABSTAIN: None

Integrated
Resource Plan
(IRP) – Approve
IRP for submittal to
the CPUC /
Resolution 2018-
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Mr. Sears reviewed the background and process of the IRP. Senate Bill 350 requires all CCAs to produce an IRP requiring portfolio planning, an action plan and updated every two (2) years. Mr. Sears turned over the discussion to VCEA Staff Olof Bystrom.



Mr. Bystrom reviewed what is new in the draft IRP and pointed out that a number of scenarios were reduced with a more plausible Local portfolio based on Board and Community Advisory Committee (CAC) feedback. In addition, the Action Plan was updated with the prioritization based on CAC input.

Mr. Bystrom reviewed the resource portfolios: Base, Local and Cleaner Base. Director Chamberlain asked what are our sources of power today? Mr. Bystrom stated, wind out of the Northwest, Hydro – unspecified out of State, Indian Valley. Director Chamberlain asked if there were more details on the sources as he reminded those present that the fires north took out the lines at Indian Valley hydro, so we are not getting generation from them for a while. Director Chamberlain asked how much power is coming from Indian Valley if it was in operation? Mr. Bystrom stated the load was about 80 megawatts. Mr. Bystrom continued with his review of the estimated generation costs by portfolio.

Mr. Bystrom then reviewed the key elements in the Action Plan. Director Carson stated that PG&E services cooler coastal areas and we use more electricity in the valley. He asked that if we get better data, does Mr. Bystrom think the demand will look different? Mr. Bystrom stated that we need to use the data we have currently, until VCEA has their own historical data.

Director Chamberlain asked if the IRP can be modified when factors change? Mr. Bystrom said yes, it can be updated every 2 years and reminded the Board that the IRP is not a confining/binding document.

Chairperson Frerichs opened the floor to the public.

CAC Chairperson Gerry Braun compliment the staff on a job well done in preparing the IRP. He stated that he has confidence in the cost scenarios of Cleaner Base, but not so much in Local because no experience in that arena right now. He stated that there is more work to be done moving forward with the Action Plan; gaining confidence in costs; and, understanding the benefits of Local.

Ms. Kelsey Porton asked about ramp up costs and potentially costs during evening demand may not be feasible. Mr. Bystrom responded that the IRP calls for storage feasibility and renewables. The procurement of electricity is made to match the demand.

Director Stallard made a motion to adopt a resolution establishing the following:

- approving the Integrated Resource Plan (IRP) in substantially the form as presented, which includes the “Cleaner Base” portfolio as the Preferred Portfolio and the Action Plan identified therein, for submission to the California Public Utilities Commission (CPUC); and,
- authorizing staff to make any non-substantial changes necessary to finalize the IRP document for filing.



Director Saylor seconded the motion. Motion passed unanimously by the following vote:

AYES: Frerichs, Stallard, Barajas, Saylor, Carson, Chamberlain
NOES: None
ABSENT: None
ABSTAIN: None

** Director Saylor departed the meeting at 6:32 p.m.

Senate Bill 100 and Assembly Bill 813 Mr. Sears reviewed VCEA Staff report with those present regarding Senate Bill 100 (SB 100) and Assembly Bill 813 (AB 813).

Chairperson Frerichs opened the floor for questions. Director Carson asked if a decision needs to be made by the end of August? Chairperson Frerichs answered yes. Director Carson asked if the version would then be adjusted? Chairperson Frerichs said yes, CalCCA would adjust their position and VCEA would too.

Public Comment: Yvonne Hunter Chair of the CAC Leg/Reg Task Group studied and discussed amongst the Task Group AB 813 and the role of VCEA. Although they are sensitive to VCEA being a part of CalCCA, the Task Group was not convinced that they wanted to support or not, so they took a "No Position".

Lynn Nittler (Fossil Free SB100 and Davis resident), thinks that supporting SB 100 supports the State and VCEA's vision statement.

Adelita Serena (Mother out Front organization and resident) supports the SB 100 campaign and urges VCEA to support SB 100.

Director Barajas made a motion to support CalCCA's position on AB 813 of support as amended and support CalCCA's position on SB 100 of support, seconded by Director Carson.

A substitute motion was made by Director Stallard to support SB 100 consistent with CalCCA's position and take a "No Position" on AB 813 as recommended by the Community Advisory Committee.

Director Carson suggested that two (2) separate motions be made. Director Stallard withdrew his substitute motion.

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Director Carson made a motion to support CalCCA's position of support on SB 100, Director Barajas seconded the motion. Motion passed unanimously by the following vote:

AYES: Frerichs, Stallard, Barajas, Saylor, Carson, Chamberlain
NOES: None
ABSENT: None
ABSTAIN: None

Director Stallard made a motion to take a "No Position" on Ab 813, seconded by Chairperson Frerichs. After a brief discussion amongst the Board Members, Director Stallard withdrew his motion and asked that taking a position on AB 813 being tabled. This item was tabled to the August Board meeting and Staff was requested to provide an update on this bill at the next meeting.

Board Member and
Staff
Announcements

Mr. Sears reminded those present that the CalCCA annual conference is scheduled for early September and encourages Board Members to attend. The information will be forwarded to Director Carson.

Mr. Sears announced that public outreach is ongoing with VCEA having a booth at the Woodland and Davis Farmers markets.

Mr. Sears announced that there is a potential for JPAs among CCAs to pursue joint procurement of energy. He asked the Board Members to think about where does VCEA go next to get others to join, such as the Cities of Sacramento and Winters, with a target date of January 2020 for others to join. He would also like to reach out to Solana County. Staff will come back to the Board with a conceptual plan for their discussion.

He informed those present that he has been invited to attend the Butte County Board of Supervisors meeting scheduled for July 24, 2018 to provide information on VCEA and CCAs.

There are a few items being addressed in Regulatory court that pertain to rates and PG&E. Mr. Sears will have more information later and will come back to the Board with an update. He informed those present that there has been a request for the VCEA Board meetings to be recorded. Staff are looking at what other CCAs and JPA's are doing but noted that most local JPAs do not record their meetings.

Director Chamberlain asked if PG&E are lowering their rates – generation, transmission and/or transmission? Per Mr. Sears suggested that they may be thinking about lowering their generation rates.

Chairperson Frerichs asked that VCEA Staff come back to the Board with information on recording and/or audio taping the meetings, what other CCAs are doing and the costs associated with either or both.



Announcements The next VCEA Board meeting has been scheduled for Thursday, August 9, 2018 at 5:30 p.m. at the Davis Community Chambers, 23 Russell Blvd., Davis, CA 95616.

Meeting was adjourned at 7:02 p.m.

Alisa Lembke
Board Clerk/Administrative Analyst

**VALLEY CLEAN ENERGY ALLIANCE
Board of Directors Meeting**

Staff Report - Item 5

TO: VCEA Board
FROM: Mitch Sears, Interim General Manager
SUBJECT: Long Range Calendar
DATE: September 13, 2018

Recommendation

Please find attached the long range calendars for the remaining 2018 year and 2019.

VALLEY CLEAN ENERGY
2018 Meeting Dates and Topics – Board and Community Advisory Committee

MEETING DATE		TOPICS	ACTION
May 10, 2018	Board WOODLAND	<ul style="list-style-type: none"> Recontracting Master Agreement 	<ul style="list-style-type: none"> Approve
June 4, 2018	Advisory Committee DAVIS	<ul style="list-style-type: none"> Integrated Resource Plan 	<ul style="list-style-type: none"> Informational
June 1, 2018 -- LAUNCH			
June 6, 2018	Board DAVIS	<ul style="list-style-type: none"> Integrated Resource Plan 	<ul style="list-style-type: none"> Discussion
July 2, 2018	Advisory Committee WOODLAND	<ul style="list-style-type: none"> Integrated Resource Plan 	<ul style="list-style-type: none"> Recommend
July 12, 2018	Board WOODLAND	<ul style="list-style-type: none"> Integrated Resource Plan NEM Enrollment – Postponement 	<ul style="list-style-type: none"> Approve Approve
July 30, 2018	Advisory Committee DAVIS	<ul style="list-style-type: none"> NEM Policy Amendment Update Long Term Renewables Procurement Policy 	<ul style="list-style-type: none"> Informational Recommend
August 9, 2018 CANCELLED: No Quorum	Board DAVIS	<ul style="list-style-type: none"> NEM Policy Amendment Update Long Term Renewables Procurement Policy 	<ul style="list-style-type: none"> Informational Approve
August 29, 2018 (Wednesday)	Advisory Committee WOODLAND	<ul style="list-style-type: none"> NEM Policy Amendment 	<ul style="list-style-type: none"> Recommend
Sept 13, 2018	Board WOODLAND	<ul style="list-style-type: none"> NEM Policy Amendment 	<ul style="list-style-type: none"> Approve

October 1, 2018	Advisory Committee DAVIS		
October 11, 2018	Board DAVIS	•	•
October 29, 2018	Advisory Committee WOODLAND	•	•
November 8, 2018	Board WOODLAND	•	•
December 3, 2018	Advisory Committee DAVIS	•	•
December 13, 2018	Board DAVIS	•	•

VALLEY CLEAN ENERGY
2019 Meeting Dates and Topics – Board and Community Advisory Committee

MEETING DATE		TOPICS	ACTION
December 31, 2018 HOLIDAY	Advisory Committee WOODLAND	<ul style="list-style-type: none"> • Need to reschedule 	•
January 10, 2019	Board WOODLAND	•	•
February 4, 2019	Advisory Committee DAVIS	•	•
February 14, 2019	Board DAVIS	•	•
March 4, 2019	Advisory Committee WOODLAND	•	•
March 14, 2019	Board WOODLAND	•	•
April 1, 2019	Advisory Committee DAVIS	•	•
April 11, 2019	Board DAVIS	•	•
April 29, 2019	Advisory Committee WOODLAND	•	•
May 9, 2019	Board WOODLAND	•	•
June 3, 2019	Advisory Committee DAVIS	•	•

June 13, 2019	Board DAVIS	•	•
July 1, 2019	Advisory Committee WOODLAND	•	•
July 11, 2019	Board WOODLAND	•	•
July 29, 2019	Advisory Committee DAVIS	•	•
August 8, 2019	Board DAVIS	•	•
September 2, 2019 HOLIDAY	Advisory Committee WOODLAND	• Need to reschedule	•
September 12, 2019	Board WOODLAND	•	•
September 30, 2019	Advisory Committee DAVIS	•	•
October 10, 2019	Board DAVIS	•	•
November 4, 2019	Advisory Committee WOODLAND	•	•
November 14, 2019	Board WOODLAND	•	•
December 2, 2019	Advisory Committee DAVIS	•	•
January 9, 2020	Board DAVIS	•	•

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

TO: Valley Clean Energy Alliance Board of Directors

FROM: Lisa Limcaco, Finance and Operations Director, VCEA
Chad Rinde, Asst. Chief Financial Officer, Yolo County
Mitch Sears, Interim General Manager, VCEA

SUBJECT: Financial Update – June 30, 2018 and July 31, 2018

DATE: September 13, 2018

RECOMMENDATIONS:

Accept the Financial Statements (unaudited) for the following periods:

- 1) For the period of June 1, 2018 to June 30, 2018 (with comparative information from January 1, 2017 (Inception) to May 31, 2018 and Period to Date.)
- 2) For the period of July 1, 2018 to July 31, 2018 (with comparative information from Prior Periods)

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

For the period June 1, 2018-June 30, 2018

VCEA launched June 1, 2018 and the financial statements reflect the first month of power operations. In the Statement of Net Position, VCEA as of June 30, 2018 has a total of \$963,338 in a checking account with River City Bank and \$1,100,000 restricted cash for the Debt Service Reserve account related to our Line of Credit with River City Bank. VCEA has incurred obligations from Member agencies and SMUD and owes as of June 30, 2018 \$534,639 and \$837,294 respectively for a grand total of \$1,371,933. The repayments to the member agencies are deferred by the co-operation agreements until after the VCEA is revenue positive. The SMUD repayments are deferred until October 2018.

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$2,820,188 of revenue (net of allowance for doubtful accounts) of which \$5,671 was billed in June and \$2,814,517 represent estimated unbilled revenue. The cost of the electricity for the June revenue totaled \$2,237,352. For June, VCEA's gross margin is approximately 20.6% and operating income totaled \$204,655.

For the period July 1, 2018-July 31, 2018

The financial statements for July 2018 represent the first full month of power operations. In the Statement of Net Position, VCEA as of July 31, 2018 has a total of \$1,246,062 in its checking and lockbox accounts, \$1,100,000 restricted cash for the Debt Service Reserve account and \$36,293 restricted cash for the Power Purchases Reserve account. VCEA has incurred obligations from Member agencies and SMUD and owes as of July 31, 2018 \$574,654 and \$1,082,390 respectively for a grand total of \$1,657,044. The outstanding line of credit balance with River City Bank at July 31, 2018 totaled \$3,600,885. At July 31, 2018, VCE's net position is \$(368,818).

In the Statement of Revenues, Expenditures and Changes in Net Position, VCEA recorded \$6,970,683 of revenue (net of allowance for doubtful accounts) of which \$6,427,113 was billed in July and \$543,570 represent estimated unbilled revenue (net June and July). The cost of the electricity for the July revenue totaled \$5,538,730. For July, VCEA's gross margin is approximately 20.5% and operating income totaled \$1,065,468.

In the Statement of Cash Flows, VCEA cash flows from operations was \$(1,677,897) due to negligible cash receipts from June revenue and the payment of June purchased electricity. The June purchased electricity was paid with the \$2,000,885 draw on the RCB line of credit.

Attachments:

- 1) Financial Statements (Unaudited) June 1, 2018 to June 30, 2018 (with comparative information from January 1, 2017 (Inception) to May 31, 2018 and Period to Date.)
- 2) Financial Statements (Unaudited) July 1, 2018 to July 31, 2018 (with comparative information from Prior Periods.)



VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF JUNE 1, 2018 TO JUNE 30, 2018

(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)

PREPARED ON AUGUST 14, 2018

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
JUNE 30, 2018
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(UNAUDITED)

	JUNE 30, 2018	MAY 31, 2018
ASSETS		
Current assets:		
Cash in Yolo County Treasury	\$ -	\$ 283,102
Cash with fiscal agent	963,388	234,492
Accounts receivable, net of allowance	2,830,161	-
Inventory - Renewable Energy Credits	436,587	-
Other current assets and deposits	2,540	2,540
Total current assets	4,232,676	520,134
Noncurrent assets:		
Restricted cash	1,100,000	-
Other noncurrent assets and deposits	600,000	600,000
Total noncurrent assets	1,700,000	600,000
TOTAL ASSETS	\$ 5,932,676	\$ 1,120,134
LIABILITIES		
Current liabilities:		
Accounts payable	\$ 137,475	\$ 153,383
Accrued payroll	1,624	917
Interest payable	61,556	9,313
Due to member agencies	534,639	501,513
Accrued cost of electricity	2,673,939	-
Other accrued liabilities	837,294	531,273
User taxes and energy surcharges	10,002	-
Total current liabilities	4,256,529	1,196,399
Noncurrent liabilities		
Line of credit	1,600,000	-
Loans from member agencies	1,500,000	1,500,000
Total noncurrent liabilities	3,100,000	1,500,000
TOTAL LIABILITIES	\$ 7,356,529	\$ 2,696,399
NET POSITION		
Net position:		
Restricted	\$ -	\$ -
Unrestricted	(1,423,853)	(1,576,265)
TOTAL NET POSITION	\$ (1,423,853)	\$ (1,576,265)

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF JUNE 1, 2018 TO JUNE 30, 2018
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(UNAUDITED)

	JUNE 1, 2018 - JUNE 30, 2018	JANUARY 1, 2017 - MAY 31, 2018
OPERATING REVENUE		
Electricity sales, net	\$ 2,820,188	\$ -
Other revenue	-	-
TOTAL OPERATING REVENUES	<u>2,820,188</u>	<u>-</u>
OPERATING EXPENSES		
Cost of electricity	2,237,352	-
Contract services		
Contractors	246,661	1,066,865
Member agencies	33,126	501,513
Staff compensation	8,581	9,341
General and administration	36,304	5,636
Other expenses	53,509	-
Depreciation	-	-
TOTAL OPERATING EXPENSES	<u>2,615,533</u>	<u>1,583,355</u>
TOTAL OPERATING INCOME (LOSS)	204,655	(1,583,355)
NONOPERATING REVENUES (EXPENSES)		
Interest income	-	16,403
Interest and related expenses	(52,243)	(9,313)
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>(52,243)</u>	<u>7,090</u>
CHANGE IN NET POSITION	152,412	(1,576,265)
Net position at beginning of period	(1,576,265)	-
Net position at end of period	<u>\$ (1,423,853)</u>	<u>\$ (1,576,265)</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF JUNE 1, 2018 TO JUNE 30, 2018
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(UNAUDITED)

	JUNE 1, 2018 - JUNE 30, 2018	JANUARY 1, 2017 - MAY 31, 2018
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from electricity sales	\$ 29	\$ -
Payments for security deposits with energy suppliers	-	(600,000)
Payments to purchase electricity	-	-
Payments for contract services, general, and administration	(46,361)	(387,845)
Payments for member agency services	-	-
Payments for staff compensation	(7,874)	(8,424)
Other cash payments	-	(2,540)
Net cash provided (used) by operating activities	<u>(54,206)</u>	<u>(998,809)</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Loans from member agencies	-	1,500,000
Draw of line of credit	1,600,000	-
Transfer to restricted cash	(1,100,000)	-
Net cash provided (used) by non-capital financing activities	<u>500,000</u>	<u>1,500,000</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income	-	16,403
Net cash provided (used) by investing activities	<u>-</u>	<u>16,403</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	445,794	517,594
Cash and cash equivalents at beginning of period	517,594	-
Cash and cash equivalents at end of period	<u>\$ 963,388</u>	<u>\$ 517,594</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS (CONTINUED)
FOR THE PERIOD OF JUNE 1, 2018 TO JUNE 30, 2018
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(UNAUDITED)

**RECONCILIATION OF OPERATING INCOME TO NET CASH
PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating Income (Loss)	\$ 204,655	\$ (1,583,355)
Adjustments to reconcile operating income to net cash provided (used) by operating activities:		
(Increase) decrease in net accounts receivable	(2,830,161)	-
(Increase) decrease in inventory - renewable energy credits	(436,587)	-
(Increase) decrease in other assets and deposits	-	(602,540)
Increase (decrease) in accounts payable	(15,908)	153,383
Increase (decrease) in accrued payroll	707	917
Increase (decrease) in due to member agencies	33,126	501,513
Increase (decrease) in accrued cost of electricity	2,673,939	-
Increase (decrease) in other accrued liabilities	306,021	531,273
Increase (decrease) in user taxes and energy surcharges	10,002	-
Net cash provided (used) by operating activities	<u>\$ (54,206)</u>	<u>\$ (998,809)</u>



VALLEY CLEAN ENERGY ALLIANCE

FINANCIAL STATEMENTS

(UNAUDITED)

FOR THE PERIOD OF JULY 1, 2018 TO JULY 31, 2018

(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)

PREPARED ON AUGUST 31, 2018

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
AS OF JULY, 31, 2018
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(UNAUDITED)

	<u>JULY 31, 2018</u>	<u>JUNE 30, 2018</u>	<u>MAY 31, 2018</u>
ASSETS			
Current assets:			
Cash in Yolo County Treasury	\$ -	\$ -	\$ 283,102
Cash with fiscal agent	1,246,062	963,388	234,492
Accounts receivable, net of allowance	5,959,837	5,671	-
Accrued revenue	3,430,303	2,824,490	-
Prepaid expenses	16,687	-	-
Inventory - Renewable Energy Credits	1,029,703	436,587	-
Other current assets and deposits	2,540	2,540	2,540
Total current assets	<u>11,685,132</u>	<u>4,232,676</u>	<u>520,134</u>
Noncurrent assets:			
Restricted cash	1,136,293	1,100,000	-
Other noncurrent assets and deposits	600,000	600,000	600,000
Total noncurrent assets	<u>1,736,293</u>	<u>1,700,000</u>	<u>600,000</u>
TOTAL ASSETS	<u>\$ 13,421,425</u>	<u>\$ 5,932,676</u>	<u>\$ 1,120,134</u>
LIABILITIES			
Current liabilities:			
Accounts payable	\$ 122,542	\$ 137,475	\$ 153,383
Accrued payroll	2,332	1,624	917
Interest payable	67,968	61,556	9,313
Due to member agencies	574,654	534,639	501,513
Accrued cost of electricity	6,804,900	2,673,939	-
Other accrued liabilities	1,082,390	837,294	531,273
User taxes and energy surcharges	34,572	10,002	-
Total current liabilities	<u>8,689,358</u>	<u>4,256,529</u>	<u>1,196,399</u>
Noncurrent liabilities			
Line of credit	3,600,885	1,600,000	-
Loans from member agencies	1,500,000	1,500,000	1,500,000
Total noncurrent liabilities	<u>5,100,885</u>	<u>3,100,000</u>	<u>1,500,000</u>
TOTAL LIABILITIES	<u>\$ 13,790,243</u>	<u>\$ 7,356,529</u>	<u>\$ 2,696,399</u>
NET POSITION			
Net position:			
Restricted			
Local Programs Reserve	\$ 10,550	\$ -	\$ -
Unrestricted			
TOTAL NET POSITION	<u>\$ (368,818)</u>	<u>\$ (1,423,853)</u>	<u>\$ (1,576,265)</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN NET POSITION
FOR THE PERIOD OF JULY 1, 2018 TO JULY 31, 2018
(WITH COMPARATIVE INFORMATION FROM PRIOR PERIODS)
(UNAUDITED)

	JULY 1, 2018 - JULY 31, 2018	JUNE 1, 2018 - JUNE 30, 2018	JANUARY 1, 2017 - MAY 31, 2018
OPERATING REVENUE			
Electricity sales, net	\$ 6,970,683	\$ 2,820,188	\$ -
Other revenue	-	-	-
TOTAL OPERATING REVENUES	<u>6,970,683</u>	<u>2,820,188</u>	<u>-</u>
OPERATING EXPENSES			
Cost of electricity	5,538,730	2,237,352	-
Contract services:			
Contractors	280,455	246,661	1,066,865
Member agencies	40,015	33,126	501,513
Staff compensation	9,049	8,581	9,341
General, administration, and other	36,966	89,813	5,636
Depreciation	-	-	-
TOTAL OPERATING EXPENSES	<u>5,905,215</u>	<u>2,615,533</u>	<u>1,583,355</u>
TOTAL OPERATING INCOME (LOSS)	1,065,468	204,655	(1,583,355)
NONOPERATING REVENUES (EXPENSES)			
Interest income	-	-	16,403
Interest and related expenses	(10,433)	(52,243)	(9,313)
TOTAL NONOPERATING REVENUES (EXPENSES)	<u>(10,433)</u>	<u>(52,243)</u>	<u>7,090</u>
CHANGE IN NET POSITION	1,055,035	152,412	(1,576,265)
Net position at beginning of period	(1,423,853)	(1,576,265)	-
Net position at end of period	<u>\$ (368,818)</u>	<u>\$ (1,423,853)</u>	<u>\$ (1,576,265)</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF JULY 1, 2018 TO JULY 31, 2018
(WITH COMPARATIVE INFORMATION FOR PRIOR PERIODS)
(UNAUDITED)

	JULY 1, 2018 TO JULY 31, 2018	JUNE 1, 2018 - JUNE 30, 2018	JANUARY 1, 2017 - MAY 31, 2018
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts from electricity sales	\$ 435,274	\$ 29	\$ -
Payments for security deposits with energy suppliers	-	-	(600,000)
Payments to purchase electricity	(2,000,885)	-	-
Payments for contract services, general, and administration	(103,945)	(46,361)	(387,845)
Payments for member agency services	-	-	-
Payments for staff compensation	(8,341)	(7,874)	(8,424)
Other cash payments	-	-	(2,540)
Net cash provided (used) by operating activities	<u>(1,677,897)</u>	<u>(54,206)</u>	<u>(998,809)</u>
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES			
Loans from member agencies	-	-	1,500,000
Draw of line of credit	2,000,885	1,600,000	-
Transfer to restricted cash	(36,293)	(1,100,000)	-
Interest and related expenses	(4,021)	-	-
Net cash provided (used) by non-capital financing activities	<u>1,960,571</u>	<u>500,000</u>	<u>1,500,000</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Interest income	-	-	16,403
Net cash provided (used) by investing activities	<u>-</u>	<u>-</u>	<u>16,403</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS			
	282,674	445,794	517,594
Cash and cash equivalents at beginning of period	963,388	517,594	-
Cash and cash equivalents at end of period	<u>\$ 1,246,062</u>	<u>\$ 963,388</u>	<u>\$ 517,594</u>

VALLEY CLEAN ENERGY ALLIANCE
STATEMENTS OF CASH FLOWS
FOR THE PERIOD OF JULY 1, 2018 TO JULY 31, 2018
(WITH COMPARATIVE INFORMATION FOR PRIOR PERIODS)
(UNAUDITED)

**RECONCILIATION OF OPERATING INCOME TO NET CASH
PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating Income (Loss)	\$ 1,065,468	\$ 204,655	\$ (1,583,355)
Adjustments to reconcile operating income to net cash provided (used) by operating activities:			
(Increase) decrease in net accounts receivable	(5,954,166)	(5,671)	-
(Increase) decrease in accrued revenue	(605,813)	(2,824,490)	-
(Increase) decrease in prepaid expenses	(16,687)	-	-
(Increase) decrease in inventory - renewable energy credits	(593,116)	(436,587)	-
(Increase) decrease in other assets and deposits	-	-	(602,540)
Increase (decrease) in accounts payable	(14,933)	(15,908)	153,383
Increase (decrease) in accrued payroll	708	707	917
Increase (decrease) in due to member agencies	40,015	33,126	501,513
Increase (decrease) in accrued cost of electricity	4,130,961	2,673,939	-
Increase (decrease) in other accrued liabilities	245,096	306,021	531,273
Increase (decrease) in user taxes and energy surcharges	24,570	10,002	-
Net cash provided (used) by operating activities	<u>\$ (1,677,897)</u>	<u>\$ (54,206)</u>	<u>\$ (998,809)</u>

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 7

TO: Valley Clean Energy Alliance Board of Directors

FROM: Lisa Limcaco, Director of Finance and Internal Operations, VCE
Mitch Sears, Interim General Manager, VCE

SUBJECT: A Resolution of the Valley Clean Energy Alliance Board of Directors to authorize execution of agreement with the ICMA - RC to provide a 401(a) Discretionary Defined Contribution Plan and 457(b) Deferred Compensation Plan for Eligible Employees

DATE: September 13, 2018

Recommendation

Staff recommends that the Board of Directors adopt the following resolutions:

1. Authorizing adoption of the following documents related to the 401(a) Discretionary Defined Contribution Plan and 457(b) Deferred Compensation Plan:
 - a. ICMA-RC Governmental Profit-Sharing Plan & Trust, pursuant to the specific provisions of the Adoption Agreement
 - b. ICMA RC Deferred Compensation Plan and Trust and Optional Provisions Election Form
 - c. Administrative Services Agreement that appoints ICMA-RC as Administrator of VCE's 401(a) Defined Contribution plan and 457(b) Deferred Compensation Program (the "Plans") to perform all nondiscretionary functions necessary for the administration of the Plans.
 - d. Trust Agreement with the Matrix Trust Company ("Matrix") to provide trustee services for the Plans.
2. Authorizing that VCEA has the discretion to make an employer matching contribution on the elective deferrals made by eligible participants to the VCEA 457 (b) Deferred Compensation Plan.

Background & Discussion

ICMA-RC serve more than 9,000 plans representing over 1.3 million plan participant accounts and \$52.5 billion in assets under management and administration. The public sector agencies that have adopted similar retirement programs through ICMA-RC include City of Roseville, the City of Palo Alto, and the City of Oakland.

Effective November 1, 2018, Valley Clean Energy (VCE) will contribute 7.0% of salary on behalf of each employee eligible to the 401(a) Discretionary Defined Contribution Plan. In addition, the employee can voluntarily contribute their own pre-tax compensation into the 457(b) Deferred Compensation Plan at their discretion and VCE will match a 100% of the employee contribution up to 3% of the employees' earnings into the 401(a) Discretionary Defined Contribution Plan. Based on the current employees and

estimated employees from the Proforma, VCE estimates that the projected employer contribution of the program will range from approximately \$7,000-\$28,000 annually.

The vesting on VCE's contributions into the 401(a) Discretionary Defined Contribution Plan will be the following:

- Year 1 - 33%
- Year 2 - 66%
- Year 3 - 100%

There are several benefits of a Discretionary Defined Contribution Plan including:

1. Employer Contribution rate is set by the Employer.
2. The Employer can increase or decrease employer contributions at its discretion.
3. External factors (e.g., volatility in the financial markets or mortality rates) do not impact the Employer's ultimate cost of the program
4. The employee benefits through participation in a tax-qualified retirement program that provides advantages during employment (e.g., no immediate taxation on any contributions received and tax-deferred accumulation).

As the plan administrator, ICMA-RC will ensure that VCE eligible employees are educated in the program and will be provided information regarding plan investments. ICMA-RC also provides training to staff to ensure that the program is properly implemented and will also monitor the program and generate and submit all required reports. Matrix serves as the Trustee of the program. The assets are held separately from the assets of Matrix and cannot be accessed by creditors of either Matrix, ICMA-RC or VCE. Employees should feel very secure that their funds will be available when required. Investments through a variety of no-load mutual funds for selection by the employees are provided through VT III Vantagepoint Funds and other third party mutual funds.

Attachment

1. Resolutions including Exhibits

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
AUTHORIZING THE ADOPTION OF A
401(a) DISCRETIONARY DEFINED CONTRIBUTION PLAN**

WHEREAS, Valley Clean Energy Alliance (“VCEA”), is a public agency formed in January 2017 under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., between the County of Yolo and the City of Davis to provide Community Choice Energy (CCE) programs within the member agencies, and in June 2017, the City of Woodland also joined VCEA adding to the overall VCEA service territory;

WHEREAS it is determined to be in the best interest of the VCEA and its employees to provide a 401(a) Discretionary Plan (Plan) for its eligible employees and their beneficiaries in the event of death; and

WHEREAS VCEA desires that its Plan be administered by ICMA-RC and that the funds held under their retirement and deferred compensation plans:

NOW THEREFORE, BE IT RESOLVED that VCEA hereby establishes or has established the Plan in the form of:

The ICMA Retirement Corporation Governmental Profit Sharing Plan & Trust and the specific provisions of the Adoption Agreement, collectively referred to as Exhibit A.

BE IT FURTHER RESOLVED that the Plan shall be maintained for the exclusive benefit of eligible employees and their beneficiaries; and

BE IT FURTHER RESOLVED that VCEA hereby adopts the Declaration of Trust of VantageTrust, included in Exhibit A, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by VCEA, if the assets of the plan are to be invest in VantageTrust;

BE IT FURTHER RESOLVED that VCEA appoints ICMA-Retirement Corporation as administrator of the Plan as defined under Article II, Section 2.2 of the Plan;

BE IT FURTHER RESOLVED that under Plan, the VCEA has the discretion to make an employer matching contribution (“matching contribution”) on the elective deferrals made by eligible participants to the VCEA Deferred Compensation Plan (457 Plan). The matching contribution shall be one hundred percent (100%) of the elective deferrals made by the participant to the 457 Plan up to three (3) percent of the 457 Plan participant’s earnings. Such VCEA matching

contributions will be made and allocated on a payroll by payroll basis. This VCEA matching contribution shall remain in effect until the VCEA Board changes it by adoption of a new resolution;

BE IT FURTHER RESOLVED that VCEA authorizes the Interim General Manager (GM) or Board Chair to execute the Administrative Services Agreement with ICMA Retirement Corporation attached hereto as Exhibit B;

BE IT FURTHER RESOLVED that VCEA appoints the Matrix Trust Company (“Matrix”) and Matrix agrees to serve as non-discretionary trustee of the Plan and to invest funds held under the Plan in VantageTrust;

BE IT FURTHER RESOLVED that VCEA authorizes the GM or the Board Chair to execute the trust agreement with Matrix attached hereto as Exhibit C;

BE IT FURTHER RESOLVED that the VCEA shall appoint the GM as Plan Administrator of the Plan and delegate the duties and responsibilities of Plan administration to the GM which shall include receipt of reports, notices, etc., from ICMA Retirement Corporation or VantageTrust; shall cast, on behalf of VCEA, any required votes under VantageTrust; may delegate any administrative duties relating to the Plan to appropriate departments; and

BE IT FURTHER RESOLVED that VCEA hereby authorizes the GM or the Board Chair to execute all necessary agreements with ICMA Retirement Corporation incidental to the administration of the Plan.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2018, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Lucas Frerichs, VCEA Chair

ATTEST: _____
Alisa M. Lembke, VCEA Secretary

ICMA RETIREMENT CORPORATION

GOVERNMENTAL PROFIT-SHARING PLAN & TRUST



ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT-SHARING PLAN & TRUST

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ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT-SHARING PLAN & TRUST

I. PURPOSE

The Employer hereby adopts this Plan and Trust to provide funds for its Employees' retirement, and to provide funds for their Beneficiaries in the event of death. The benefits provided in this Plan shall be paid from the Trust. The Plan and the Trust forming a part hereof are adopted and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. Except as provided in Sections 4.14 and 14.03, no part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

II. DEFINITIONS

- 2.01 Account.** A separate record which shall be established and maintained under the Trust for each Participant, and which shall include all Participant subaccounts created pursuant to Article IV, plus any Participant Loan Account created pursuant to Section 13.03. Each subaccount created pursuant to Article IV shall include any earnings of the Trust and adjustments for withdrawals, and realized and unrealized gains and losses allocable thereto. The term "Account" may also refer to any of such separate subaccounts.
- 2.02 Accounting Date.** Each day that the New York Stock Exchange is open for trading, and such other dates as may be determined by the Plan Administrator, as provided in Section 6.06 for valuing the Trust's assets.
- 2.03 Adoption Agreement.** The separate agreement executed by the Employer through which the Employer adopts the Plan and elects among the various alternatives provided thereunder, and which upon execution, becomes an integral part of the Plan.
- 2.04 Beneficiary.** The person or persons (including a trust) designated by the Participant who shall receive any benefits payable hereunder in the event of the Participant's death. The designation of such Beneficiary shall be in writing to the Plan Administrator. A Participant may designate primary and contingent Beneficiaries. Where no designated Beneficiary survives the Participant or no Beneficiary is otherwise designated by the Participant, the Participant's Beneficiary shall be his/her surviving spouse or, if none, his/her estate.

Notwithstanding the foregoing, the Beneficiary designation is subject to the requirements of Article XII unless the Employer elects otherwise in the Adoption Agreement.

Notwithstanding the foregoing, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the Beneficiary designation is subject to the requirements of Article XVII.

Notwithstanding the foregoing, to the extent permitted by the Employer, a Beneficiary receiving required minimum distributions in accordance with Article X and not in a benefit form elected under Article XI or XII, may designate a Beneficiary to receive the required minimum distributions that would have otherwise been payable to the initial Beneficiary but for his or her death.

For purposes of Section 9.07, relating to hardship distributions, the term Primary Beneficiary means an individual who is named as a Beneficiary under the Plan and who has an unconditional right to all or a portion of the Participant's account balance under the plan upon the death of the Participant.

- 2.05 Break in Service.** A Period of Severance of at least twelve (12) consecutive months. In the case of an individual who is absent from work for maternity or paternity reasons, the twelve (12) consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a Break in Service. For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.
- 2.06 Catch-up Contributions.** Elective Deferrals made to the Plan that are in excess of an otherwise applicable plan limit and that are made by Participants who are age 50 or over by the end of their taxable years. An otherwise applicable plan limit is a limit in the Plan that applies to Elective Deferrals without regard to Catch-up Contributions, such as the limits on annual additions and the dollar limitation on Elective Deferrals under Code section 402(g) (not counting Catch-up Contributions). Catch-up Contributions for a Participant for a taxable year may not exceed (1) the dollar limit on Catch-up Contributions under Code section 414(v) (2)(B)(i) for the taxable year or (2) when added to other Elective Deferrals, 75 percent of the Participant's Earnings for the taxable year. The dollar limit on Catch-up Contributions under Code section 414(v)(2)(B)(i) was \$5,000 for taxable years beginning in 2006. After 2006, the \$5,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code section 414(v)(2)(C). Any such adjustments will be in multiples of \$500. Catch-up Contributions are not subject to the limits on annual additions. Provisions in the Plan relating to Catch-up Contributions apply to Elective Deferrals made after 2001.
- 2.07 Code.** The Internal Revenue Code of 1986, as amended from time to time.
- 2.08 Covered Employment Classification.** The group or groups of Employees eligible to make and/ or have contributions to this Plan made on their behalf, as specified by the Employer in the Adoption Agreement.
- 2.09 Disability.** A physical or mental impairment which is of such permanence and degree that, as determined by the Employer, a Participant is unable because of such impairment to perform any substantial gainful activity for which he/she is suited by virtue of his/her experience, training, or education and that has lasted, or can be expected to last, for a continuous period of not less than twelve (12) months, or can be expected to result in death. The permanence and degree of such impairment shall be supported by medical evidence. If the Employer maintains a long-term disability plan, the definition of Disability shall be the same as the definition of disability in the long-term disability plan.
- 2.10 Earnings.**
- (a) General Rule. Earnings, which form the basis for computing Employer Contributions, are all of each Participant's W-2 earnings which are actually paid to the Participant during the Plan Year, plus any contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the Employee under section 125, 402(e)(3), 402(h)(1)(B), 403(b), 414(h)(2), 457(b), or, effective January 1, 2001, 132(f)(4) of the Code. Earnings shall include any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the Employer providing retiree health care benefits. Earnings shall also include any other earnings as defined and elected by the Employer in the Adoption Agreement. Unless the Employer elects otherwise in the Adoption Agreement, Earnings shall exclude overtime compensation and bonuses.
- (b) Limitation on Earnings. For any Plan Year beginning after December 31, 2001, the annual Earnings of each Participant taken into account in determining allocations shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual Earnings means Earnings during the Plan Year or such other consecutive 12-month period over which Earnings is otherwise determined under the Plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual Earnings for the determination period that begins with or within such calendar year.

If a determination period consists of fewer than twelve (12) months, the annual Earnings limit is an amount equal to the otherwise applicable annual Earnings limit multiplied by the fraction, the numerator of which is the number of months in the short Plan Year and the denominator of which is twelve (12).

If Earnings for any prior determination period are taken into account in determining a Participant's allocations for the current Plan Year, the Earnings for such prior year are subject to the applicable annual Earnings limit in effect for that prior year.

- (c) Limitations for Governmental Plans. In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Code), the dollar limitation shall not apply to the extent the Earnings which are allowed to be taken into account under the Plan would be reduced below the amount which was allowed to be taken into account under the Plan as in effect on July 1, 1993, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Code. For purposes of this Section, an eligible participant is an individual who first became a Participant in the Plan during a Plan Year beginning before the first Plan Year beginning after December 31, 1993.
- (d) Earnings Paid After Severance from Employment. Earnings for purposes of allocations under the Plan shall not include amounts paid after a Participant's severance from Employment with the Employer except as provided in this Section 2.10(d).
- (1) Leave Cashouts. Earnings shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (i) the Participant would have been able to use the leave if employment had continued, and (ii) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.
- (2) Regular Pay. Earnings shall include regular pay after severance from employment if:
- (a) The payment is included in the Participant's W-2 earnings;
- (b) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
- (c) Such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.
- Notwithstanding anything to the contrary in this subsection (b), unless the Employer has specifically elected to include overtime compensation and bonuses in Earnings, Earnings shall exclude overtime compensation and bonuses paid after severance from employment.
- (3) Effective Date. This Section 2.10(d) is effective for Plan Years beginning on or after January 1, 2009. For Plan Years beginning before January 1, 2009, the amounts specified in subsections (1) and (2) must be paid within 2½ months after severance from employment with the Employer maintaining the Plan.

2.11 Effective Date. The first day of the Plan Year during which the Employer adopts the Plan, unless the Employer elects in the Adoption Agreement an alternate date as the Effective Date of the Plan.

2.12 Elective Deferrals. Contributions made by the Employer on behalf of the Participant pursuant to Section 4.03.

- 2.13 Employee.** Any individual who has applied for and been hired in an employment position and who is employed by the Employer as a common law employee; provided, however, that Employee shall not include any individual who is not so recorded on the payroll records of the Employer, including any such person who is subsequently reclassified by a court of law or regulatory body as a common law employee of the Employer. For purposes of clarification only and not to imply that the preceding sentence would otherwise cover such person, the term Employee does not include any individual who performs services for the Employer as an independent contractor, or under any other non-employee classification.
- 2.14 Employer.** The unit of state or local government or an agency or instrumentality of one (1) or more states or local governments that executes the Adoption Agreement.
- 2.15 Hour of Service.** Each hour for which an Employee is paid or entitled to payment for the performance of duties for the Employer.
- 2.16 Nonforfeitable Interest.** The nonforfeitable interest of the Participant or his/her Beneficiary (whichever is applicable) is that percentage of his/her Employer Contribution Account balance, which has vested pursuant to Article VII. A Participant shall, at all times, have a one hundred percent (100%) Nonforfeitable Interest in his/her Elective Deferral, Participant Contribution, Rollover, and Voluntary Contribution Accounts.
- 2.17 Normal Retirement Age.** The age which the Employer specifies in the Adoption Agreement. If the Employer enforces a mandatory retirement age, the Normal Retirement Age is the lesser of that mandatory age or the age specified in the Adoption Agreement.
- 2.18 Participant.** An Employee or former Employee for whom contributions have been made under the Plan and who has not yet received all of the payments of benefits to which he/she is entitled under the Plan. A Participant is treated as benefiting under the Plan for any Plan Year during which the participant received or is deemed to receive an allocation in accordance with Treas. Reg. section 1.410(b)-3(a).
- 2.19 Period of Service.** For purposes of determining an Employee's initial or continued eligibility to participate in the Plan or the Nonforfeitable Interest in the Participant's Account balance derived from Employer Contributions, an Employee will receive credit for the aggregate of all time period(s) commencing with the Employee's first day of employment or reemployment and ending on the date a Break in Service begins. The first day of employment or reemployment is the first day the Employee performs an Hour of Service. An Employee will also receive credit for any Period of Severance of less than twelve (12) consecutive months. Fractional periods of a year will be expressed in terms of days.
- Notwithstanding anything to the contrary herein, if the Plan is an amendment and restatement of a plan that previously calculated service under the hours of service method, service shall be credited in a manner that is at least as generous as that provided under Treas. Regs. section 1.410(a)-7(g).
- 2.20 Period of Severance.** A continuous period of time during which the Employee is not employed by the Employer. Such period begins on the date the Employee retires, quits or is discharged, or if earlier, the twelve (12) month anniversary of the date on which the Employee was otherwise first absent from service.
- 2.21 Plan.** This Plan, as established by the Employer, including any elected provisions pursuant to the Adoption Agreement. If the Employer has elected in the Adoption Agreement to permit Participants to make Elective Deferrals, this Plan is a profit-sharing plan containing a 401(k) arrangement.
- 2.22 Plan Administrator.** The person(s) or entity named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described, which is the ICMA Retirement Corporation or any successor Plan Administrator. Unless otherwise provided in the Plan, the Plan Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction.

- 2.23 Plan Year.** The twelve (12) consecutive month period designated by the Employer in the Adoption Agreement.
- 2.24 Trust.** The Trust created under Article VI of the Plan which shall consist of all of the assets of the Plan derived from Employer and Participant contributions under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

III. ELIGIBILITY

- 3.01 Service.** Except as provided in Sections 3.02 and 3.03 of the Plan, an Employee within the Covered Employment Classification who has completed a twelve (12) month Period of Service shall be eligible to participate in the Plan at the beginning of the payroll period next commencing thereafter. The Employer may elect in the Adoption Agreement to waive or reduce the twelve (12) month Period of Service.

If the Employer maintains the plan of a predecessor employer, service with such employer shall be treated as Service for the Employer.

- 3.02 Age.** The Employer may designate a minimum age requirement, not to exceed age twenty-one (21), for participation. Such age, if any, shall be declared in the Adoption Agreement.
- 3.03 Return to Covered Employment Classification.** In the event a Participant is no longer a member of Covered Employment Classification and becomes ineligible to make contributions and/or have contributions made on his/her behalf, such Employee will become eligible for contributions immediately upon returning to a Covered Employment Classification. If such Participant incurs a Break in Service, eligibility will be determined under the Break in Service rules of the Plan.

In the event an Employee who is not a member of a Covered Employment Classification becomes a member, such Employee will be eligible to participate immediately if such Employee has satisfied the minimum age and service requirements and would have otherwise previously become a Participant.

- 3.04 Service Before a Break in Service.** All Periods of Service with the Employer are counted toward eligibility, including Periods of Service before a Break in Service.

IV. CONTRIBUTIONS

- 4.01 Employer Contributions.** For each Plan Year, the Employer will contribute to the Trust an amount as specified in the Adoption Agreement. The Employer's full contribution for any Plan Year shall be due and paid not later than thirty (30) working days after the close of the Plan Year. Each Participant will share in Employer Contributions for the period beginning on the date the Participant commences participation under the Plan and ending on the date on which such Employee severs employment with the Employer or is no longer a member of a Covered Employment Classification, and such contributions shall be accounted for separately in his Employer Contribution Account. Notwithstanding anything to the contrary herein, if so elected by the Employer in the Adoption Agreement, an Employee shall be required to make contributions as provided pursuant to Section 4.04 or 4.05 in order to be eligible for Employer Contributions to be made on his/her behalf to the Plan.
- 4.02 Forfeitures.** All amounts forfeited by terminated Participants, pursuant to Section 7.06, shall be used no later than the end of the next Plan Year. Forfeitures will be used to reduce dollar for dollar Employer Contributions otherwise required under the Plan. Forfeitures may first be used to pay the reasonable administrative expenses of the Plan, with any remainder being applied to reduce Employer Contributions. If no Employer Contributions are required under the Plan, forfeitures will be allocated in the ratio that the Earnings of each Participant bears to that of all Participants.

4.03 Elective Deferrals and Catch-up Contributions. If the Employer so elects in the Adoption Agreement, and subject to the limitations provided in Article V, a Participant may elect after he/she meets the eligibility requirements provided in Article III to have the Employer make payments either (1) as Elective Deferrals on his/her behalf, pursuant to a properly executed salary reduction agreement, whereby the Employee agrees to reduce his/her future Earnings by a specific amount, and the Employer to contribute such Elective Deferrals to the Trust on behalf of the Employee or (2) to the Employee directly in cash. Such a Participant, if age 50 or over by the end of his or her taxable year, is also permitted to make Catch-up Contributions. Elective Deferrals (and Catch-up Contributions) shall be made by payroll reduction, and shall be accounted for separately in the Participant's Elective Deferral Account. Such Account shall be at all times nonforfeitable by the Participant.

The Employer must provide a period(s), as elected in the Adoption Agreement, of not less than thirty (30) days at least once each calendar year during which a Participant may elect to commence Elective Deferrals and Catch-up Contributions. Such election may not be made retroactively. A Participant's election to commence Elective Deferrals must remain in effect until modified or terminated.

Notwithstanding anything to the contrary elsewhere contained in this Plan, Elective Deferrals and Catch-up Contributions are intended to be employer contributions within the meaning of the Code and regulations, not employee contributions, and relevant provisions shall be construed accordingly.

Elective Deferrals and Catch-up Contributions are available only to an Employer who established a cash or deferred arrangement under section 401(k) of the Code on or before May 6, 1986.

4.04 Mandatory Participant Contributions. If the Employer so elects in the Adoption Agreement, each eligible Employee shall make contributions at a rate prescribed by the Employer or at any of a range of specified rates, as set forth by the Employer in the Adoption Agreement, as a requirement for his/her participation (1) in the Plan or (2) in this portion of the Plan. Once an eligible Employee becomes a Participant and makes an election hereunder, he/she shall not thereafter have the right to discontinue or vary the rate of such Mandatory Participant Contributions. Such contributions shall be accounted for separately in the Participant Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.

If the Employer so elects in the Adoption Agreement, the Mandatory Participant Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). Any contribution "picked up" under this Section shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

To constitute a Pick-Up Contribution, (1) the Employer must specify in a contemporaneous written document by a person duly authorized by the Employer that the contributions are being paid by the Employer in lieu of contributions by the Employee, and (2) the Employee must not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the Employer to the Plan.

4.05 Employer Matching Contributions of Voluntary Participant Contributions or Elective Deferrals. If the Employer so elects in the Adoption Agreement, Employer Matching Contributions shall be made on behalf of an eligible Employee for a Plan Year only if the Employee agrees to make Voluntary Participant Contributions or Elective Deferrals for that Plan Year. The rate of Employer Contributions shall, to the extent specified in the Adoption Agreement, be based upon the rate at which Voluntary Participant Contributions or Elective Deferrals are made for that Plan Year. Employer Matching Contributions shall be accounted for separately in the Employer Contribution Account.

- 4.06 Voluntary Participant Contributions.** If the Employer so elects in the Adoption Agreement, an eligible Employee may make after-tax voluntary (unmatched) contributions under the Plan for any Plan Year in any amount up to twenty-five percent (25%) of his/her Earnings for such Plan Year. Matched and unmatched contributions shall be accounted for separately in the Participant's Voluntary Contribution Account. Such Account shall be at all times nonforfeitable by the Participant.
- 4.07 Deductible Employee Contributions.** The Plan will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a Deductible Employee Contribution Account. The Account will share in the gains and losses under the Plan in the same manner as described in Section 6.06 of the Plan. Such Account shall be at all times nonforfeitable by the Participant. No part of the deductible voluntary contribution account will be used to purchase life insurance.
- 4.08 Final Pay Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Final Pay Contributions under this Plan in accordance with Article XVIII. This election may be made even if the Employer does not elect to make any other contributions under the Plan.
- 4.09 Accrued Leave Contributions.** If the Employer so elects in the Adoption Agreement, eligible Participants shall be eligible to make or receive Accrued Leave Contributions under this Plan in accordance with Article XIX. This election may be made even if the Employer does not elect to make any other contributions under the Plan.
- 4.10 Military Service Contributions.** Notwithstanding any provision of the Plan to the contrary, effective December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Code.

Effective December 12, 1994, if the Employer has elected in the Adoption Agreement to make loans available to Participants, loan repayments shall be suspended under the Plan as permitted under section 414(u)(4) of the Code.

4.11 Accrual of Additional Benefits for Qualified Military Service

- (a) Death Benefits with Respect to Qualified Military Service. In the case of a Participant who dies on or after January 1, 2007 while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer, his/her Beneficiary shall have a Nonforfeitable Interest in the Participant's entire Employer Contribution Account to the extent that he/she would have had had the Participant resumed and then terminated employment on account of death.
- (b) Benefit Accruals with Respect to Differential Wage Payments. If the Employer so elects in the Adoption Agreement, effective as elected by the Employer but no earlier than January 1, 2009, Plan contributions shall be made based on differential wage payments (as such term is defined in Code section 3401(h)(2)). Solely for purposes of applying the limits of Code section 415, differential wage payments shall be treated as compensation.
- (c) Benefit Accruals with Respect to Qualified Military Service. Notwithstanding any provision of the Plan to the contrary, effective as elected by the Employer but no earlier than January 1, 2007, if the Employer so elects in the Adoption Agreement, Participants who die or become Disabled while performing qualified military service (as defined in Code section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code section 414(u)(9).

4.12 Changes in Participant Election. A Participant may elect to change his/her rate of Elective Deferrals, Catch-up Contributions, or Voluntary Participant Contributions at any time or during an election period as designated by the Employer. A Participant may discontinue such contributions at any time or during an election period as designated by the Employer.

The Employer must provide a period of not less than thirty (30) days at least once each calendar year during which a Participant may elect to terminate an election or to modify the amount or frequency of his/her Elective Deferrals, Catch-up Contributions, or Voluntary Participant Contributions.

4.13 Portability of Benefits.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, the Plan will accept Participant (which shall include, for purposes of this subsection, an Employee within the Covered Employment Classification whether or not he/she has satisfied the minimum age and service requirements of Article III) rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from all of the following types of plans:
- (1) A qualified plan described in Section 401(a) or 403(a) of the Code;
 - (2) An annuity contract described in Section 403(b) of the Code;
 - (3) An eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state; and
 - (4) An individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEPs, and SIMPLE IRAs after two years of participating in the SIMPLE IRA).
- (b) Notwithstanding the foregoing, the Employer may reject the rollover contribution if it determines, in its discretion, that the form and nature of the distribution from the other plan does not satisfy the applicable requirements under the Code to make the transfer or rollover a nontaxable transaction to the Participant;
- (c) For indirect rollover contributions, the amount distributed from such plan must be rolled over to this Plan no later than the sixtieth (60th) day after the distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code.
- (d) The amount transferred shall be deposited in the Trust and shall be credited to a Rollover Account. Such Account shall be one hundred percent (100%) vested in the Participant.
- (e) The Plan will accept accumulated deductible employee contributions as defined in section 72(o)(5) of the Code that were distributed from a qualified retirement plan and transferred (rolled over) pursuant to section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3) of the Code. Notwithstanding the above, this transferred (rolled over) amount shall be deposited to the Trust and shall be credited to a Deductible Employee Contributions Account. Such Account shall be one-hundred percent (100%) vested in the Participant.
- (f) A Participant may, upon approval by the Employer and the Plan Administrator, transfer his/her interest in another plan maintained by the Employer that is qualified under section 401(a) of the Code to this Plan, provided the transfer is effected through a one-time irrevocable written election made by the Participant. The amount transferred shall be deposited in the Trust and shall be credited to sources that maintain the same attributes as the plan from which they are transferred. Such transfer shall not reduce the accrued years or service credited to the Participant for purposes of vesting or eligibility for any Plan benefits or features.

- 4.14 Return of Employer Contributions.** Any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the date of contribution.

V. LIMITATION ON ELECTIVE DEFERRALS AND ALLOCATIONS

5.01 Maximum Elective Deferrals. Notwithstanding anything to the contrary herein, no Participant shall be permitted to have Elective Deferrals made under this Plan, or Elective Deferrals under any other plan, contract or arrangement maintained by the Employer, during any calendar year, in excess of the dollar limitation contained in section 402(g) of the Code in effect for the Participant's taxable year beginning in such calendar year. In the case of a Participant age 50 or over by the end of the taxable year, the dollar limitation described in the preceding sentence includes the amount of Elective Deferrals that can be Catch-up Contributions. The dollar limitation contained in Code section 402(g) was \$15,000 for taxable years beginning in 2006. After 2006, the \$15,000 limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under section 402(g)(4). Any such adjustments will be in multiples of \$500.

5.02 Distribution of Excess Elective Deferrals.

- (a) A Participant may assign to this Plan any Excess Elective Deferrals made during a preceding taxable year of the Participant by providing the Plan Administrator with written notice on or before March 1 of the amount of Excess Elective Deferrals to be assigned to the Plan. A Participant is deemed to notify the Plan Administrator of any Excess Elective Deferrals that arise by taking into account only those Elective Deferrals made to this Plan and any other plan, contract or arrangement of this Employer. Notwithstanding any other provisions of the Plan, Excess Elective Deferrals, plus any income and minus any loss allocable thereto, shall be distributed no later than April 15 to any Participant whose Excess Elective Deferrals were assigned for the preceding year and who claims Excess Elective Deferrals for such taxable year or calendar year. Participants who claim Excess Elective Deferrals for the preceding taxable year must submit their claims in writing to the Plan Administrator on or before March 1. Distribution of Excess Elective Deferrals for a year shall be made first from a Participant's Pre-tax Elective Deferral account, to the extent Pre-tax Elective Deferrals were made for the year, unless a Participant specifies otherwise.
- (b) Excess Elective Deferrals shall be adjusted for any income or loss.
- (1) For taxable years beginning after 2007, the income or loss allocable to Excess Elective Deferrals is the income or loss allocable to a Participant's Elective Deferral account for the taxable year multiplied by a fraction, the numerator of which is such Participant's Excess Elective Deferrals for the year and the denominator is a Participant's account balance attributable to Elective Deferrals without regard to any income or loss occurring during such taxable year.
- (2) For taxable years beginning before 2008, income or loss allocable to Excess Elective Deferrals also includes ten percent (10%) of the amount determined under subsection (b)(1) multiplied by the number of whole calendar months between the end of the Participant's taxable year and the date of distribution, counting the month of distribution if distribution occurs after the fifteenth (15th) of such month.

5.03 Participants Only in This Plan.

- (a) If the Participant does not participate in, and has never participated in another qualified plan or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, the amount of Annual Additions which may be credited to the Participant's Account for any Limitation Year will not exceed the lesser of the Maximum Permissible Amount or any other limitation contained in this Plan. If the Employer Contribution that would otherwise be contributed or allocated to

the Participant's Account would cause the Annual Additions for the Limitation Year to exceed the Maximum Permissible Amount, the amount contributed or allocated will be reduced so that the Annual Additions for the Limitation Year will equal the Maximum Permissible Amount.

- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant on the basis of a reasonable estimation of the Participant's Compensation for the Limitation Year, uniformly determined for all Participants similarly situated.
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.

5.04 Participants in Another Defined Contribution Plan.

- (a) Unless the Employer provides other limitations in the Adoption Agreement, this Section applies if, in addition to this Plan, the Participant is covered under another qualified defined contribution plan maintained by the Employer, or a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the Employer, or an individual medical account, as defined by section 415(l)(2) of the Code, maintained by the Employer, which provides an Annual Addition, during any Limitation Year. The Annual Additions which may be credited to a Participant's Account under this Plan for any such Limitation Year will not exceed the Maximum Permissible Amount reduced by the Annual Additions credited to a Participant's Account under the other plans and welfare benefit funds for the same Limitation Year. If the Annual Additions with respect to the Participant under other defined contribution plans and welfare benefit funds maintained by the Employer are less than the Maximum Permissible Amount and the Employer contribution that would otherwise be contributed or allocated to the Participant's Account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the Limitation Year will equal the Maximum Permissible Amount. If the Annual Additions with respect to the Participant under such other defined contribution plans and welfare benefit funds in the aggregate are equal to or greater than the Maximum Permissible Amount, no amount will be contributed or allocated to the Participant's Account under this Plan for the Limitation Year.
- (b) Prior to determining the Participant's actual Compensation for the Limitation Year, the Employer may determine the Maximum Permissible Amount for a Participant in the manner described in Section 5.03(b).
- (c) As soon as is administratively feasible after the end of the Limitation Year, the Maximum Permissible Amount for the Limitation Year will be determined on the basis of the Participant's actual Compensation for the Limitation Year.
- (d) If, pursuant to Subsection (c) or as a result of the allocation of forfeitures, a Participant's Annual Additions under this Plan and such other plans would result in an Excess Amount for a Limitation Year, the Excess Amount will be deemed to consist of the Annual Additions last allocated, except that Annual Additions attributable to a welfare benefit fund or individual medical account will be deemed to have been allocated first regardless of the actual allocation date.
- (e) If an Excess Amount was allocated to a Participant on an allocation date of this Plan which coincides with an allocation date of another plan, the Excess Amount attributed to this Plan will be the product of,
 - (1) The total Excess Amount allocated as of such date, multiplied by

- (2) The ratio of (i) the Annual Additions allocated to the Participant for the Limitation Year as of such date under this Plan to (ii) the total Annual Additions allocated to the Participant for the Limitation Year as of such date under this and all the other qualified prototype defined contribution plans.

5.05 Definitions. For the purposes of this Article, the following definitions shall apply:

- (a) Annual Additions: The sum of the following amounts credited to a Participant's account for the Limitation Year:
 - (1) Employer Contributions (including Elective Deferrals and contributions "picked up" by the Employer under Section 4.04);
 - (2) Forfeitures;
 - (3) Employee contributions (including after-tax Voluntary Contributions under Section 4.06 and Mandatory Participant Contributions under Section 4.04 not "picked up" by the Employer); and
 - (4) Allocations under a simplified employee pension. Amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(l)(2) of the Code, which is part of a pension or annuity plan maintained by the Employer, are treated as Annual Additions to a defined contribution plan.
 - (5) Notwithstanding the above, the term Annual Additions does not include the following:
 - (a) Restorative Payments. Annual Additions for purposes of Code section 415 shall not include restorative payments. For this purpose, restorative payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under applicable federal or state law, where Participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a court-approved settlement to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty are not restorative payments and generally constitute contributions that give rise to Annual Additions.
 - (b) Other Amounts. Annual Additions for purposes of Code section 415 shall not include (i) the direct transfer of a benefit or employee contributions from a qualified plan to this Plan; (ii) rollover contributions (as described in Code sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)); (iii) repayments of loans made to a Participant from the Plan; (iv) repayments of amounts described in Code section 411(a)(7)(B) (in accordance with Code sections 411(a)(7)(C)) and 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in Code section 414(d)) as described in Code section 415(k)(3), as well as Employer restorations of benefits that are required pursuant to such repayments; (v) Employee Contributions to a qualified cost of living arrangement within the meaning of Code section 415(k)(2)(B); (vi) catch-up contributions made in accordance with section 414(v) and §1.414(v)-1 and (vii) excess deferrals that are distributed in accordance with §1.402(g)-1(e)(2) or (3).

- (c) Date of Employer Contributions. Notwithstanding anything in the Plan to the contrary, Employer Contributions are treated as credited to a Participant's account for a particular Limitation Year only if the contributions are actually made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the Employer keeps its books) with or within which the particular Limitation Year ends.
- (b) Compensation: Participant's wages, salaries, fees for professional services, and other amounts received (without regard to whether an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under Code section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan as described in Treas. Reg. section 1.62-2(c).
- (1) Notwithstanding the foregoing, Compensation does not include:
- (i) Contributions (other than elective contributions described in Code section 402(e)(3), 408(k)(6), 408(p)(2)(A)(i), or 457(b)) made by the Employer to a plan of deferred compensation (including a simplified employee pension described in Code section 408(k) or a simple retirement account described in Code section 408(p), and whether or not qualified) to the extent that the contributions are not includible in the gross income of the Participant for the taxable year in which contributed. In addition, any distributions from a plan of deferred compensation (whether or not qualified) are not considered as Compensation for Code section 415 purposes, regardless of whether such amounts are includible in the gross income of the Participant when distributed; and
 - (ii) Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the Participant and are not salary reduction amounts that are described in Code section 125).
 - (iii) Other items of remuneration that are similar to the items listed in subparagraph (i) or (ii) of this subsection (b).
- (2) Compensation Paid After Severance or Deemed Severance from Employment. Compensation shall be adjusted as set forth herein for the following types of compensation paid after a Participant's severance from employment (as determined under section 415 of the Code and the regulations thereunder) with the Employer. Any payment that is not described in subsection (i), (ii), (iii), or (iv) of this Section is not considered Compensation within the meaning of section 415 of the Code if paid after severance from employment with the Employer.
- (i) Regular Pay.
 - (A) Compensation shall include regular pay after severance of employment if the payment is regular compensation for services during the Participant's regular working hours, or compensation for services outside the Participant's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;
 - (B) The payment would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; and
 - (C) Such amounts are paid:
 - 1. for Limitation Years beginning before January 1, 2009, within 2½ months after severance from employment with the Employer maintaining the Plan; and

2. for Limitation Years beginning on or after January 1, 2009, by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment.

(D) The date January 1, 2009 in subsections (b)(2)(i)(C)(1) and (2) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(ii) Leave Cashouts.

(A) For Limitation Years beginning before January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid within 2½ months after severance from employment with the Employer maintaining the Plan, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.

(B) For Limitation Years beginning on or after January 1, 2009, Compensation shall include payment for unused accrued bona fide sick, vacation, or other leave, but only if (I) the Participant would have been able to use the leave if employment had continued, (II) such amounts are paid by the later of 2½ months after severance from employment with the Employer maintaining the Plan or by the end of the calendar year that includes the date of such severance from employment, and (III) such amounts would be included in Compensation if the individual had continued to perform services for the Employer.

(C) The date January 1, 2009 in subsections (b)(2)(ii)(A) and (B) of this Section shall be substituted for an earlier effective date if provided in Article II of the Adoption Agreement but no earlier than July 1, 2007.

(iii) Salary Continuation Payments for Military Service Participants.

(A) Compensation includes payments to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)) to the extent:

1. Those payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the Employer rather than entering qualified military service; and
2. Those payments would be included in Compensation if the individual had continued to perform services for the Employer rather than entering qualified military service.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to an individual who does not currently perform services for the Employer by reason of qualified military service (as that term is used in Code section 414(u)(1)).

(iv) Salary Continuation Payments for Disabled Participants.

(A) Compensation includes amounts paid to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)) to the extent:

1. Salary continuation applies to all Participants who are permanently and totally disabled for a

fixed or determinable period or the Participant was not a highly compensated employee (as defined in Code section 414(q)) immediately before becoming disabled.

2. Those amounts would be included in Compensation if the Participant had continued to perform services for the Employer.

(B) Notwithstanding the foregoing, Compensation does not include distributions from this Plan to a Participant who is permanently and totally disabled (as defined in Code section 22(e)(3)).

For purposes of applying the limitations of this Article, Compensation for a Limitation Year is the Compensation actually paid or made available during such year. Compensation for a Limitation Year shall not include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates.

- (c) Defined Contribution Dollar Limitation: \$40,000, as adjusted for increases in the cost of-living in accordance with section 415(d) of the Code.
- (d) Elective Deferrals: Any Employer Contributions made to the Plan at the election of the Participant, in lieu of cash compensation. With respect to any taxable year, a Participant's Elective Deferrals is the sum of all Employer Contributions made on behalf of such Participant pursuant to an election to defer under any qualified CODA described in section 401(k) of the Code, any salary reduction simplified employee pension described in section 408(k)(6) of the Code, any SIMPLE IRA described in section 408(p), and any plan described under section 501(c)(18) of the Code, and any Employer Contributions made on the behalf of the Participant for the purchase of an annuity contract under section 403(b) of the Code pursuant to a salary reduction agreement. Elective Deferrals shall not include any deferrals properly distributed as excess Annual Additions.
- (e) Employer: The Employer that adopts this Plan.
- (f) Excess Amount: The excess of the Participant's Annual Additions for the Limitation Year over the Maximum Permissible Amount. Any Excess Amount shall include allocable income. The income allocable to an Excess Amount is equal to the sum of allocable gain or loss for the Plan Year and the allocable gain or loss for the period between the end of the Plan Year and the date of distribution (the gap period). The Plan may use any reasonable method for computing the income allocable to an Excess Amount, provided that the method is used consistently for all Participants and for all corrective distributions under the Plan for the Plan Year, and is used by the Plan for allocating income to Participants' Accounts.
- (g) Excess Elective Deferrals: Those Elective Deferrals of a Participant that either (1) are made during the Participant's taxable year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in section 414(v) for such year); or (2) are made during a calendar year and exceed the dollar limitation under Code section 402(g) (including, if applicable, the dollar limitation on Catch-up Contributions defined in section 414(v)) for the Participant's taxable year beginning in such calendar year, counting only Elective Deferrals made under this Plan and any other plan, contract or arrangement maintained by the Employer. Excess Elective Deferrals shall be treated as Annual Additions, as defined under Section 5.05, unless such amounts are distributed no later than the first April 15 following the close of the Participant's taxable year.
- (h) Limitation Year: A calendar year, or the twelve (12) consecutive month period elected by the Employer in section X. 2 of the Adoption Agreement. All qualified plans maintained by the Employer must use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, the

new Limitation Year must begin on a date within the Limitation Year in which the amendment is made. The Limitation Year may only be changed by a Plan amendment. Furthermore, if the Plan is terminated effective as of a date other than the last day of the Plan's Limitation Year, then the Plan is treated as if the Plan had been amended to change its Limitation Year and the maximum permissible amount shall be prorated for the resulting short Limitation Year.

- (i) Maximum Permissible Amount: Except for Catch-up Contributions described in Code section 414(v), the maximum Annual Addition that may be contributed or allocated to a Participant's Account under the Plan for any Limitation Year shall not exceed the lesser of:
 - (1) The Defined Contribution Dollar Limitation, or
 - (2) One hundred percent (100%) of the Participant's Compensation for the Limitation Year.

The compensation limit referred to in (2) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition.

If a short Limitation Year is created because of an amendment changing the Limitation Year to a different twelve (12) consecutive month period, the Maximum Permissible Amount will not exceed the Defined Contribution Dollar Limitation multiplied by the following fraction:

Number of months in the short Limitation Year

12

5.06 Aggregation and Disaggregation of Plans.

- (a) Generally. For purposes of applying the limitations of Code section 415, all defined contribution plans (without regard to whether a plan has been terminated) ever maintained by the Employer (or a "predecessor employer") under which the Participant receives Annual Additions are treated as one defined contribution plan. The "Employer" means the Employer that adopts this Plan and any other entity which the Employer determines, based on a reasonable, good faith interpretation of existing law in accordance with Notice 89-23, 1989-1 C.B. 654, as modified by Notice 96-64, 1996-2 C.B. 229, should be aggregated for purposes of applying the limitations of Code section 415. For purposes of this Section:
 - (1) A former employer is a "predecessor employer" with respect to a Participant if the Employer maintains a plan under which the Participant had accrued a benefit while performing services for the former employer, but only if that benefit is provided under the plan maintained by the Employer. For this purpose, the formerly affiliated plan rules in Treas. Reg. section 1.415(f)-1(b)(2) apply as if the Employer and predecessor employer constituted a single employer under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately prior to the cessation of affiliation (and as if they constituted two, unrelated employers under the rules described in Treas. Reg. section 1.415(a)-1(f)(1) and (2) immediately after the cessation of affiliation) and cessation of affiliation was the event that gives rise to the predecessor employer relationship, such as a transfer of benefits or plan sponsorship.
 - (2) With respect to an Employer, a former entity that antedates the Employer is a "predecessor employer" with respect to a Participant if, under the facts and circumstances, the Employer constitutes a continuation of all or a portion of the trade or business of the former entity.
- (b) Midyear Aggregation. Two or more defined contribution plans that are not required to be aggregated pursuant to Code section 415(f) and the Treasury Regulations thereunder as of the first day of a Limitation

Year do not fail to satisfy the requirements of Code section 415 with respect to a Participant for the Limitation Year merely because they are aggregated later in that Limitation Year, provided that no Annual Additions are credited to the Participant's account after the date on which the plans are required to be aggregated.

5.07 Effective Date. Except as otherwise provided in Section 5.05(b)(2), this Article shall apply to limitation years beginning on or after July 1, 2007. The Employer may elect a delayed effective date for this Article in Section X. 3 of the Adoption Agreement, however, such effective date must apply to limitation years that begin on or after the date that is 90 days after the close of the first legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.

VI. TRUST AND INVESTMENT OF ACCOUNTS

6.01 Trust. A Trust is hereby created to hold all of the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person which agrees to act in that capacity hereunder.

6.02 Investment Powers. The trustee or the Plan Administrator, acting as agent for the trustee, shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is controlled by Participants, pursuant to Sections 6.05 and 13.03.

- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, notes, debentures, mortgages, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
- (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans qualified under section 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.
- (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
- (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.
- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Plan Administrator, or in bearer

form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

- (f) Upon such terms as may be deemed advisable by the Employer or the Plan Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Plan Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Plan Administrator, as may be agreed upon from time to time by the Employer and the Plan Administrator, and reimbursement for reasonable expenses incurred by the Plan Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust. However, no person who is a fiduciary within the meaning of section 3(21)(A) of ERISA and regulations promulgated thereunder, and who receives full-time pay from the Employer may receive compensation from the Trust, except for expenses properly and actually incurred.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Plan Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. Benefits under this Plan shall be paid only if the Plan Administrator, custodian or other person, or the Employer if directing such person, decides in his/her discretion that the applicant is entitled to them. The Plan Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Plan Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds available under the Plan; provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Employer and shall not include any investment in collectibles, as defined in section 408(m) of the Code.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be

valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances, as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant Loan Accounts shall be invested in accordance with Section 13.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Section 6.05.

6.08 Deemed IRAs. If deemed IRAs are available pursuant to section 408(q) of the Code, the assets of such deemed IRAs may be commingled with the Plan assets for investment purposes but, if held in the same trust, the trustee shall maintain a separate account for each deemed IRA.

VII. VESTING

7.01 Vesting Schedule. The portion of a Participant's Account attributable to Elective Deferrals, Catch-up Contributions, Mandatory Participant Contributions, and Voluntary Participant Contributions, and the earnings thereon, shall be at all times nonforfeitable by the Participant. A Participant shall have a Nonforfeitable Interest in the percentage of his/her Employer Contribution Account established under Section 4.01, 4.05, 18.02(a), and 19.02(a) determined pursuant to the schedule elected by the Employer in the Adoption Agreement.

7.02 Crediting Periods of Service. Except as provided in Section 7.03, all of an Employee's Periods of Service with the Employer are counted to determine the nonforfeitable percentage in the Employee's Account balance derived from Employer Contributions. If the Employer maintains the plan of a predecessor employer, service with such employer will be treated as service for the Employer.

For purposes of determining years of service and Breaks in Service for the purposes of computing a Participant's nonforfeitable right to the Account balance derived from Employer Contributions, the twelve (12) consecutive month period will commence on the date the Employee first performs an Hour of Service and each subsequent twelve (12) consecutive month period will commence on the anniversary of such date.

7.03 Service After Break in Service. In the case of a Participant who has a Break in Service of at least five (5) years, all Periods of Service after such Breaks in Service will be disregarded for the purpose of determining the nonforfeitable percentage of the Employer-derived Account balance that accrued before such Break, but both pre-Break and post-Break service will count for the purposes of vesting the Employer-derived Account balance that accrues after such Break. Both Accounts will share in the earnings and losses of the fund.

In the case of a Participant who does not have a Break in Service of at least five (5) years, both the pre-Break and post-Break service will count in vesting both the pre-Break and post-Break Employer-derived Account balance.

In the case of a Participant who does not have any nonforfeitable right to the Account balance derived from Employer Contributions, years of service before a period of consecutive one (1) year Breaks in Service will not be taken into account in computing eligibility service if the number of consecutive one (1) year Breaks in Service in such period equals or exceeds the greater of five (5) or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior Breaks in Service.

If a Participant's years of service are disregarded pursuant to the preceding paragraph, such Participant will be

treated as a new Employee for eligibility purposes. If a Participant's years of service may not be disregarded pursuant to the preceding paragraph, such Participant shall continue to participate in the Plan, or, if terminated, shall participate immediately upon reemployment.

- 7.04 Vesting Upon Normal Retirement Age.** Notwithstanding Section 7.01 of the Plan, a Participant shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan, if he/she is employed on or after his/her Normal Retirement Age.
- 7.05 Vesting Upon Death or Disability.** Notwithstanding Section 7.01 of the Plan, in the event of Disability or death, a Participant or his/her Beneficiary shall have a Nonforfeitable Interest in his/her entire Employer Contribution Account, to the extent that the balance of such Account has not previously been forfeited pursuant to Section 7.06 of the Plan.
- 7.06 Forfeitures.** Except as provided in Sections 7.04 and 7.05 of the Plan or as otherwise provided in this Section 7.06, a Participant who separates from service prior to obtaining full vesting shall forfeit that percentage of his/her Employer Contribution Account balance which has not vested as of the date such Participant incurs a Break in Service of five (5) consecutive years or, if earlier, the date such Participant receives, or is deemed under the provisions of Section 9.04 to have received, distribution of the entire Nonforfeitable Interest in his/her Employer Contribution Account. No forfeiture will occur solely as a result of a Participant's withdrawal of Employee Contributions. Forfeitures shall be allocated in the manner described in Section 4.02.
- 7.07 Reinstatement of Forfeitures.** If the Participant returns to the employment of the Employer before incurring a Break in Service of five (5) consecutive years, any amounts forfeited pursuant to Section 7.06 shall be reinstated to the Participant's Employer Contribution Account on the date of repayment by the Participant of the amount distributed to such Participant from his/her Employer Contribution Account; provided, however, that if such Participant forfeited his/her Account balance by reason of a deemed distribution, pursuant to Section 9.04, such amounts shall be automatically restored upon the reemployment of such Participant. Such repayment must be made before the earlier of five (5) years after the first date on which the Participant is subsequently reemployed by the Employer, or the date the Participant incurs a Break in Service of five (5) consecutive years.

VIII. BENEFITS CLAIM

- 8.01 Claim of Benefits.** A Participant or Beneficiary shall notify the Plan Administrator in writing of a claim of benefits under the Plan. The Plan Administrator shall take such steps as may be necessary to facilitate the payment of such benefits to the Participant or Beneficiary.
- 8.02 Appeal Procedure.** If any claim for benefits is initially denied by the Plan Administrator, the claimant shall file the appeal with the Employer, whose decision shall be final, to the extent provided by Section 15.07.

IX. COMMENCEMENT OF BENEFITS

- 9.01 Normal and Elective Commencement of Benefits.** A Participant who retires, becomes Disabled or incurs a severance from employment for any other reason may elect by written notice to the Plan Administrator to have his or her vested Account balance benefits commence on any date, provided that such distribution complies with Section 9.02. Such election must be made in writing during the one-hundred eighty (180) day period ending on the date as of which benefit payments are to commence. A Participant's election shall be revocable and may be amended by the Participant.

Except as otherwise provided under the Plan, a Participant's Elective Deferrals and income allocable thereto

are not distributable to a Participant or his/her Beneficiary(ies), in accordance with such Participant's or Beneficiary(ies) election, earlier than upon the Participant's severance from employment, death, or Disability.

The failure of a Participant to consent to a distribution while a benefit is immediately distributable, within the meaning of section 9.02 of the Plan, shall be deemed to be an election to defer commencement of payment of any benefit sufficient to satisfy this section.

9.02 Restrictions on Immediate Distributions. Notwithstanding anything to the contrary contained in Section 9.01 of the Plan, if the value of a Participant's vested Account balance is at least \$1,000, and the Account balance is immediately distributable, the Participant must consent to any distribution of such Account balance. The Participant's consent shall be obtained in writing during the one-hundred eighty (180) day period (ninety (90) day period for Plan Years beginning before January 1, 2007) ending on the date as of which benefit payments are to commence. No consent shall be required, however, to the extent that a distribution is required to satisfy section 401(a)(9) or 415 of the Code.

The Plan Administrator shall notify the Participant of the right to defer any distribution until the Participant's Account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the Plan in a manner that would satisfy section 417(a)(3) of the Code, and shall be provided no less than thirty (30) and no more than one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the date as of which benefit payments are to commence. However, distribution may commence less than thirty (30) days after the notice described in the preceding sentence is given, provided (i) the distribution is one to which sections 401(a)(11) and 417 of the Code do not apply or, if the QJSA Election is made by the Employer in the Adoption Agreement, the waiver requirements of Section 17.05(a) are met; (ii) the Plan Administrator clearly informs the Participant that the Participant has a right to a period of at least thirty (30) days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and (iii) the Participant, after receiving the notice, affirmatively elects a distribution.

In addition, upon termination of this Plan, if the Plan does not offer an annuity option (purchased from a commercial provider) and if the Employer does not maintain another 401(a) defined contribution plan, the Participant's Account balance will, without the Participant's consent, be distributed to the Participant in a lump sum. However, if the Employer maintains another 401(a) defined contribution plan, the Participant's Account will be transferred, without the Participant's consent, to the other plan if the Participant does not consent to an immediate distribution.

An Account balance is immediately distributable if any part of the Account balance could be distributed to the Participant (or surviving spouse) before the Participant attains or would have attained (if not deceased) the later of Normal Retirement Age or age sixty-two (62).

For purposes of determining the applicability of the foregoing consent requirements to distributions made before the first day of the first plan year beginning after December 31, 1988, the Participant's vested Account balance shall not include amounts attributable to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code.

9.03 Transfer to Another Plan.

- (a) If a Participant becomes eligible to participate in another plan maintained by the Employer that is qualified under section 401(a) of the Code, the Plan Administrator shall, at the written election of such Participant, transfer all or part of such Participant's Account to such plan, provided the Plan Administrator for such plan certifies to the Plan Administrator that its plan provides for the acceptance of such a transfer. Such transfers

shall include those transfers of the nonforfeitable interest of a Participant's Account made for the purchase of service credit in defined benefit plans maintained by the Employer. For purposes of this Plan, any such transfer shall not be considered a distribution to the Participant subject to spousal consent as described in Section 9.11.

- (b) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover.
- (c) Definitions. For the purposes of Subsection (b), the following definitions shall apply:
- (1) Eligible Rollover Distribution. Any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include:
- (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten years or more;
 - (ii) any distribution to the extent such distribution is required under section 401(a)(9) of the Code;
 - (iii) any hardship distribution; and
 - (iv) the portion of any other distribution(s) that is not includible in gross income.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or, for distributions occurring after December 31, 2007, to a Roth IRA described in § 408A of the Code, or to a qualified defined contribution plan described in section 401(a) or a qualified annuity contract described in section 403(b) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

- (2) Eligible Retirement Plan.
- (i) an individual retirement account described in section 408(a) of the Code or an individual retirement annuity described in section 408(b) of the Code (collectively, an "IRA");
 - (ii) an annuity plan described in section 403(a) of the Code;
 - (iii) an annuity contract described in section 403(b) of the Code;
 - (iv) an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan;
 - (v) a qualified plan described in section 401(a) of the Code, that accepts the Distributee's Eligible Rollover Distribution; or
 - (vi) for distributions occurring after December 31, 2007, a Roth IRA described in Code section 408A. The definition of Eligible Retirement Plan shall also apply in the case of a distribution to

a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code.

(3) Distributee. Participant; in addition, the Participant's surviving spouse and the spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are Distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless a later date is elected by the Employer pursuant to subsection (d)(1) below, but no later than Plan Years beginning after December 31, 2009), a distributee includes the Employee's or former Employee's nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary for the purpose of receiving the distribution.

(4) Direct Rollover. A payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(d) Rollover by a Non-Spouse Designated Beneficiary.

(1) Unless otherwise elected by the Employer in the Adoption Agreement, for distributions beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(2) Notwithstanding paragraph (1), for Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a "designated beneficiary" under Code section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code section 401(a)(9).

(e) Rollover by a Surviving Spouse Distributee. If any distribution attributable to a Participant is paid to the Participant's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the Participant. However, a qualified plan (as defined in Treasury Regulation section 1.402(c)-2 Q&A-2) is not treated as an eligible retirement plan with respect to a surviving spouse. Only an individual retirement plan is treated as an eligible retirement plan with respect to an eligible rollover distribution to a surviving spouse.

9.04 De Minimis Accounts. Notwithstanding the foregoing provisions of this Article, if a Participant terminates service, and the value of his/her Nonforfeitable Interest in his/her Account is less than \$1,000, the Participant's benefit shall be paid as soon as practicable to the Participant in a single lump sum distribution. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under section 411(a)(11)(A) of the Code, the Participant may elect to receive his/her Nonforfeitable Interest in his/her Account. Such distribution shall be made as soon as practicable following the request, in a lump sum.

For purposes of this Section, if a Participant's Nonforfeitable Interest in his/her Account is zero, the Participant shall be deemed to have received a distribution of such Nonforfeitable Interest in his/her Account.

9.05 Withdrawal of Voluntary Contributions. A Participant may upon written request withdraw a part of or the

full amount of his/her Voluntary Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.06 Withdrawal of Deductible Employee Contributions. A Participant may upon written request withdraw a part of or the full amount of his/her Deductible Employee Contribution Account. Such withdrawals may be made at any time, provided that no more than two (2) such withdrawals may be made during any calendar year. No forfeiture will occur solely as the result of any such withdrawal.

9.07 Hardship Withdrawals.

(a) Where elected by the Employer in the Adoption Agreement for a profit-sharing plan containing a 401(k) arrangement, distribution of nonforfeitable amounts attributable to Employer Contributions and/or Elective Deferrals (including Catch-up Contributions but not including earnings attributable to Elective Deferrals accrued after December 31, 1988) may be made to a Participant in the event of hardship. A hardship distribution may only be made on account of an immediate and heavy financial need of the Employee and where the distribution is necessary to satisfy the immediate and heavy financial need.

(b) Special Rules:

(1) The following are the only financial needs considered immediate and heavy (or as otherwise provided for under Treasury Regulation section 1.401(k)-1(d)(3) (iii)(B) or any subsequent guidance thereto):

- (i) Expenses for medical care (within the meaning of section 213(d) of the Code) previously incurred or necessary to obtain medical care for the Employee, the Employee's spouse or dependents;
- (ii) Costs directly related to the purchase (excluding mortgage payments) of a principal residence for the Employee;
- (iii) Payment of tuition and related educational fees for the next twelve (12) months of post-secondary education for the Employee, the Employee's spouse, children or dependents;
- (iv) Payments necessary to prevent the eviction of the Employee from, or a foreclosure on the mortgage of, the Employee's principal residence; or
- (v) Payments for funeral or burial expenses for the Employee's deceased parent, spouse, child or dependent and expenses to repair damage to the Employee's principal residence that would qualify for a casualty loss deduction under Code section 165 (determined without regard to whether the loss exceeds 10 percent of adjusted gross income). The last two needs (funeral expenses and home repair) only apply to Plan Years beginning after 2005.

(2) A distribution will be considered as necessary to satisfy an immediate and heavy financial need of the employee only if:

- (i) The distribution is not in excess of the amount of an immediate and heavy financial need, including amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution;
- (ii) The Employee has obtained all distributions, other than hardship distributions, and all nontaxable loans under all plans maintained by the Employer; and

(iii) All plans maintained by the Employer provide that the Employee's Elective Deferrals (and Employee

contributions) will be suspended for six (6) months after the receipt of the hardship distribution, provided that Employee contributions that are “picked up” by the Employer pursuant to Section of the Plan shall not be considered Employee contributions for this purpose.

- (3) Distributions for Financial Hardship. Unless otherwise elected by the Employer, after August 31, 2007, the determination of any deemed immediate and heavy financial need described in Treasury Regulation section 1.401(k)-1(d)(3)(iii)(B)(1), (3), or (5) (relating to medical, tuition, and funeral expenses, respectively) will be expanded to include any immediate and heavy financial need of a Participant’s Primary Beneficiary.

9.08 In-Service Distributions. If elected by the Employer in the Adoption Agreement, a Participant who has attained age 59½ and has a Nonforfeitable Interest in his/her entire Employer Contribution Account shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

Unless otherwise elected by the Employer in the Adoption Agreement, a Participant who has reached age 70½ regardless of his Nonforfeitable Interest in his/her entire Employer Contribution Account, shall, upon written request, receive a distribution of a part of or the full amount of the balance in any or all of his vested Accounts. Such distributions may be requested at any time, provided that no more than two (2) such distributions may be made during any calendar year.

9.09 In-Service Distribution from Rollover Account. Where elected by the Employer in the Adoption Agreement, a Participant that has a separate account attributable to rollover contributions to the Plan, may at any time elect to receive a distribution of all or any portion of the amount held in the Rollover Account.

9.10 Latest Commencement of Benefits. Notwithstanding anything to the contrary in this Article, benefits shall begin no later than the Participant’s Required Beginning Date, as defined under Section 10.05, or as otherwise provided in Section 10.04.

9.11 Spousal Consent. Notwithstanding the foregoing, if the Employer elected the QJSA Election in the Adoption Agreement, a married Participant must first obtain his or her spouse’s notarized consent to request a distribution (other than a Qualified Joint and Survivor Annuity), withdrawal, or rollover under this Article IX.

9.12 Qualified Reservist Distribution Available under the Plan. Unless otherwise elected by the Employer, after September 11, 2001, Qualified Reservist Distributions will be available under the Plan.

- (a) Qualified Reservist Distribution. The term “Qualified Reservist Distribution” means any distribution of Elective Deferrals to a Qualified Reservist that is made during the period beginning on the date that the Qualified Reservist is ordered or called to duty and ending on the last day of active duty. A Qualified Reservist Distribution may be made to a Qualified Reservist under any circumstance and/or for any reason without violating the distribution restrictions of Code section 401(k)(2)(B)(i).
- (b) Qualified Reservist. The term “Qualified Reservist” means an individual who is a member of a reserve component, as defined in section 101 of title 37, United States Code, and who is ordered or called to active duty after September 11, 2001 either for a period in excess of 179 days or for an indefinite period.

9.13 Deemed Severance from Employment.

- (a) Unless otherwise elected by the Employer in the Adoption Agreement, effective January 1, 2009, a

Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than 30 days.

- (b) If a Participant receives a distribution pursuant to subsection (a), then the Participant shall not be permitted to make an Elective Deferral or after-tax voluntary contributions during the six-month period beginning on the date of the distribution.
- (c) If a Participant receives a distribution which could be attributable to:
 - (i) a deemed severance from employment described in subsection (a); or
 - (ii) another distribution event under the Plan,

then the distribution shall be considered made pursuant to the distribution event referenced in paragraph (ii), and the Participant shall not be subject to the limitation on Elective Deferrals or after-tax voluntary contributions set forth in subsection (b).

9.14 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term “Eligible Retired Public Safety Officer” means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term “Public Safety Officer” has the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.
- (c) The term “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code section 7702(B)).

X. DISTRIBUTION REQUIREMENTS

10.01 General Rules.

- (a) Generally. Subject to the provisions of Article XII or XVII if so elected by the Employer in the Adoption Agreement, the requirements of this Article shall apply to any distribution of a Participant’s interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Article X apply to calendar years beginning after December 31, 2002.

With respect to distributions under the Plan made in or for Plan Years beginning on or after January 1, 2002 and prior to January 1, 2003, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provision of the Plan to the contrary.

- (b) Distributions in Accordance with 401(a)(9). All distributions required under this Article shall be determined and made in accordance with the regulations under section 401(a)(9) of the Code, and the minimum distribution incidental benefit requirement of section 401(a)(9)(G) of the Code.
- (c) Limits on Distribution Periods. As of the first Distribution Calendar Year, distributions to a Participant, if not made in a single-sum, may only be made over one of the following periods:
 - (1) The life of the Participant,
 - (2) The joint lives of the Participant and a designated Beneficiary,
 - (3) A period certain not extending beyond the life expectancy of the Participant, or
 - (4) A period certain not extending beyond the joint and last survivor expectancy of the Participant and a designated Beneficiary.
- (d) TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this Article X, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the Plan that relate to Section 242(b)(2) of TEFRA.
- (e) EESA Provisions. The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in section 702 of the Emergency Economic Stabilization Act of 2008 (“EESA”) shall apply to the Plan.
- (f) KETRA and GOZA Provisions. The provisions relating to qualified hurricane distributions and repayment thereof set forth in section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 (“KETRA”) and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

10.02 Time and Manner of Distribution

- (a) Required Beginning Date. The Participant’s entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant’s required beginning date.
- (b) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant’s entire interest will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant’s surviving spouse is the Participant’s sole designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant’s surviving spouse is not the Participant’s sole designated Beneficiary, then distributions to the designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.

- (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this Section 10.02(b), other than Section 10.02(b)(1), will apply as if the surviving spouse were the Participant.

For purposes of this Section 10.02(b) and Section 10.04, unless Section 10.02(b)(4) applies, distributions are considered to begin on the Participant's required beginning date. If Section 10.02(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 10.02(b)(1)), the date distributions are considered to begin is the date distributions actually commence.

- (c) Forms of Distribution. Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with Sections 10.03 and 10.04. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

10.03 Required Minimum Distributions During Participant's Lifetime

- (a) Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:
 - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table found in Section 1.401(a)(9)-9, Q&A-2, of the Final Income Tax Regulations using the Participant's age as of the Participant's birthday in the distribution calendar year; or
 - (2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.
- (b) Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this Section 10.03 beginning with the first distribution calendar year and continuing up to, and including, the distribution calendar year that includes the Participant's date of death.

10.04 Required Minimum Distributions After Participant's Death

- (a) Death On or After Date Distributions Begin.
 - (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated Beneficiary, determined as follows:

- (i) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the Participant's surviving spouse is the Participant's sole designated Beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.
 - (iii) If the Participant's surviving spouse is not the Participant's sole designated Beneficiary, the designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.
- (2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
- (b) Death Before Date Required Distributions Begin.
- (1) Participant Survived by Designated Beneficiary. If the Participant dies before the date required distributions begin and there is a designated Beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining life expectancy of the Participant's designated Beneficiary, determined as provided in Section 10.04(a).
 - (2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 10.02(b)(1), this Section 10.04(b) will apply as if the surviving spouse were the Participant.

10.05 Definitions

- (a) Designated Beneficiary. The individual who is designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the designated Beneficiary under Code Section 401(a)(9) and Section 1.401(a)(9)-4 of the regulations.
- (b) Distribution Calendar Year. A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately

preceding the calendar year which contains the Participant's required beginning date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under Section 10.02(b). The required minimum distribution for the Participant's first distribution calendar year will be made on or before the Participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

- (c) Life Expectancy. Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the regulations.
- (d) Participant's Account Balance. The Account Balance as of the last Accounting Date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.
- (e) Required Beginning Date. The Required Beginning Date of a Participant is April 1 of the calendar year following the later of the calendar year in which the Participant attains age seventy and one-half (70½), or the calendar year in which the Participant retires.

10.06 Application of Minimum Distribution Requirements. The minimum distribution requirements of section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.

10.07 Special Rule for Scheduled Installment Payments. All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 10.07, the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

XI. MODES OF DISTRIBUTION OF BENEFITS

11.01 Normal Mode of Distribution. Unless an elective mode of distribution is elected as provided in Section 11.02, benefits shall be paid to the Participant in the form of a lump sum payment. Notwithstanding the foregoing, where the Employer made the "QJSA Election" in the Adoption Agreement, unless an elective mode of distribution is elected in accordance with Article XVII, benefits shall be paid to the Participant in the form provided for in Article XVII.

11.02 Elective Mode of Distribution. Subject to the requirements of Articles X, XII and XVII, a Participant may revocably elect to have his/her Account distributed in any one (1) of the following modes in lieu of the mode described in Section 11.01:

- (a) Equal Payments. Equal monthly, quarterly, semi-annual, or annual payments in an amount chosen by the Participant continuing until the Account is exhausted.
- (b) Period Certain. Approximately equal monthly, quarterly, semi-annual, or annual payments, calculated to continue for a period certain chosen by the Participant.

(c) Other. Any other sequence of payments requested by the Participant.

(d) Lump Sum. Where the Employer did make the QJSA Election in the Adoption Agreement, a Participant may also elect a lump sum payment.

11.03 Election of Mode. A Participant's election of a payment option must be made in writing between thirty (30) and one-hundred eighty (180) days (ninety (90) days for Plan Years beginning before January 1, 2007) before the payment of benefits is to commence.

11.04 Death Benefits. Subject to Article X (and Article XII or XVII if so elected by the Employer in the Adoption Agreement),

(a) In the case of a Participant who dies before he/she has begun receiving benefit payments, the Participant's entire Nonforfeitable Interest shall then be payable to his/ her Beneficiary within ninety (90) days of the Participant's death. A Beneficiary who is entitled to receive benefits under this Section may elect to have benefits commence at a later date, subject to the provisions of Article X. The Beneficiary may elect to receive the death benefit in any of the forms available to the Participant under Sections 11.01 and 11.02. If the Beneficiary is the Participant's surviving spouse, and such surviving spouse dies before payment commences, then this Section shall apply to the beneficiary of the surviving spouse as though such surviving spouse were the Participant.

(b) Should the Participant die after he/she has begun receiving benefit payments, the Beneficiary shall receive the remaining benefits, if any, that are payable, under the payment schedule elected by the Participant. Notwithstanding the foregoing, the Beneficiary may elect to accelerate payments of the remaining balances, including but not limited to, a lump sum distribution.

XII. SPOUSAL DEATH BENEFIT REQUIREMENTS

12.01 Application. Unless otherwise elected by the Employer in the Adoption Agreement, on or after January 1, 2006, the provisions of this Article shall take precedence over any conflicting provision in this Plan. The provisions of this Article, known as the "Beneficiary Spousal Consent Election," shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 12.04.

12.02 Spousal Death Benefit.

(a) On the death of a Participant, the Participant's Vested Account Balance will be paid to the Participant's Surviving Spouse. If there is no Surviving Spouse, or if the Participant has waived the spousal death benefit, as provided in Section 12.03, such Vested Account Balance will be paid to the Participant's designated Beneficiary.

(b) The Surviving Spouse may elect to have distribution of the Vested Account Balance commence within the one-hundred eighty (180) day period following the date of the Participant's death, or as otherwise provided under Section 11.04. The Account balance shall be adjusted for gains or losses occurring after the Participant's death in accordance with the provisions of the Plan governing the adjustment of Account balances for other types of distributions.

12.03 Waiver of Spousal Death Benefit.

The Participant may waive the spousal death benefit described in Section 12.02 at any time; provided that no such waiver shall be effective unless: (a) the Participant's Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the

Participant without any further spousal consent); (c) the Spouse's consent acknowledges the effect of the election; and (d) the Spouse's consent is witnessed by a Plan representative or notary public. If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed to meet the requirements of this Section.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited.

12.04 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (b) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

XIII. LOANS TO PARTICIPANTS

13.01 Availability of Loans to Participants.

- (a) If the Employer has elected in the Adoption Agreement to make loans available to Participants, a Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Plan Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

13.02 Terms and Conditions of Loans to Participants. Any loan by the Plan to a Participant under Section 13.01 of the Plan shall satisfy the following requirements:

- (a) Availability. Loans shall be made available to all Participants who are active Employees on a reasonably equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.
- (b) Nondiscrimination. Loans shall not be made to highly compensated Employees in an amount greater than the amount made available to other Employees.
- (c) Interest Rate. Loans must be adequately secured and bear a reasonable interest rate.
- (d) Loan Limit. No Participant loan shall exceed the present value of the Participant's Nonforfeitable Interest in his/her Account.

- (e) Foreclosure. In the event of default, foreclosure on the note and attachment of security will not occur until a distributable event occurs in the Plan.
- (f) Reduction of Account. Notwithstanding any other provision of this Plan, the portion of the Participant's vested Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan. If less than one hundred percent (100%) of the Participant's nonforfeitable Account balance (determined without regard to the preceding sentence) is payable to the surviving spouse, then the Account balance shall be adjusted by first reducing the nonforfeitable Account balance by the amount of the security used as repayment of the loan, and then determining the benefit payable to the surviving spouse.
- (g) Amount of Loan. At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant or Beneficiary from the Plan and from all other plans of the Employer that are qualified employer plans under section 72(p)(4) of the Code shall not exceed the lesser of:
 - (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made, over
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half (½) of the value of the Participant's Nonforfeitable Interest in all of his/her Accounts under this Plan (or \$10,000, if greater, for loans prior to January 1, 2006).

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer, including 457(b) plans, under Code section 72(p)(4) are aggregated.

- (h) Application for Loan. The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any calendar year. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (i) Length of Loan. The terms of any loan issued or renegotiated after December 31, 1993, shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least quarterly (except as otherwise provided in Treasury Regulation section 1.72(p)-1, Q&A-9 for certain leave of absence and military leave), over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this Subsection (i), with a revised payment schedule (within such term) instituted at the end of such period of suspension. If the Participant fails to make any installment payment, the Plan Administrator may, according to Treasury Regulation 1.72(p)-1, allow a cure period, which cure period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the

required installment payment was due.

- (j) Prepayment. The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (k) Note. The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer. Unless waived by a Participant, any plan loan that is outstanding on the date that active duty military service begins will accrue interest at a rate of no more than 6% during the period of military service in accordance with the provisions of the Servicemembers Civil Relief Act (SCRA), 50 USC App. § 526 and subject to the notice requirements contained therein. This limitation applies even if loan payments are suspended during the period of military service as permitted under the Plan and Treasury regulations.
- (l) Security. The loan shall be secured by an assignment of that portion the Participant's right, title and interest in and to his/her Employer Contribution Account (to the extent vested), Participant Contribution Account, and Rollover Account that is equal to fifty percent (50%) of the Participant's Account (to the extent vested).
- (m) Assignment or Pledge. For the purposes of paragraphs (h) and (i), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (n) Spousal Consent. If the Employer elected the QJSA Election in the Adoption Agreement, the Participant must first obtain his or her spouse's notarized consent to the loan. Spousal consent shall be obtained no earlier than the beginning of the one-hundred eighty (180) day period (ninety (90) day period for plan years beginning before January 1, 2007) that ends on the date on which the loan is to be so secured. The consent must be in writing, must acknowledge the effect of the loan, and must be witnessed by a Plan representative or notary public. Such consent shall thereafter be binding with respect to the consenting spouse or any subsequent spouse with respect to that loan. A new consent shall be required if the account balance is used for renegotiation, extension, renewal, or other revision of the loan.
- (o) Other Terms and Conditions. The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the qualification of the Plan and Trust under section 401(a) of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:
 - (1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;
 - (2) rules relating to reamortization of loans; and
 - (3) rules relating to refinance of loans.

13.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.

- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 13.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. No person who is otherwise a fiduciary of the Plan shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account. A payment intended to be a Prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the provisions of the Plan, governing the establishment and maintenance of Participant Loan Accounts.

XIV. PLAN AMENDMENT, TERMINATION AND OPTIONAL PROVISIONS

14.01 Amendment by Employer. The Employer reserves the right, subject to Section 14.02 of the Plan, to amend the Plan from time to time by either:

- (a) Filing an amended Adoption Agreement to change, delete, or add any optional provision, or
- (b) Continuing the Plan in the form of an amended and restated Plan and Trust.

No amendment to the Plan shall be effective to the extent that it has the effect of decreasing a Participant's accrued benefit. Notwithstanding the preceding sentence, a Participant's Account balance may be reduced to the extent permitted under section 412(d)(2) of the Code. For purposes of this paragraph, a Plan amendment which has the effect of decreasing a Participant's Account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the vesting schedule of the Plan is amended, in the case of an Employee who is a Participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such Employee's right to his/her Employer-derived accrued benefit will not be less than his percentage computed under the plan without regard to such amendment.

No amendment to the Plan shall be effective to eliminate or restrict an optional form of benefit. The preceding sentence shall not apply to a Plan amendment that eliminates or restricts the ability of a Participant to receive payment of his or her Account balance under a particular optional form of benefit if the amendment provides a single-sum distribution form that is otherwise identical to the optional form of benefit being eliminated or restricted. For this purpose, a single-sum distribution form is otherwise identical only if the single-sum distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the Participant) except with respect to the timing of payments after commencement.

The Employer may (1) change the choice of options in the Adoption Agreement, (2) add overriding language in the Adoption Agreement when such language is necessary to satisfy sections 415 or 416 of the Code because of the required aggregation of multiple plans, (3) amend administrative provisions of the trust or custodial document in the case of a nonstandardized plan and make more limited amendments in the case of a standardized plan such as the name of the plan, employer, trustee or custodian, plan administrator and other fiduciaries, the trust year, and the name of any pooled trust in which the Plan's trust will participate, (4) add certain sample or model amendments published by the Internal Revenue Service or other required

good faith amendments which specifically provide that their adoption will not cause the plan to be treated as individually designed, and (5) add or change provisions permitted under the Plan and/or specify or change the effective date of a provision as permitted under the Plan and correct obvious and unambiguous typographical errors and/or cross-references that merely correct a reference but that do not in any way change the original intended meaning of the provisions. An Employer that amends the Plan for any other reason will be considered to have an individually designed plan.

14.02 Amendment of Vesting Schedule. If the Plan's vesting schedule is amended, or the Plan is amended in any way that directly or indirectly affects the computation of the Participant's nonforfeitable percentage, each Participant may elect, within a reasonable period after the adoption of the amendment or change, to have the nonforfeitable percentage computed under the Plan without regard to such amendment or change.

The period during which the election may be made shall commence with the date the amendment is adopted or deemed to be made and shall end on the latest of:

- (a) Sixty (60) days after the amendment is adopted;
- (b) Sixty (60) days after the amendment becomes effective; or
- (c) Sixty (60) days after the Participant is issued written notice of the amendment by the Employer or Plan Administrator.

14.03 Termination by Employer. The Employer reserves the right to terminate this Plan. However, in the event of such termination no part of the Trust shall be used or diverted to any purpose other than for the exclusive benefit of the Participants or their Beneficiaries, except as provided in this Section.

Upon Plan termination or partial termination, all Account balances shall be valued at their fair market value and the Participant's right to his/her Employer Contribution Account shall be one hundred percent (100%) vested and nonforfeitable. Such amount and any other amounts held in the Participant's other Accounts shall be maintained for the Participant until paid pursuant to the terms of the Plan.

Any amounts held in a suspense account, after all liabilities of the Plan to Participants and Beneficiaries have been satisfied or provided for, shall be paid to the Employer in accordance with the Code and regulations thereunder.

In the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made by the Employer incident to that initial qualification must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

14.04 Discontinuance of Contributions. A permanent discontinuance of contributions to the Plan by the Employer, unless an amended and restated Plan is established, shall constitute a Plan termination. In the event of a complete discontinuance of contributions under the Plan, the Account balance of each affected Participant shall be nonforfeitable.

14.05 Amendment by Plan Administrator. The Plan Administrator may amend this Plan upon thirty (30) days written notification to the Employer; provided, however, that any such amendment must be for the express purpose of maintaining compliance with applicable federal laws and regulations, revenue rulings, other statements published

by the Internal Revenue Service (including model and sample amendments that specifically provide that their adoption will not cause such Plan to be individually designed), or corrections of prior approved Plans may be applied to all Employers who have adopted the Plan. Such amendment shall become effective unless, within such 30-day period, the Employer notifies the Administrator, in writing, that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

For purposes of reliance on the advisory letter, the Plan Administrator shall no longer have authority to amend the Plan on behalf of the Employer as of the date of the adoption of an Employer amendment to the Plan to incorporate a type of plan not allowable in the volume submitter program described in section 16.03 of Revenue Procedure 2011-49 (or successor guidance) or as of the date the Internal Revenue Service notifies the Plan Administrator that the Plan is being treated as an individually designed plan pursuant to section 24.03 of Revenue Procedure 2011-49 (or successor guidance).

14.06 Optional Provisions. Any provision which is optional under this Plan shall become effective if and only if elected by the Employer and agreed to by the Plan Administrator.

14.07 Failure of Qualification. If the Employer's plan fails to attain or retain qualification, such plan will no longer participate in this Plan and will be considered an individually designed plan.

XV. ADMINISTRATION

15.01 Powers of the Employer. The Employer shall have the following powers and duties:

- (a) To appoint and remove, with or without cause, the Plan Administrator;
- (b) To amend or terminate the Plan pursuant to the provisions of Article XIV;
- (c) To appoint a committee to facilitate administration of the Plan and communications to Participants;
- (d) To decide all questions of eligibility (1) for Plan participation, and (2) upon appeal by any Participant, Employee or Beneficiary, for the payment of benefits;
- (e) To engage an independent qualified public accountant, when required to do so by law, to prepare annually the audited financial statements of the Plan's operation;
- (f) To take all actions and to communicate to the Plan Administrator in writing all necessary information to carry out the terms of the Plan and Trust; and
- (g) To notify the Plan Administrator in writing of the termination of the Plan.

15.02 Duties of the Plan Administrator. The Plan Administrator shall have the following powers and duties, subject to the oversight by the Employer:

- (a) To construe and interpret the provisions of the Plan;
- (b) To maintain and provide such returns, reports, schedules, descriptions, and individual Account statements as are required by law within the times prescribed by law; and to furnish to the Employer, upon request, copies of any or all such materials, and further, to make copies of such instruments, reports, descriptions, and statements as are required by law available for examination by Participants and such of their Beneficiaries who are or may be entitled to benefits under the Plan in such places and in such manner as required by law;

- (c) To obtain from the Employer such information as shall be necessary for the proper administration of the Plan;
- (d) To determine the amount, manner, and time of payment of benefits hereunder;
- (e) To appoint and retain such agents, counsel, and accountants for the purpose of properly administering the Plan;
- (f) To distribute assets of the Trust to each Participant and Beneficiary in accordance with Article X of the Plan;
- (g) To pay expenses from the Trust pursuant to Section 6.03 of the Plan; and
- (h) To do such other acts reasonably required to administer the Plan in accordance with its provisions or as may be provided for or required by the Code.

15.03 Protection of the Employer. The Employer shall not be liable for the acts or omissions of the Plan Administrator, but only to the extent that such acts or omissions do not result from the Employer's failure to provide accurate or timely information as required or necessary for proper administration of the Plan.

15.04 Protection of the Plan Administrator. The Plan Administrator may rely upon any certificate, notice or direction purporting to have been signed on behalf of the Employer which the Plan Administrator believes to have been signed by a duly designated official of the Employer.

15.05 Resignation or Removal of Plan Administrator. The Plan Administrator may resign at any time effective upon sixty (60) days prior written notice to the Employer. The Plan Administrator may be removed by the Employer at any time upon sixty (60) days prior written notice to the Plan Administrator. Upon the resignation or removal of the Plan Administrator, the Employer may appoint a successor Plan Administrator; failing such appointment, the Employer shall assume the powers and duties of Plan Administrator. Upon the resignation or removal of the Plan Administrator, any Trust assets invested by or held in the name of the Plan Administrator shall be transferred to the trustee in cash or property, at fair market value, except that the return of Trust assets invested in a contract issued by an insurance company shall be governed by the terms of that contract.

15.06 No Termination Penalty. The Plan Administrator shall have no authority or discretion to impose any termination penalty upon its removal.

15.07 Decisions of the Plan Administrator. All constructions, determinations, and interpretations made by the Plan Administrator pursuant to Section 15.02(a) or (d) or by the Employer pursuant to Section 15.01(d) shall be final and binding on all persons participating in the Plan, given deference in all courts of law to the greatest extent allowed by applicable law, and shall not be overturned or set aside by any court of law unless found to be arbitrary or capricious, or made in bad faith.

XVI. MISCELLANEOUS

16.01 Nonguarantee of Employment. Nothing contained in this Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of an Employee to be continued in the employment of the Employer, as a limitation of the right of the Employer to discharge any of its Employees, with or without cause.

16.02 Rights to Trust Assets. No Employee or Beneficiary shall have any right to, or interest in, any assets of the Trust upon termination of his/her employment or otherwise, except as provided from time to time under this Plan, and then only to the extent of the benefits payable under the Plan to such Employee or Beneficiary out of the assets of the Trust. All payments of benefits as provided for in this Plan shall be made solely out of the assets of the Trust and none of the fiduciaries shall be liable therefor in any manner.

16.03 Nonalienation of Benefits. Except as provided in Sections 16.04 and 16.06 of the Plan, benefits payable under this Plan shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution, or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit under the terms of the Plan; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right to benefits payable hereunder, shall be void. The Trust shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to benefits hereunder.

16.04 Qualified Domestic Relations Order. Notwithstanding Section 16.03 of the Plan, amounts may be paid with respect to a Participant pursuant to a domestic relations order, but if and only if the order is determined to be a qualified domestic relations order within the meaning of section 414(p) of the Code or any domestic relations order entered before January 1, 1985.

16.05 Nonforfeitability of Benefits. Subject only to the specific provisions of this Plan, nothing shall be deemed to deprive a Participant of his/her right to the Nonforfeitable Interest to which he/ she becomes entitled in accordance with the provisions of the Plan.

16.06 Incompetency of Payee. In the event any benefit is payable to a minor or incompetent, to a person otherwise under legal disability, or to a person who, in the sole judgment of the Employer, is by reason of advanced age, illness, or other physical or mental incapacity incapable of handling the disposition of his/her property, the Employer may apply the whole or any part of such benefit directly to the care, comfort, maintenance, support, education, or use of such person or pay or distribute the whole or any part of such benefit to:

- (a) The parent of such person;
- (b) The guardian, committee, or other legal representative, wherever appointed, of such person;
- (c) The person with whom such person resides;
- (d) Any person having the care and control of such person; or
- (e) Such person personally.

The receipt of the person to whom any such payment or distribution is so made shall be full and complete discharge therefor.

16.07 Inability to Locate Payee. Anything to the contrary herein notwithstanding, if the Employer is unable, after reasonable effort, to locate any Participant or Beneficiary to whom an amount is payable hereunder, such amount shall be forfeited and held in the Trust for application against the next succeeding Employer Contribution or contributions required to be made hereunder. Notwithstanding the foregoing, however, such amount shall be reinstated, by means of an additional Employer contribution, if and when a claim for the forfeited amount is subsequently made by the Participant or Beneficiary or if the Employer receives proof of death of such person, satisfactory to the Employer. To the extent not inconsistent with applicable law, any benefits lost by reason of escheat under applicable state law shall be considered forfeited and shall not be reinstated.

16.08 Mergers, Consolidations, and Transfer of Assets. The Plan shall not be merged into or consolidated with any other plan, nor shall any of its assets or liabilities be transferred into any such other plan, unless each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer that is equal to or greater than the benefit he/she would have been entitled to receive immediately before the merger, consolidation, or transfer (if the Plan had then terminated).

- 16.09 Employer Records.** Records of the Employer as to an Employee's or Participant's Period of Service, termination of service and the reason therefor, leaves of absence, reemployment, Earnings, and Compensation will be conclusive on all persons, unless determined to be incorrect.
- 16.10 Gender and Number.** The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.
- 16.11 Applicable Law.** The Plan shall be construed under the laws of the State where the Employer is located, except to the extent superseded by federal law. The Plan is established with the intent that it meets the requirements under the Code. The provisions of this Plan shall be interpreted in conformity with these requirements.

In the event of any conflict between the Plan and a policy or contract issued hereunder, the Plan provisions shall control; provided, however, no Plan amendment shall supersede an existing policy or contract unless such amendment is required to maintain qualification under section 401(a) and 414(d) of the Code.

- 16.12 Electronic Communication and Consent.** Unless expressly provided otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

XVII. SPOUSAL BENEFIT REQUIREMENTS

- 17.01 Application.** Effective as of January 1, 2006, where elected by the Employer in the Adoption Agreement (the "QJSA Election"), the provisions of this Article shall take precedence over any conflicting provision in this Plan. If elected, the provisions of this Article shall apply to any Participant who is credited with any Period of Service with the Employer on or after August 23, 1984, and such other Participants as provided in Section 17.06.
- 17.02 Qualified Joint and Survivor Annuity.** Unless an optional form of benefit is selected pursuant to a Qualified Election within the one-hundred eighty (180) day period ending on the Annuity Starting Date, a married Participant's Vested Account Balance will be paid in the form of a Qualified Joint and Survivor Annuity and an unmarried Participant's Vested Account Balance will be paid in the form of a Straight Life Annuity. The Participant may elect to have such annuity distributed upon the attainment of the Earliest Retirement Age under the Plan.
- 17.03 Qualified Optional Survivor Annuity.** For plan years beginning after December 31, 2007, if a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period, provided, however, that this Section shall apply only to the extent the Plan makes another survivor annuity available.
- 17.04 Qualified Preretirement Survivor Annuity.** If a Participant dies before the Annuity Starting Date, then fifty percent (50%) of the Participant's Vested Account Balance shall be applied toward the purchase of an annuity for the life of the Surviving Spouse; the remaining portion shall be paid to such Beneficiaries (which may include such Spouse) designated by the Participant. Notwithstanding the foregoing, the Participant may waive the spousal annuity by designating a different Beneficiary within the Election Period pursuant to a Qualified Election. To the extent that less than one hundred percent (100%) of the vested Account balance is paid to the Surviving Spouse, the amount of the Participant's Account derived from Employee contributions will be allocated to the Surviving Spouse in the same proportion as the amount of the Participant's Account derived from Employee contributions is to the Participant's total Vested Account Balance. The Surviving Spouse may elect to have such annuity distributed within a reasonable period after the Participant's death. Further, such Spouse may elect to receive any death benefit payable to him/her hereunder in any of the forms available to the Participant under Section 11.02.

17.05 Notice Requirements.

- (a) In the case of a Qualified Joint and Survivor Annuity as described in Section 17.02, the Plan Administrator shall, no less than thirty (30) days and no more than one-hundred eighty (180) days (or ninety (90) days for notices given in Plan Years before January 1, 2007) prior to the Annuity Starting Date, provide each Participant a written explanation of: (i) the terms and conditions of a Qualified Joint and Survivor Annuity; (ii) the Participant's right to make and the effect of an election to waive the Qualified Joint and Survivor Annuity form of benefit; (iii) the rights of a Participant's Spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the Qualified Joint and Survivor Annuity. However, if the Participant, after having received the written explanation, affirmatively elects a form of distribution and the Spouse consents to that form of distribution (if necessary), benefit payments may commence less than thirty (30) days after the written explanation was provided to the Participant, provided that the following requirements are met:
- (1) The Plan Administrator provides information to the Participant clearly indicating that the Participant has a right to at least thirty (30) days to consider whether to waive the Qualified Joint and Survivor Annuity and consent to a form of distribution other than a Qualified Joint and Survivor Annuity;
 - (2) The Participant is permitted to revoke an affirmative distribution election at least until the Annuity Starting Date, or if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant;
 - (3) The Annuity Starting Date is after the date that the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant; and
 - (4) Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins after the day after the explanation of the Qualified Joint and Survivor Annuity is provided to the Participant.
- (b) In the case of a Qualified Preretirement Survivor Annuity as described in Section 17.04, the Plan Administrator shall provide each Participant within the applicable period for such Participant a written explanation of the Qualified Preretirement Survivor Annuity in such terms and in such manner as would be comparable to the explanation provided for meeting the requirements of Subsection (a) applicable to a Qualified Joint and Survivor Annuity.

The applicable period for a Participant is whichever of the following periods ends last:

- (i) the period beginning with the first day of the Plan Year in which the Participant attains age thirty-two (32) and ending with the close of the Plan Year preceding the Plan Year in which the Participant attains age thirty-five (35);
- (ii) a reasonable period ending after the individual becomes a Participant;
- (iii) a reasonable period ending after Subsection (c) ceases to apply to the Participant;
- (iv) a reasonable period ending after this Article first applies to the Participant. Notwithstanding the foregoing, notice must be provided within a reasonable period ending after separation from service in the case of a Participant who separates from service before attaining age thirty-five (35).

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events

described in (ii), (iii) and (iv) is the end of the two (2) year period beginning one (1) year prior to the date the applicable event occurs, and ending one (1) year after that date. In the case of a Participant who separates from service before the Plan Year in which age thirty-five (35) is attained, notice shall be provided within the two (2) year period beginning one (1) year prior to separation and ending one (1) year after separation. If such a Participant thereafter returns to employment with the Employer, the applicable period for such Participant shall be redetermined.

- (c) Notwithstanding the other requirements of this Section, the respective notices prescribed by this Section need not be given to a Participant if (1) the Plan “fully subsidizes” the costs of a Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity, and (2) the Plan does not allow the Participant to waive the Qualified Joint and Survivor Annuity or Qualified Preretirement Survivor Annuity and does not allow a married Participant to designate a non-Spouse Beneficiary. For purposes of this Subsection (c), a plan fully subsidizes the costs of a benefit if no increase in cost or decrease in benefits to the Participant may result from the Participant’s failure to elect another benefit.

17.06 Definitions. For the purposes of this Section, the following definitions shall apply:

- (a) Annuity Starting Date. The first day of the first period for which an amount is paid as an annuity or any other form.
- (b) Election Period. The period which begins on the first day of the Plan Year in which the Participant attains age thirty-five (35) and ends on the date of the Participant’s death. If a Participant separates from service prior to the first day of the Plan Year in which age thirty-five (35) is attained, with respect to the Account balance as of the date of separation, the Election Period shall begin on the date of separation. Pre-age thirty-five (35) waiver: A Participant who will not yet attain age thirty-five (35) as of the end of any current Plan Year may make a special Qualified Election to waive the Qualified Preretirement Survivor Annuity for the period beginning on the date of such election and ending on the first day of the Plan Year in which the Participant will attain age thirty-five (35). Such election shall not be valid unless the Participant receives a written explanation of the Qualified Preretirement Survivor Annuity in such terms as are comparable to the explanation required under Section 17.05(a). Qualified Preretirement Survivor Annuity coverage will be automatically reinstated as of the first day of the Plan Year in which the Participant attains age thirty-five (35). Any new waiver on or after such date shall be subject to the full requirements of this Article.
- (c) Earliest Retirement Age. The earliest date on which, under the Plan, the Participant could elect to receive retirement benefits.
- (d) Qualified Election. A waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity. Any waiver of a Qualified Joint and Survivor Annuity or a Qualified Preretirement Survivor Annuity shall not be effective unless: (a) the Participant’s Spouse consents in writing to the election; (b) the election designates a specific Beneficiary, including any class of Beneficiaries or any contingent Beneficiaries, which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further spousal consent); (c) the Spouse’s consent acknowledges the effect of the election; and (d) the Spouse’s consent is witnessed by a Plan representative or notary public. Additionally, a Participant’s waiver of the Qualified Joint and Survivor Annuity shall not be effective unless the election designates a form of benefit payment which may not be changed without spousal consent (or the Spouse expressly permits designations by the Participant without any further Spousal consent). If it is established to the satisfaction of a Plan representative that there is no Spouse or that the Spouse cannot be located, a waiver will be deemed a Qualified Election.

Any consent by a Spouse obtained under this provision (or establishment that the consent of a Spouse may not be obtained) shall be effective only with respect to such Spouse. A consent that permits designations

by the Participant without any requirement of further consent by such Spouse must acknowledge that the Spouse has the right to limit consent to a specific Beneficiary, and a specific form of benefit where applicable, and that the Spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a Participant without the consent of the Spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the Participant has received notice as provided in Section 17.05.

- (e) Qualified Joint and Survivor Annuity. An immediate annuity for the life of the Participant with a survivor annuity for the life of the Spouse which is fifty percent (50%) of the amount of the annuity which is payable during the joint lives of the Participant and the Spouse and which is the amount of benefit which can be purchased with the Participant's Vested Account Balance.
- (f) Spouse (Surviving Spouse). The Spouse or Surviving Spouse of the Participant, provided that a former Spouse will be treated as the Spouse or Surviving Spouse and a current Spouse will not be treated as the Spouse or Surviving Spouse to the extent provided under a qualified domestic relations order as described in section 414(p) of the Code.
- (g) Straight Life Annuity. An annuity payable in equal installments for the life of the Participant that terminates upon the Participant's death.
- (h) Vested Account Balance. The aggregate value of the Participant's vested Account balances derived from Employer and Employee contributions (including rollovers), whether vested before or upon death, including the proceeds of insurance contracts, if any, on the Participant's life. The provisions of this Article shall apply to a Participant who is vested in amounts attributable to Employer Contributions, Employee contributions (or both) at the time of death or distribution.

17.07 Annuity Contracts. Where benefits are to be paid in the form of a life annuity pursuant to the terms of this Article, a nontransferable annuity contract shall be purchased from a life insurance company and distributed to the Participant or Surviving Spouse, as applicable. The terms of any annuity contract purchased and distributed by the Plan shall comply with the requirements of this Plan and section 417 of the Code.

XVIII. FINAL PAY CONTRIBUTIONS

18.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Final Pay Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid final pay, as defined in the Adoption Agreement ("Final Pay"), shall be contributed to the Plan. Eligibility for Final Pay Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

18.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Final Pay Contributions may be made as either (a) Employer Final Pay Contributions, or (b) Employee Designated Final Pay Contributions, as described below.

- (a) Employer Final Pay Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid final pay upon termination of employment of the Participant, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Final Pay Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Final Pay Contributions. The Employer shall contribute to the Plan for each eligible

Participant all or any portion of a Participant's Final Pay, as elected by the Participant. The Employer may limit the amount of Final Pay to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked.

The Employee Designated Final Pay Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Final Pay Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is distributed.

A Participant cannot elect to receive cash in lieu of any Final Pay Contribution.

18.03 Equivalencies. The Final Pay Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

18.04 Excess Contributions. Final Pay Contributions are limited to the extent of applicable law and any Code limitation. No Final Pay Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XIX. ACCRUED LEAVE CONTRIBUTIONS

19.01 Eligibility. Effective as of January 1, 2006, if elected by the Employer in the Adoption Agreement, Accrued Leave Contributions on behalf of each eligible Participant equal to the equivalent of the accrued unpaid leave, as defined in the Adoption Agreement ("Accrued Leave"), shall be contributed to the Plan. Eligibility for Accrued Leave Contributions is limited to only those Participants or class of Participants that the Employer elects in the Adoption Agreement.

19.02 Contribution Amount. At the election of the Employer in the Adoption Agreement, the Accrued Leave Contributions may be made as either (a) Employer Accrued Leave Contributions, or (b) Employee Designated Accrued Leave Contributions, as described below.

- (a) Employer Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant the equivalent of a designated amount of accrued unpaid leave each year, as the Employer so elects in the Adoption Agreement. The Employer's contribution for any Plan Year shall be due and paid not later than the time prescribed by applicable law. The Employer Accrued Leave Contributions shall be accounted for in the Employer Contribution Account.
- (b) Employee Designated Accrued Leave Contributions. The Employer shall contribute to the Plan for each eligible Participant all or any portion of a Participant's Accrued Leave, as elected by the Participant. The Employer may limit the amount of Accrued Leave to be elected to be contributed to the Plan. Once elected, an Employee's election shall remain in force and may not be revised or revoked. The Employee Designated Accrued Leave Contributions shall be accounted for in the Participant Contribution Account, and are nonforfeitable by the Participant at all times.

The Employee Designated Accrued Leave Contributions shall be "picked up" by the Employer in accordance with Code section 414(h)(2). The contributions shall be treated as an employer contribution in determining the tax treatment under the Code, and shall not be included as gross income of the Participant until it is

distributed.

A Participant cannot elect to receive cash in lieu of any Accrued Leave Contribution.

19.03 Equivalencies. The Accrued Leave Contribution shall be determined by multiplying the Participant's current daily rate of pay from the Employer times the amount of accrued unpaid leave being converted.

19.04 Excess Contributions. Accrued Leave Contributions are limited to the extent of applicable law and any Code limitation. No Accrued Leave Contribution shall be made to the extent that it would exceed the applicable Code section 415 limitation, as set forth in Article V. Any excess contributions as a result of the Code section 415 limitation shall remain in the Participant's leave bank.

XX. ROTH PROVISIONS

20.01 Effective Date. This Article XX has no effect unless and until the Employer affirmatively elects to permit Roth Elective Deferrals under Section 20.03 in the Adoption Agreement. An Employer may elect to permit Roth Elective Deferrals under Section 20.03 only if the Plan offers Elective Deferrals.

20.02 Definitions. The following definitions shall apply for purposes of this Article XX.

- (a) Designated Roth Account. A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from a designated Roth account under an Eligible Retirement Plan, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.
- (b) In-Plan Roth Conversion. A distribution occurring after September 27, 2010 from a Participant's Account, other than the Participant's Designated Roth Account, that is rolled over to the Participant's Designated Roth Account under the Plan, pursuant to Code section 402A(c)(4). Notwithstanding anything herein to the contrary, an amount is not eligible for an In-Plan Roth Conversion unless it is distributable under the terms of the Plan and such distribution is an eligible rollover distribution within the meaning of Code section 402(c)(4). Thus, for example, amounts that are not fully vested are not eligible for an In-Plan Roth Conversion.
- (c) Pre-Tax Account. A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.
- (d) Qualified Roth Contribution Program. A program described in paragraph (1) of Code section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.
- (e) Roth Elective Deferrals. Amounts contributed pursuant to Section 20.03 by a Participant, which amounts are:
 - (1) designated irrevocably by the Participant at the time of the cash or deferred election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax Elective Deferrals the Participant is otherwise eligible to make under the Plan; and
 - (2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Compensation.

20.03 Permitted Roth Elective Deferrals.

- (a) As of the effective date, a Participant shall be permitted to make Roth Elective Deferrals from his or her Compensation in such amount or percentage as may be specified in a salary reduction agreement executed by the Participant. A Participant's Roth Elective Deferrals will be allocated to a separate Designated Roth Account maintained for such deferrals as defined in Section 20.02(a) above.
- (b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Elective Deferrals for all purposes under the Plan.

20.04 Separate Accounting.

- (a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an Eligible Retirement Plan will be credited and debited to a participant's Designated Roth Account.
- (b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an Eligible Retirement Plan in each Participant's Designated Roth Account.
- (c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and the Participant's other Accounts under the Plan.
- (d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from a designated Roth account under an Eligible Retirement Plan, and properly attributable Earnings will be credited to each Participant's Designated Roth Account.

20.05 Direct Rollovers.

- (a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an applicable retirement plan described in section 402A(e)(1) of the Code or to a Roth IRA described in section 408A of the Code, and only to the extent the rollover is permitted under the rules of section 402(c) of the Code.
- (b) Notwithstanding anything to the contrary in the Plan, unless otherwise provided by the Employer in the Adoption Agreement, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an applicable retirement plan described in section 402A(e)(1) of the Code, or if the rollover is an In-Plan Conversion defined in section 20.06 of this document.
- (c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account balances under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

20.06 In-Plan Roth Conversions. Unless otherwise elected by the Employer in the Adoption Agreement, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.

- (a) Tax Treatment. The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.
- (b) Irrevocability. Any election made by the Participant to do an In Plan Roth Conversion shall be irrevocable.

- (c) Treatment of Loans. Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.
- (d) Spousal Consent. Notwithstanding anything herein to the contrary, if the Plan requires spousal consent to distribution, a married Participant shall not be required to obtain spousal consent in connection with an election to make an In-Plan Roth Conversion.
- (e) Availability of Loans from Designated Roth Accounts. A Participant's Designated Roth Account balance can

be included to determine a Participant loan amount under Article XIII. However, unless the Employer elects otherwise in the Adoption Agreement, Designated Roth Accounts will not be available as a source for loans under the Plan.

- (f) Effective Date. This section 20.06 shall be effective for distributions occurring after September 27, 2010, or if later, when adopted by the Employer.

DECLARATION OF TRUST

This Declaration of Trust (the "Group Trust Agreement") is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the "ICMA Declaration"); and

WHEREAS, the trust created hereunder (the "Group Trust") is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan's assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) *Incorporation of ICMA Declaration by Reference; ICMA By-Laws.* Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.


Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
 2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to, resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.
- (b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:

1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
 2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
 3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
 4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.
- (c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.
- (d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY

By: 
Name: Paul F. Gallagher
Title: Assistant Secretary



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Plan Description: Volume Submitter Profit Sharing Plan
FFN: 315D0880004-001 Case: 201200591 EIN: 23-7268394
Letter Serial No: J593645a
Date of Submission: 04/02/2012

ICMA RETIREMENT CORP
777 NORTH CAPITOL ST. NE, SUITE 600
WASHINGTON, DC 20002

Contact Person:
Janell Hayes
Telephone Number:
513-263-3602
In Reference To: TEGE:EP:7521
Date: 03/31/2014

Dear Applicant:

In our opinion, the form of the plan identified above is acceptable under section 401 of the Internal Revenue Code for use by employers for the benefit of their employees. This opinion relates only to the acceptability of the form of the plan under the Internal Revenue Code. It is not an opinion of the effect of other Federal or local statutes.

You must furnish a copy of this letter, a copy of the approved plan, and copies of any subsequent amendments to adopting employers if the practitioner is authorized to amend the plan on their behalf, to each employer who adopts this plan. Effective on or after 10/31/2011, interim amendments adopted by the practitioner on behalf of employers must provide the date of adoption by the practitioner.

This letter considers the changes in qualification requirements contained in the 2010 Cumulative List of Notice 2010-90, 2010-52 I.R.B. 909.

Our opinion on the acceptability of the form of the plan is not a ruling or determination as to whether an employer's plan qualifies under Code section 401(a). However, an employer that adopts this plan may rely on this letter with respect to the qualification of its plan under Code section 401(a), as provided for in Rev. Proc. 2011-49, 2011-44 I.R.B. 608, and outlined below. The terms of the plan must be followed in operation.

Except as provided below, our opinion does not apply with respect to the requirements of Code sections 401(a)(4), 401(l), 410(b), and 414(s). Our opinion does not apply for purposes of Code section 401(a)(10)(B) and section 401(a)(16) if an employer ever maintained another qualified plan for one or more employees who are covered by this plan. For this purpose, the employer will not be considered to have maintained another plan merely because the employer has maintained another defined contribution plan(s), provided such other plan(s) has been terminated prior to the effective date of this plan and no annual additions have been credited to the account of any participant under such other plan(s) as of any date within the limitation year of this plan. Also, for this purpose, an employer is considered as maintaining another plan, to the extent that the employer maintains a welfare benefit fund defined in Code section 419(e), which provides postretirement medical benefits allocated to separate accounts for key employees as defined in Code section 419A(d)(3), or an individual medical account as defined in Code section 415(l)(2), which is part of a pension or annuity plan maintained by the employer, or a simplified employee pension plan.

Our opinion does not apply for purposes of the requirement of section 1.401(a)-1(b)(2) of the regulations applicable to a money purchase plan or target benefit plan where the normal retirement age under the employer's plan is lower than age 62.

Letter 4333

This is not a ruling or determination with respect to any language in the plan that reflects Section 3 of the Defense of Marriage Act, Pub. L. 104-199, 110 Stat. 2419 (DOMA) or U.S. v. Windsor, 133 S. Ct. 2675 (2013), which invalidated that section.

This letter is not a ruling with respect to the tax treatment to be accorded contributions which are picked up by the governmental employing unit within the meaning of section 414(h)(2) of the Internal Revenue Code.

Our opinion applies with respect to the requirements of Code section 410(b) if 100 percent of all nonexcludable employees benefit under the plan. Employers that elect a safe harbor allocation formula and a safe harbor compensation definition can also rely on an advisory letter with respect to the nondiscriminatory amounts requirement under section 401(a)(4). If this plan includes a CODA or otherwise provides for contributions subject to sections 401(k) and/or 401(m), the advisory letter can be relied on with respect to the form of the nondiscrimination tests of 401(k)(3) and 401(m)(2) if the employer uses a safe harbor compensation definition. In the case of plans described in section 401(k)(12) or (13) and/or 401(m)(11) or (12), employers may also rely on the advisory letter with respect to whether the form of the plan satisfies the requirements of those sections unless the plan provides for the safe harbor contribution to be made under another plan.

The employer may request a determination (1) as to whether the plan, considered with all related qualified plans and, if appropriate, welfare benefit funds, individual medical benefit accounts, and simplified employee pension plans, satisfies the requirements of Code section 401(a)(16) as to limitations on benefits and contributions in Code section 415 and the requirements of Code section 401(a)(10)(B) as to the top-heavy plan requirements in Code section 416; (2) with respect to whether a money purchase or target benefit plan's normal retirement age which is earlier than age 62 satisfies the requirements of section 401(a)-1(b)(2) of the Income Tax Regulations; (3) that the plan is a multiple employer plan; (4) whether there has been a partial termination; and (5) to comply with published procedures of the Service (e.g. minimum funding waiver request). The employer may request a determination letter by filing an application with Employee Plans Determinations on Form 5307, with regard to item (1) above, and Form 5300, for items (2), (3), (4) and (5), without restating for the Cumulative List in effect when the application is filed.

If you, the volume submitter practitioner, have any questions concerning the IRS processing of this case, please call the above telephone number. This number is only for use of the practitioner. Individual participants and/or adopting employers with questions concerning the plan should contact the volume submitter practitioner. The plan's adoption agreement, if applicable, must include the practitioner's address and telephone number for inquiries by adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us if you modify or discontinue sponsorship of this plan.

Sincerely Yours,



Andrew E. Zuckerman
Director, Employee Plans Rulings and Agreements

Letter 4333



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-213-21267-201405-W1372
REV 3/2015

ICMA RETIREMENT CORPORATION

GOVERNMENTAL PROFIT-SHARING PLAN & TRUST ADOPTION AGREEMENT



**ICMA RETIREMENT CORPORATION
GOVERNMENTAL PROFIT-SHARING PLAN & TRUST
ADOPTION AGREEMENT**

Plan Number 10 9971 _____

The Employer hereby establishes a Profit Sharing Plan and Trust to be known as Valley Clean Energy Alliance Discretionary Defined Contribu (the "Plan") in the form of the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust.

This Plan is an amendment and restatement of an existing defined contribution profit sharing plan.

Yes No

If yes, please specify the name of the defined contribution profit sharing plan which this Plan hereby amends and restates:

I. **Employer:** Valley Clean Energy Alliance

II. **Effective Dates**

1. **Effective Date of Restatement.** If this document is a restatement of an existing plan, the effective date of the Plan shall be January 1, 2007 unless an alternate effective date is hereby specified: _____

(Note: An alternate effective date can be no earlier than January 1, 2007.)

2. **Effective Date of New Plan.** If this is a new Plan, the effective date of the Plan shall be the first day of the Plan Year during which the Employer adopts the Plan, unless an alternate Effective Date is hereby specified: November 1, 2018

3. **Special Effective Dates.** Please note here any elections in the Adoption Agreement with an effective date that is different from that noted in 1. or 2. above.

(Note provision and effective date.)

III. **Plan Year** will mean:

The twelve (12) consecutive month period which coincides with the limitation year. (See Section 5.05(h) of the Plan.)

The twelve (12) consecutive month period commencing on _____ and each anniversary thereof.

IV. **Normal Retirement Age** shall be age 62 (not to exceed age 65).

V. ELIGIBILITY REQUIREMENTS

1. The following group or groups of Employees are eligible to participate in the Plan:

- All Employees
- All Full Time Employees
- Salaried Employees
- Non union Employees
- Management Employees
- Public Safety Employees
- General Employees
- Other Employees (Specify the group(s) of eligible employees below. Do not specify employees by name. Specific positions are acceptable.) _____

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer. The eligibility requirements cannot be such that an Employee becomes eligible only in the Plan Year in which the Employee terminates employment. Note: As stated in Sections 4.08 and 4.09, the Plan may, however, provide that Final Pay Contributions or Accrued Leave Contributions are the only contributions made under the Plan.

2. The Employer hereby waives or reduces the requirement of a twelve (12) month Period of Service for participation. The required Period of Service shall be (write N/A if an Employee is eligible to participate upon employment)
N/A

If this waiver or reduction is elected, it shall apply to all Employees within the Covered Employment Classification.

3. A minimum age requirement is hereby specified for eligibility to participate. The minimum age requirement is N/A (not to exceed age 21. Write N/A if no minimum age is declared.)

VI. CONTRIBUTION PROVISIONS

1. The Employer shall contribute as follows (Choose all that apply):

Fixed Employer Contributions With or Without Mandatory Participant Contributions. (If Option B is chosen, please complete section C.)

A. **Fixed Employer Contributions.** The Employer shall contribute on behalf of each Participant 7 % of Earnings or \$_____ for the Plan Year (subject to the limitations of Article V of the Plan).
Mandatory Participant Contributions:

are required are not required

to be eligible for this Employer Contribution.

B. Mandatory Participant Contributions for Plan Participation.

Required Mandatory Contributions. A Participant is required to contribute (subject to the limitations of Article V of the Plan) the specified amounts designated in items (i) through (iii) of the Contribution Schedule below:

Yes No

Employee Opt-In Mandatory Contributions. To the extent that mandatory Participant contributions are not required by the Plan, each Employee eligible to participate in the Plan shall be given the opportunity to irrevocably elect to participate in the Mandatory Participant Contribution portion of the Plan by electing to contribute the specified amounts designated in items (i) through (iii) of the Contribution Schedule below for each Plan Year (subject to the limitations of Article V of the Plan):

Yes No

Contribution Schedule.

(i) _____% of Earnings,

(ii) \$ _____, or

(iii) a whole percentage of Earnings between the range of _____ (*insert range of percentages between 1% and 20% inclusive (e.g., 3%, 6%, or 20%; 5% to 7%)*), as designated by the Employee in accordance with guidelines and procedures established by the Employer for the Plan Year as a condition of participation in the Plan. A Participant must pick a single percentage and shall not have the right to discontinue or vary the rate of such contributions after becoming a Plan Participant.

Employer "Pick Up". The Employer hereby elects to "pick up" the Mandatory Participant Contributions.¹

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

C. Election Window. (Complete if Option B is selected.)

Newly eligible Employees shall be provided an election window of _____ days (*no more than 60 calendar days*) from the date of initial eligibility during which they may make the election to participate in the Mandatory Participant Contribution portion of the Plan. Participation in the Mandatory Participant Contribution portion of the Plan shall begin the first of the month following the end of the election window.

An Employee's election is irrevocable and shall remain in force until the Employee terminates employment or ceases to be eligible to participate in the Plan. In the event of re-employment to an eligible position, the Employee's original election will resume. In no event does the Employee have the option of receiving the pick-up contribution amount directly.

Discretionary Employer Contributions

The Employer will determine the amount of Employer contributions to be made to the Plan for each Plan Year. The amount of Employer contributions to be allocated to the Account of each Participant will be based on the ratio for the Plan Year that such Participant's Earnings bears to the Earnings of all Participants eligible for such contributions.

See Attachment A

¹ Neither an IRS advisory letter nor a determination letter issued to an adopting Employer is a ruling by the Internal Revenue Service that Participant contributions that are "picked up" by the Employer are not includable in the Participant's gross income for federal income tax purposes. Pick-up contributions are not mandated to receive private letter rulings, however, if an adopting employer wishes to receive a ruling on pick-up contributions they may request one in accordance with Revenue Procedure 2012-4 (or subsequent guidance).

Fixed Employer Match of Voluntary After-Tax Participant Contributions.

The Employer shall contribute on behalf of each Participant _____% of Earnings for the Plan Year (subject to the limitations of Article V of the Plan) for each Plan Year that such Participant has contributed _____% of Earnings or \$ _____. Under this option, there is a single, fixed rate of Employer contributions, but a Participant may decline to make the required Participant contributions in any Plan Year, in which case no Employer contribution will be made on the Participant's behalf in that Plan Year.

Variable Employer Match of Voluntary After-Tax Participant Contributions.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

_____ % of the Voluntary Participant Contributions made by the Participant for the Plan Year (not including Participant contributions exceeding _____% of Earnings or \$ _____);

PLUS _____ % of the contributions made by the Participant for the Plan Year in excess of those included in the above paragraph (but not including Voluntary Participant Contributions exceeding in the aggregate _____% of Earnings or \$ _____).

Employer Matching Contributions on behalf of a Participant for a Plan Year shall not exceed _____ \$ or _____% of Earnings, whichever is ___ more or ___ less.

2. Each Participant may make a voluntary (unmatched), after tax contribution, subject to the limitations of Section 4.06 and Article V of the Plan:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

3. Employer contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

Semi-monthly (payroll by payroll)

4. Participant contributions for a Plan Year shall be contributed to the Trust in accordance with the following payment schedule (no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable depending on the basis on which the Employer keeps its books) with or within which the particular Limitation year ends, or in accordance with applicable law):

5. In the case of a Participant performing qualified military service (as defined in Code section 414(u)) with respect to the Employer:

A. Plan contributions will be made based on differential wage payments:

Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective beginning January 1, 2009 unless another later effective date is filled in here

_____.

B. Participants who die or become disabled will receive Plan contributions with respect to such service:

- Yes No (*"No" is the default provision under the Plan if no selection is made.*)

If yes is selected, this is effective for participants who died or became disabled while performing qualified military service on or after January 1, 2007 unless another later effective date is filled in here

VII. CASH OR DEFERRED ARRANGEMENT UNDER SECTION 401(k)

1. This Plan will include a cash or deferred arrangement allowing for Elective Deferrals under section 401(k) of the Code:²

- Yes No (*"No" is the default provision under the Plan if no selection is made.*)

(If "no" is selected, skip to section VIII.)

Each Participant may elect to make Elective Deferrals, not to exceed _____ % of Earnings for the Plan Year, subject to the limitations of Article V of the Plan.

The provisions of the cash or deferred arrangement (the "401(k) feature") may be made effective as of the first day of the Plan Year in which the 401(k) feature is adopted. However, under no circumstances may a salary reduction agreement or other deferral mechanism be adopted retroactively.

2. The Employer will match Elective Deferrals:

- Yes No (*"No" is the default provision under the Plan if no selection is made.*)

The Employer will contribute as follows (choose one, if applicable):

Employer Percentage Match of Elective Deferrals.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

_____ % of the Elective Deferrals made on behalf of the Participant for the Plan Year (not including Elective Deferrals exceeding _____ % of Earnings or \$ _____);

PLUS _____ % of the Elective Deferrals made on behalf of the Participant for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate _____ % of Earnings or \$ _____).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____ % of Earnings, whichever is _____ more or _____ less.

² Under current law, the cash or deferred arrangement option under section 401(k) of the Code is not available to an employer that is a State or local government or political subdivision thereof, or any agency or instrumentality thereof, unless that employer established a cash or deferred arrangement on or before May 6, 1986.

Employer Dollar Match of Elective Deferrals.

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\$ N/A for each _____ % of Earnings or \$ _____ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year (not including Elective Deferrals exceeding _____ % of Earnings or \$ _____);

PLUS \$ _____ for each _____ % of Earnings or \$ _____ that the Employer contributes on behalf of the Participant as Elective Deferrals for the Plan Year in excess of those included in the above paragraph (but not including Elective Deferrals exceeding in the aggregate _____ % of Earnings or \$ _____).

Employer Contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____ % of Earnings, whichever is _____ more or _____ less.

3. The Employer will permit Elective Deferrals and Catch-up Contributions elections to be made during the annual election window of _____ days (at least 30 calendar days). The election window will run from _____ to _____ (insert annual time frame for the election window or multiple time periods) and will not apply retroactively.
4. **Roth Provisions.** As provided in Section 20.03, Participants are permitted to make Roth Elective Deferrals from Compensation in the amount or percentage specified in a salary reduction agreement:

Yes No (*"No" is the default provision under the Plan if no selection is made.*)

VIII. EARNINGS

Earnings, as defined under Section 2.10 of the Plan, shall include:

1. Overtime
 Yes No
2. Bonuses
 Yes No
3. Other Pay (specifically describe any other types of pay to be included below)

IX. ROLLOVER PROVISIONS

1. The Employer will permit rollover contributions in accordance with Section 4.13 of the Plan:
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
2. The Plan will accept a direct rollover contribution to a Designated Roth Account as permitted in Section 20.05(b) (*401(k) plans with Roth feature only*):
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
3. The Plan will allow In-Plan Roth Conversions as provided in Section 20.06 (*401(k) plans with Roth feature only*):
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

4. Direct rollovers by non-spouse beneficiaries are effective for distributions after 2006 unless the Plan delayed making them available. If the Plan delayed making such rollovers available, check the box below and indicate the later effective date in the space provided.

Effective Date is _____.

(Note: Plans must offer direct rollovers by non-spouse beneficiaries no later than plan years beginning after December 31, 2009.)

X. LIMITATION ON ALLOCATIONS

If the Employer maintains or ever maintained another qualified plan in which any Participant in this Plan is (or was) a participant or could possibly become a participant, the Employer hereby agrees to limit contributions to all such plans as provided herein, if necessary in order to avoid excess contributions (as described in Section 5.04 of the Plan).

1. If the Participant is covered under another qualified defined contribution plan maintained by the Employer, the provisions of Section 5.04(a) through (e) of the Plan will apply, unless another method has been indicated below.

Other Method. (Provide the method under which the plans will limit total Annual Additions to the Maximum Permissible Amount, and will properly reduce any excess amounts, in a manner that precludes Employer discretion.)

2. The Limitation Year is the following 12 consecutive month period:

3. Unless the Employer elects a delayed effective date below, Article 5 of the Plan will apply to limitations years beginning on or after July 1, 2007.

(The effective date listed cannot be later than 90 days after the close of the first regular legislative session of the legislative body with authority to amend the plan that begins on or after July 1, 2007.)

XI. VESTING PROVISIONS

The Employer hereby specifies the following vesting schedule, subject to (1) the minimum vesting requirements and (2) the concurrence of the Plan Administrator. *(For the blanks below, enter the applicable percent – from 0 to 100 (with no entry after the year in which 100% is entered), in ascending order.)*

<u>Period of Service Completed</u>	<u>Percent Vested</u>
Zero	<u>0</u> %
One	<u>33</u> %
Two	<u>66</u> %
Three	<u>100</u> %
Four	_____ %
Five	_____ %
Six	_____ %
Seven	_____ %
Eight	_____ %
Nine	_____ %
Ten	_____ %

XII. WITHDRAWALS AND LOANS

1. Qualified reservist distributions are available under the plan (*401(k) plans only*):
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
2. In-service distributions are permitted under the Plan, as provided in Section 9.08, after a participant attains age (*select one of the below options*):
 59 ½
 70½ (*"70½" is the default provision under the Plan if no selection is made.*)
 Not permitted at any age
3. A Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services for more than 30 days:
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)
4. Tax-free distributions of up to \$3,000 for the direct payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.
 Yes No (*"No" is the default provision under the Plan if no selection is made.*)
5. In-service distributions of the Rollover Account are permitted under the Plan as provided in Section 9.09
 Yes No (*"No" is the default provision under the Plan if no selection is made.*)
6. The Plan will provide the following with respect to loans:
 - a. Loans are permitted under the Plan, as provided in Article XIII of the Plan:
 Yes No (*"No" is the default provision under the Plan if no selection is made.*)
 - b. Designated Roth Accounts will be available as a source for loans under the Plan (*401(k) plans with Roth feature only*):
 Yes No (*"No" is the default provision under the Plan if no selection is made.*)
7. (*401(k) plans only*) Hardship withdrawals are permitted under the Plan as provided in Section 9.07 but only if specifically elected by the Employer.
 Yes No (*"No" is the default provision under the Plan if no selection is made.*)

If selected, hardship distributions will be available for the following accounts:

- a. Employer Contribution Account (Nonforfeitable Interest):
 Yes No (*"No" is the default provision under the Plan if no selection is made.*)
- b. Participant Elective Deferral Account (not including earnings thereon accrued after December 31, 1988):
 Yes No (*"Yes" is the default provision under the Plan if no selection is made.*)

- c. The determination of any deemed immediate and heavy financial need will be expanded to include any immediate and heavy financial need of the Participant's Primary Beneficiary, as provided in Section 9.07(b)(3):

Yes

No (*"Yes" is the default provision under the Plan if no selection is made.*)

XIII. SPOUSAL PROTECTION

The Plan will provide the following level of spousal protection (select one):

1. Participant Directed Election. The normal form of payment of benefits under the Plan is a lump sum. The Participant can name any person(s) as the Beneficiary of the Plan, with no spousal consent required.
2. Beneficiary Spousal Consent Election (Article XII). The normal form of payment of benefits under the Plan is a lump sum. Upon death, the surviving spouse is the Beneficiary, unless he or she consents to the Participant's naming another Beneficiary. (*"Beneficiary Spousal Consent Election" is the default provision under the Plan if no selection is made.*)
3. QJSA Election (Article XVII). The normal form of payment of benefits under the Plan is a 50% qualified joint and survivor annuity with the spouse (or life annuity, if single). In the event of the Participant's death prior to commencing payments, the spouse will receive an annuity for his or her lifetime. (If C is selected, the spousal consent requirements in Article XII also will apply.)

XIV. FINAL PAY CONTRIBUTIONS

The Plan will provide for Final Pay Contributions if either 1 or 2 below is selected.

The following group of Employees shall be eligible for Final Pay Contributions:

All Eligible Employees

Other: _____

Final Pay shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of Final Pay – must be leave that Employee would have been able to use if employment had continued and must be bona fide vacation and/or sick leave*):

1. **Employer Final Pay Contribution.** The Employer shall contribute on behalf of each Participant _____% of Final Pay to the Plan (subject to the limitations of Article V of the Plan).
2. **Employee Designated Final Pay Contribution.** Each Employee eligible to participate in the Plan shall be given the opportunity at enrollment to irrevocably elect to contribute _____% (insert fixed percentage of final pay to be contributed) or up to _____% (insert maximum percentage of final pay to be contributed) of Final Pay to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XV. ACCRUED LEAVE CONTRIBUTIONS

The Plan will provide for accrued unpaid leave contributions annually if either 1 or 2 is selected below.

The following group of Employees shall be eligible for Accrued Leave Contributions:

- All Eligible Employees
- Other: _____

Accrued Leave shall be defined as (select one):

- A. Accrued unpaid vacation
- B. Accrued unpaid sick leave
- C. Accrued unpaid vacation and sick leave
- D. Other (*insert definition of accrued leave that is bona fide vacation and/or sick leave*):

- 1. **Employer Accrued Leave Contribution.** The Employer shall contribute as follows (choose one of the following options):
 - For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant the unused Accrued Leave in excess of ____ (insert number of hours/days/weeks (circle one)) to the Plan (subject to the limitations of Article V of the Plan).
 - For each Plan Year, the Employer shall contribute on behalf of each Eligible Participant _____ % of unused Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

- 2. **Employee Designated Accrued Leave Contribution.**

Each eligible Participant shall be given the opportunity at enrollment to irrevocably elect to contribute _____ % (insert fixed percentage of accrued unpaid leave to be contributed) or up to _____ % (insert maximum percentage of accrued unpaid leave to be contributed) of Accrued Leave to the Plan (subject to the limitations of Article V of the Plan).

Once elected, an Employee's election shall remain in force and may not be revised or revoked.

XVI. The Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

XVII. The Employer understands that this Adoption Agreement is to be used with only the ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust. This ICMA Retirement Corporation Governmental Profit Sharing Plan and Trust is a restatement of a previous plan, which was submitted to the Internal Revenue Service for approval on April 2, 2012, and received approval on March 31, 2014.

The Plan Administrator hereby agrees to inform the Employer of any amendments to the Plan made pursuant to Section 14.05 of the Plan or of the discontinuance or abandonment of the Plan. The Employer understands that an amendment(s) made pursuant to Section 14.05 of the Plan will become effective within 30 days of notice of the amendment(s) unless the Employer notifies the Plan Administrator, in writing, that it disapproves of the amendment(s). If the Employer so disapproves, the Plan Administrator will be under no obligation to act as Administrator under the Plan.

XVIII. The Employer hereby appoints the ICMA Retirement Corporation as the Plan Administrator pursuant to the terms and conditions of the ICMA RETIREMENT CORPORATION GOVERNMENTAL PROFIT SHARING PLAN & TRUST.

The Employer hereby agrees to the provisions of the Plan and Trust.

XIX. The Employer hereby acknowledges it understands that failure to properly fill out this Adoption Agreement may result in disqualification of the Plan.

XX. An adopting Employer may rely on an advisory letter issued by the Internal Revenue Service as evidence that the Plan is qualified under section 401 of the Internal Revenue Code to the extent provided in applicable IRS revenue procedures and other official guidance.

XXI. See Attachment A.

In Witness Whereof, the Employer hereby causes this Agreement to be executed on this _____ day of _____, 20_____.

EMPLOYER

ICMA RETIREMENT CORPORATION
777 North Capitol St., NE Suite 600
Washington, DC 20002
800-326-7272

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Attest: _____

Attest: _____

ATTACHMENT A

VALLEY CLEAN ENERGY ALLIANCE

1. **The following language shall be added and incorporated as part of VI. CONTRIBUTION PROVISIONS:**

Discretionary Employer Contributions:

“Valley Clean Energy Alliance (VCEA) shall have the discretion to determine the amount of the discretionary matching contribution to be made to the Plan by Board resolution. Such discretionary employer matching contribution set by Board resolution shall remain in effect until the Board changes it by adoption of a new resolution.

2. **The following language shall be added and incorporated as XXI:**

“XXI. COMPLIANCE WITH CALIFORNIA LAW

This Plan shall comply the California Public Employees’ Pension Reform Act (PEPRA) and as amended.”



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-215-21269-201405-W1304
REV 3/2015

ADMINISTRATIVE SERVICES AGREEMENT

Between

ICMA Retirement Corporation

and

Valley Clean Energy Alliance

Type: 457

Account #: 307601

Type: 401

Account #: 109971

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (“Agreement”), made as of the day of , 20___ between the International City Management Association Retirement Corporation (“ICMA-RC”), a nonprofit corporation organized and existing under the laws of the State of Delaware, and the Valley Clean Energy Alliance (“Employer”), an entity organized and existing under the laws of the State of California with an office at 604 2nd Street, Davis, California 95616.

RECITALS

Employer acts as public plan sponsor of a retirement plan (“Plan”), and in that capacity, has responsibility to obtain administrative services and investment alternatives for the Plan;

VantageTrust is a group trust established and maintained in accordance with New Hampshire Revised Statutes Annotated section 391:1 and Internal Revenue Service Revenue Ruling 81-100, 1981-1 C.B. 326, which provides for the commingled investment of retirement funds;

ICMA-RC acts as investment adviser to VantageTrust Company, LLC, the Trustee of VantageTrust;

ICMA-RC has designed, and VantageTrust offers, a series of separate funds (the “Funds”) for the investment of plan assets as referenced in VantageTrust’s principal disclosure documents, the VantageTrust Disclosure Memorandum and the Funds’ Fact Sheets (together, “VT Disclosures”); and

In addition to serving as investment adviser to VantageTrust Company LLC, ICMA-RC provides a range of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account recordkeeping, investment and tax reporting, transaction processing, and benefit disbursement.

AGREEMENTS

1. Appointment of ICMA-RC

Employer hereby appoints ICMA-RC as Administrator of the Plan to perform all nondiscretionary functions necessary for the administration of the Plan. The functions to be performed by ICMA-RC shall be those set forth in Exhibit A to this Agreement.

2. Adoption of Trust

Employer has adopted the Declaration of Trust of VantageTrust Company and agrees to the commingled investment of assets of the Plan within VantageTrust. Employer agrees that the investment, management, and distribution of amounts deposited in VantageTrust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the VT Disclosures or Employer Bulletins) as those terms and conditions may be adjusted from time to time.

3. Employer Duty to Furnish Information

Employer agrees to furnish to ICMA-RC on a timely basis such information as is necessary for ICMA-RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in VantageTrust, and information as to the employment status of participants, and participant ages, addresses, and other identifying information (including tax identification numbers). Employer also agrees that it will notify ICMA-RC in a timely manner regarding changes in staff as it relates to various roles. This is to be completed through the online EZLink employer contact options. ICMA-RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and ICMA-RC shall not be responsible for any error arising from its reliance on such information. ICMA-RC will provide reports, statements and account information to the Employer through EZLink, the online plan administrative tool.

Employer is required to send in contributions through EZLink, the online plan administration tool provided by ICMA-RC. Alternative electronic methods may be allowed, but must be approved by ICMA-RC for use. Contributions may not be sent through paper submittal documents.

To the extent Employer selects third-party funds that do not have fund profile information provided to ICMA-RC through our electronic data feeds from external sources (such as Morningstar) or third party fund providers, the Employer is responsible for providing to ICMA-RC timely fund investment updates for disclosure to Plan participants. Such updates may be provided to ICMA-RC through the Employer's investment consultant or other designated representative.

Failure to provide timely fund profile update information, including the source of the information, may result in a lack of fund information for participants, as ICMA-RC will remove outdated fund profile information from the systems that provide fund information to Plan participants.

4. Certain Representations and Warranties

ICMA-RC represents and warrants to Employer that:

- (a) ICMA-RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of ICMA-RC to serve as investment adviser to VantageTrust is dependent upon the continued willingness of VantageTrust for ICMA-RC to serve in that capacity.
- (b) ICMA-RC is an investment adviser registered as such with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended.
- (c) (i) ICMA-RC shall maintain and administer the Plan in accordance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code and other applicable federal law; provided, however, that ICMA-RC shall not be responsible for the eligible status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the Plan not to be carried out in accordance with its terms. Further, in the event that the Employer uses its own customized plan document, ICMA-RC shall not be responsible for the eligible status of the Plan to the extent affected by terms in the Employer's plan document that differ from those in ICMA-RC's standard plan document. ICMA-RC shall not be responsible for monitoring state or local law applicable to retirement plans or for administering the Plan in compliance with local or state requirements unless Employer notifies ICMA-RC of any such local or state requirements.
- (c) (ii) ICMA-RC shall maintain and administer the Plan in accordance with the requirements for plans which satisfy the qualification requirements of Section 401 of the Internal Revenue Code and other applicable federal law; provided, however, ICMA-RC shall not be responsible for the qualified status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 401 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of ICMA-RC's standardized plan document, ICMA-RC shall not be responsible for the qualified status of the Plan to the extent affected by the differing terms in the Employer's plan document. ICMA-RC shall not be

responsible for monitoring state or local law applicable to retirement plans or for administering the Plan in compliance with local or state requirements unless Employer notifies ICMA-RC of any such local or state requirements.

Employer represents and warrants to ICMA-RC that:

- (d) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.
- (e) Employer understands and agrees that ICMA-RC's sole function under this Agreement is to act as recordkeeper and to provide administrative, investment or other services at the direction of Plan participants, the Employer, its agents or designees in accordance with the terms of this Agreement. Under the terms of this Agreement, ICMA-RC does not render investment advice, is neither the "Plan Administrator" nor "Plan Sponsor" as those terms are defined under applicable federal, state, or local law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the Plan and its related trust. ICMA-RC does not perform any service under this Agreement that might cause ICMA-RC to be treated as a "fiduciary" of the Plan under applicable law, except, and only, to the extent that ICMA-RC provides investment advisory services to individual participants enrolled in Guided Pathways Advisory Services.
- (f) Employer acknowledges and agrees that ICMA-RC does not assume any responsibility with respect to the selection or retention of the Plan's investment options. Employer shall have exclusive responsibility for the Plan's investment options, including the selection of the applicable mutual fund share class. Where applicable, Employer understands that the VT Retirement IncomeAdvantage Fund is an investment option for the Plan and that the fund invests in a separate account available through a group variable annuity contract. By entering into this Agreement, Employer acknowledges that it has received the Important Considerations document and the VT Disclosures and that it has read the information therein concerning the VT Retirement IncomeAdvantage Fund.
- (g) Employer acknowledges that certain such services to be performed by ICMA-RC under this Agreement may be performed by an affiliate or agent of ICMA-RC pursuant to one or more other contractual arrangements or relationships, and that ICMA-RC reserves the right to

change vendors with which it has contracted to provide services in connection with this Agreement without prior notice to Employer.

- (h) Employer acknowledges that it has received ICMA-RC's Fee Disclosure Statement, prepared in substantial conformance with ERISA regulations regarding the disclosure of fees to plan sponsors.
- (i) Employer approves the use of its Plan in ICMA-RC external media, publications and materials. Examples include press releases announcements and inclusion of the general plan information in request for proposal responses.

5. Participation in Certain Proceedings

The Employer hereby authorizes ICMA-RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Plan. Unless Employer notifies ICMA-RC otherwise, Employer consents to the disbursement by ICMA-RC of benefits that have been garnished or transferred to a former spouse, current spouse, or child pursuant to a domestic relations order or child support order.

6. Compensation and Payment

- (a) **Plan Administration Fee.** The amount to be paid for plan administration services under this Agreement shall be 0.55% per annum of the amount of Plan assets invested in VantageTrust. Such fee shall be computed based on average daily net Plan assets in VantageTrust.
- (b) **Compensation for Management Services to VantageTrust, Compensation for Advisory and other Services to the VT III Vantagepoint Funds and Payments from Third-Party Mutual Funds.** Employer acknowledges that, in addition to amounts payable under this Agreement, ICMA-RC receives fees from VantageTrust for investment advisory services and plan and participant services furnished to VantageTrust. Employer further acknowledges that ICMA-RC, including certain of its wholly owned subsidiaries, receives compensation for advisory and other services furnished to the VT III Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through VantageTrust. For a VantageTrust Fund that invests substantially all of its assets in a third-party mutual fund not affiliated with ICMA-RC, ICMA-RC or its wholly owned subsidiary receives payments from the third-party mutual fund families or their service providers in the form of 12b-1 fees, service fees, compensation for sub-accounting and other services provided based on assets in the underlying third-party mutual fund. These fees are described in the VT Disclosures and ICMA-RC's fee disclosure statement. In addition, to the extent that third party mutual

funds are included in the investment line-up for the Plan, ICMA-RC receives administrative fees from its third party mutual fund settlement and clearing agent for providing administrative and other services based on assets invested in third party mutual funds; such administrative fees come from payments made by third party mutual funds to the settlement and clearing agent.

- (c) **Trustee Services Fee.** ICMA-RC makes available passive-directed trustee services via Matrix. There shall be an annual fee of \$850 per plan for these services. This fee will be invoiced quarterly to the Employer.
- (d) **Payment Procedures.** All payments to ICMA-RC pursuant to Section 6(a) shall be paid out of the Plan assets held by VantageTrust or received from third-party mutual funds or their service providers in connection with Plan assets invested in such third-party mutual funds, to the extent not paid by the Employer, to the extent not paid by the Employer. All payments to ICMA-RC pursuant to Section 6(c) shall be paid directly by Employer, and shall not be deducted from Plan Assets. The amount of Plan assets administered by ICMA-RC shall be adjusted as required to reflect any such payments as are made from the Plan. In the event that the Employer agrees to pay amounts owed pursuant to this Section 6 directly, any amounts unpaid and outstanding after 30 days of invoice to the Employer shall be withdrawn from Plan assets.

The compensation and payment set forth in this Section 6 are contingent upon the Employer's use of ICMA-RC's EZLink system for contribution processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement.

7. Contribution Remittance

Employer understands that amounts invested through VantageTrust are to be remitted directly to VantageTrust in accordance with instructions provided to Employer by ICMA-RC and are not to be remitted to ICMA-RC. In the event that any check or wire transfer is incorrectly labeled or transferred to ICMA-RC, ICMA-RC may return it to Employer with proper instructions.

8. Indemnification

ICMA-RC shall not be responsible for any acts or omissions of any person with respect to the Plan or its related trust, other than ICMA-RC in connection with the administration or operation of the Plan. Employer shall indemnify ICMA-RC against, and hold ICMA-RC harmless from, any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney's fees, that may be incurred by, imposed upon, or asserted against ICMA-RC by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan or its related trust, excepting only any and all loss, damage,

penalty, liability, cost or expense resulting from ICMA-RC's negligence, bad faith, or willful misconduct.

9. Term

This Agreement shall be in effect and commence on the date all parties have signed and executed this Agreement ("Inception Date"). This Agreement may be terminated without penalty by either party on sixty days advance notice in writing to the other; provided however, that the Employer understands and acknowledges that, in the event the Employer terminates this Agreement (or replaces the Vantagepoint PLUS Fund, offered by VantageTrust, as an investment option in its investment line-up), ICMA-RC retains full discretion to release Plan assets invested in the Vantagepoint PLUS Fund in an orderly manner over a period of up to 12 months from the date ICMA-RC receives written notification from the Employer that it has made a final and binding selection of a replacement for ICMA-RC as administrator of the Plan (or a replacement investment option for the Vantagepoint PLUS Fund).

10. Amendments and Adjustments

- (a) This Agreement may be amended by written instrument signed by the parties.
- (b) ICMA-RC may modify this agreement by providing 60 days' advance written notice to the Employer prior to the effective date of such proposed modification. Such modification shall become effective unless, within the 60-day notice period, the Employer notifies ICMA-RC in writing that it objects to such modification.
- (c) The parties agree that enhancements may be made to administrative and operations services under this Agreement. The Employer will be notified of enhancements through the Employer Bulletin, quarterly statements, electronic messages or special mailings. Likewise, if there are any reductions in fees, these will be announced through the Employer Bulletin, quarterly statement, electronic messages or special mailing.

11. Notices

All notices required to be delivered under this Agreement shall be in writing and shall be delivered, mailed, e-mailed or faxed to the location of the relevant party set forth below or to such other address or to the attention of such other persons as such party may hereafter specify by notice to the other party.

ICMA-RC: Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C., 20002-4240
Facsimile; (202) 962-4601

Employer: at the office set forth in the first paragraph hereof, or to any other address, facsimile number or e-mail address designated by the Employer to receive the same by written notice similarly given.

Each such notice, request or other communication shall be effective: (i) if given by facsimile, when transmitted to the applicable facsimile number and there is appropriate confirmation of receipt; (ii) if given by mail or e-mail, upon transmission to the designated address with no indication that such address is invalid or incorrect; or (iii) if given by any other means, when actually delivered at the aforesaid address.

12. Complete Agreement

This Agreement shall constitute the complete and full understanding and sole agreement between ICMA-RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. This Agreement supersedes all written and oral agreements, communications or negotiations among the parties. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

13. Titles

The headings of Sections of this Agreement and the headings for each of the attached schedules are for convenience only and do not define or limit the contents thereof.

14. Incorporation of Schedules

All Schedules (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto certify that they have read and understand this Agreement and all Schedules attached hereto and have caused this Agreement to be executed by their duly authorized officers as of the Inception Date first above written.

VALLEY CLEAN ENERGY ALLIANCE

By _____
Signature/Date

By _____
Name and Title (Please Print)

INTERNATIONAL CITY MANAGEMENT
ASSOCIATION RETIREMENT CORPORATION

By 
Erica McFarquhar
Assistant Secretary

Please return an executed copy of the Agreement to a Delivery Address, either:

- (a) Electronically to PlanAdoptionServices@icmarc.org, or
- (b) In paper form to ICMA-RC
ATTN: PLAN ADOPTION SERVICES
777 North Capitol Street NE
Suite 600
Washington DC 20002-4240

Exhibit A

Administrative Services

The administrative services to be performed by ICMA-RC under this Agreement shall be as follows:

- (a) Participant enrollment services, including providing a welcome package and enrollment kit containing instructions and notices necessary to implement the Plan's administration. Employees will enroll online or through a paper form. Employer can also enroll employees through EZLink.
- (b) Establishment of participant accounts for each employee participating in the Plan for whom ICMA-RC receives appropriate enrollment instructions. ICMA-RC is not responsible for determining if such Plan participants are eligible under the terms of the Plan.
- (c) Allocation in accordance with participant directions received in good order of individual participant accounts to investment funds offered under the Plan.
- (d) Maintenance of individual accounts for participants reflecting amounts deferred, income, gain or loss credited, and amounts distributed as benefits.
- (e) Maintenance of records for all participants for whom participant accounts have been established. These files shall include enrollment instructions (provided to ICMA-RC through Account Access or EZLink), beneficiary designation instructions and all other documents concerning each participant's account.
- (f) Provision of periodic reports to the Employer through EZLink. Participants will have access to account information through Investor Services, Voice Response System, Account Access, TextAccess and through quarterly statements that can be delivered electronically through Account Access or by postal service.
- (g) Communication to participants of information regarding their rights and elections under the Plan.
- (h) Making available Investor Services Representatives through a toll-free telephone number from 8:30 a.m. to 9:00 p.m. Eastern Time, Monday through Friday (excluding holidays and days on which the securities markets or ICMA-RC are closed for business (including emergency closings), to assist participants.
- (i) Making available access to ICMA-RC's web site, to allow participants to access certain account information and initiate certain plan transactions at any time. Account access is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance. The scheduled maintenance window is outlined at <https://harper1.icmarc.org/login.jsp>.
- (j) Maintaining the security and confidentiality of client information through a system of controls including but not limited to, as appropriate: restricting plan and

participant information only to those who need it to provide services, software and hardware security, access controls, data back-up and storage procedures, non-disclosure agreements, security incident response procedures, and audit reviews.

- (k) Making available access to ICMA-RC's plan sponsor EZLink web site to allow plan sponsors to access certain plan information and initiate plan transactions such as enrolling participants and managing contributions at any time. EZLink is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance. The scheduled maintenance window is outlined at <https://harper1.icmarc.org/login.jsp>
- (l) Distribution of benefits as agent for the Employer in accordance with terms of the Plan. Participants who have separated from service can request distributions through Account Access or via form.
- (m) Upon approval by the Employer that a domestic relations order is an acceptable qualified domestic relations order under the terms of the Plan, ICMA-RC will establish a separate account record for the alternate payee and provide for the investment and distribution of assets held there under.
- (n) Loans may be made available on the terms specified in the Loan Guidelines, if loans are adopted by the Employer. Participants can request loans through Account Access.
- (o) Guided Pathways Advisory Services – ICMA-RC's participant advice service, "Fund Advice", and asset allocation service, "Asset Class Guidance" may be made available through a third party vendor on the terms specified on ICMA-RC's website.
- (p) ICMA-RC will determine appropriate delivery method (electronic and/or print) for plan sponsor/participant communications and education based on a number of factors (audience, effectiveness, etc.).

MATRIX TRUST COMPANY

Account Application and Agreements

For Trustee Services

Governmental Plans

ICMA Retirement Corporation ("ICMA RC")

Disclaimer: No representation or warranty is made by Matrix Trust Company that the documents provided hereunder, including without limitation any trust agreement amendment and (as applicable) associated ministerial services agreement are appropriate for a particular plan or employer or that they comply with the requirements of law applicable to any particular plan or employer. Plan sponsors should consult with their legal, tax and other advisors in designing, drafting and/or reviewing the appropriate plan and trust agreements, amendments, and associated agreements and documents and to consider their effect on any existing or contemplated IRS tax qualification letters or determinations as well as compliance with applicable law.

Documentation Requirements

Please return **ALL** of the following documents:

- Account Application (please complete)
- Certificate of Appointment (please complete and execute)
- Certificate of Authorized Representatives (please complete and execute)
- Trustee (or Successor Trustee) Appointment and Amendment of Trust Agreement (please complete and execute)
- Most current Asset Statement
- Copy of executed Plan and Trust Document (If prototype, copy of executed Adoption Agreement is also required)
- USA PATRIOT Act Customer Identification Program requirements
 - IRS Form W-9
 - Additional requested documentation as may be necessary

USA PATRIOT Act Customer Identification Program

Important Information about Opening a New Account

To help the U.S. government fight the funding of terrorism and money laundering activities, Federal law requires us to obtain, verify and record information that identifies each person or entity that opens an account.

What this means for you: When you open an account, we will ask for your name or your business name, an address, date of birth and an identification number, such as a Social Security Number or Employer Identification Number that federal law requires us to obtain. We may ask to see your driver's license or other identifying documents that will allow us to identify you.

We appreciate your cooperation.

Failure to return all documents properly executed
may result in delays with Matrix Trust Company accepting its Trustee appointment.

Contact Information

Return all New Account Documents to the following location:

Matrix Trust Company
Attention: Transition Team Manager
2800 North Central Avenue, Suite 900
Phoenix, AZ 85004
(800) 458- 9269 phone

For ongoing administration questions contact the client services team at:

Matrix Trust Company
Melissa Tanzilli
(602) 296-1372 phone

Account Application – Trustee Services
Plan/Plan Sponsor Information

Legal Plan Name	VALLEY CLEAN ENERGY ALLIANCE 401(a) DISCRETIONARY DEFINED CONTRIBUTION PLAN (the "Plan")
Plan Sponsor Legal Name	VALLEY CLEAN ENERGY ALLIANCE (the "Employer" or "Plan Sponsor")
Entity Type	Governmental Entity
Place of Formation/Incorporation	USA
Primary Street Address	604 2ND STREET
City, State, Zip	DAVIS, CA 95616
Primary Contact Name/Title	MITCH SEARS / INTERIM GENERAL MANAGER
Country	USA
Telephone Number	530-446-2751
Fax Number	
Email Address	mitchsears@valleycleanenergy.org
Plan Trust Tax I.D. (TIN)	(if applicable)
Plan Sponsor EIN	82-3782814
Plan Year End	December 31
Plan Inception Date	November 1, 2018
Current Plan Custodian(s)	
Current Plan Trustee(s)	
Plan Type	401(a) Other
Trust Type	Select One Other
Participant Directed Plan	No (the plan is not participant directed)
Account will be used for wire transactions outside of the country where the customer relationship is established	No If yes, list anticipated transaction countries (where funds move to/from):

CERTIFICATE OF APPOINTMENT

VALLEY CLEAN ENERGY ALLIANCE (the "Client")

I, ALISA LEMBKE, the duly appointed representative of Client, in the capacity indicated below, am authorized to certify the approved actions with respect to the **VALLEY CLEAN ENERGY ALLIANCE 401(A) DISCRETIONARY DEFINED CONTRIBUTION PLAN** (the "Plan") which is qualified under Section 401(a) of the Internal Revenue Code of 1986 as amended and is maintained by the Client, a **governmental entity** organized or operating under the laws of the State of **California**, hereby certify that at a meeting of the Client's Board of Directors or other governing body (the "Board") duly called and held, or by unanimous written consent or other method provided by applicable law or governing document, the following resolutions were duly adopted and remain in full force and effect.

NOW, THEREFORE, BE IT:

- RESOLVED, that Matrix Trust Company ("Matrix Trust") is appointed to act as a non-discretionary Trustee of the Trust established as part of or with respect to the Plan and is authorized to hold the assets of such under the terms of the Trust, Custody, or Agent Agreement (the "Agreement"), as applicable.
- Further, that there currently is **not** an appointed Trustee(s) of the Plan.
And if so, it is resolved that **INSERT NAME OF CURRENT TRUSTEE(S) TO BE REMOVED** currently serving as Trustee(s) of the Plan, be removed effective as of the date Matrix Trust accepts its appointment.
- RESOLVED, that the individual(s) designated on the attached are, and each of them is, authorized in the name and on behalf of the Client, to complete, execute and deliver the Agreements to Matrix Trust substantially in the form presented to this governing body, with such revision thereto and any amendments and ancillary agreements or other documents related thereto (collectively, the "Matrix Trust Documents"), all as deemed necessary or appropriate from time to time; and each is hereby designated as a "Authorized Person" and/or "Designated Representative" under agreements with Matrix Trust who, subject to such agreements, may execute or effect transactions under and give notices, certifications and instructions with respect to such agreements, such individuals designated as "Authorized Representatives".
- RESOLVED, that Matrix Trust be and hereby is authorized to rely on the actual or purported signatures of any of Client's Authorized Representatives until Matrix Trust has actually received and had a reasonable time to act on written notice from Client revoking such authority.
- RESOLVED, that Client shall defend, indemnify and hold Matrix Trust harmless from and against all liabilities, costs, and expenses (including, but not limited to, attorneys' fees and disbursements) incurred by Matrix Trust in connection with honoring of any signature, instruction or action of any Authorized Representative, or the refusal to honor any signature, instruction or action of any person who has not been designated by the Client as an Authorized Representative of Client.
- RESOLVED, that these resolutions supersede all prior resolutions on the subject to which they pertain, and shall remain in full force and effect and binding upon Client until Matrix Trust has actually received and had a reasonable time to act on any subsequent Certificate of Authority; provided that these resolutions are limited in application to the aforesaid services to be provided by Matrix Trust and do not supersede or affect in any way the continuing validity of other resolution provided to Matrix Trust in regard to accounts that are serviced or services that are provided by any other division or department of Matrix Trust or with respect to any accounts that are not the subject of these resolutions.



IN WITNESS WHEREOF, I have executed this Certificate of Appointment this day of **September, 2018**.

Alisa LEMBKE, Secretary

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

Valley Clean Energy Alliance 401(a) Discretionary Defined Contribution Plan (the "Plan") Trust Account (the "Account")

Effective this _____ day of **September, 2018**, the following individuals are designated as authorized representatives ("**Authorized Representatives**") of the Plan Trust Account(s), Custodial Account(s), or Account(s), with (except as limited below) the full authority to give Matrix Trust Company ("**Matrix Trust**") orders, directions or instructions with respect to the Plan and Account. Matrix Trust is entitled to rely on any such order, direction or instruction signed by any one (or as otherwise indicated below) of the Authorized Representatives until such time as Matrix Trust receives written notice of the revocation of this certificate.

By any 1 of the individuals shown below.

Signature:	
Name:	Mitch Sears
Title:	Interim General Manager
DOB:	August 22, 1967
Email Address:	mitch.sears@valleycleanenergy.org
U.S. Citizen:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If No, provide country of citizenship: Insert Country
Limitations:	N/A
Signature:	
Name:	Lucas Frerichs
Title:	Board Chair
DOB:	
Email Address:	lucasf@cityofdavis.org
U.S. Citizen:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If No, provide country of citizenship: Insert Country
Limitations:	N/A

CERTIFICATE OF AUTHORIZED REPRESENTATIVES (CONTINUED)

Insert Plan Name (the "Plan")

Signature: _____ Name: Title: DOB: Email Address: U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No If No, provide country of citizenship: Insert Country Limitations:	Insert Authorized Representative's Name Insert Authorized Representative's Title Insert Date Of Birth Insert Email Address Insert Limitations or "N/A"
Signature: _____ Name: Title: DOB: Email Address: U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No If No, provide country of citizenship: Insert Country Limitations:	Insert Authorized Representative's Name Insert Authorized Representative's Title Insert Date Of Birth Insert Email Address Insert Limitations or "N/A"
Signature: _____ Name: Title: DOB: Email Address: U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No If No, provide country of citizenship: Insert Country Limitations:	Insert Authorized Representative's Name Insert Authorized Representative's Title Insert Date Of Birth Insert Email Address Insert Limitations or "N/A"

By: _____

Alisa Lembke, Secretary

AMENDMENT OF TRUST AGREEMENT/ ADDENDUM TO ADOPTION AGREEMENT

THIS AMENDMENT/ADDENDUM (the "**Amendment/Addendum**") is entered into by and between the Employer named on the signature page hereof (the "**Employer**" or "**Plan Sponsor**") and **Matrix Trust Company ("Matrix Trust")**, as non-discretionary trustee (the "**Trustee**") for the **Valley Clean Energy Alliance 401(a) Discretionary Defined Contribution Plan** (the "**Plan**") and is entered into as of this _____ day of **September, 2018**.

PRELIMINARY STATEMENTS

WHEREAS, the Trustee is a trust company that is subject to supervision of the United States or a State;

WHEREAS, the Employer is a governmental entity;

WHEREAS, the Employer is adopting or has heretofore adopted the above referenced Plan;

WHEREAS, in connection with the adoption of the Plan, the Employer is entering into or has entered into a trust agreement or a combined plan and trust agreement (the "**Trust Agreement**");

WHEREAS, the Employer has duly appointed Matrix Trust as non-discretionary directed trustee or non-discretionary directed successor trustee, as applicable, under the Trust Agreement, and Matrix Trust is willing to serve as non-discretionary directed trustee or non-discretionary directed successor trustee, as applicable; and

WHEREAS, the Employer is entering (or has entered) into an Administrative Services Agreement with ICMA Retirement Corporation ("**Recordkeeper**").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound, the Employer and Matrix Trust hereby mutually agree as follows:

1. The Employer hereby appoints Matrix Trust as non-discretionary directed trustee or non-discretionary directed successor trustee as applicable, and Matrix Trust hereby accepts such appointment subject to the terms of this Amendment/Addendum. The Employer hereby represents and warrants that the Plan is and, during the term of this Amendment/Addendum, shall remain a "governmental plan" as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") and pursuant to Section 4(b) of ERISA is exempt from Title I of ERISA, and the Employer hereby agrees that it shall notify Matrix Trust immediately if the Plan is or will no longer be exempt therefrom. To the extent applicable, the Employer agrees that it has or shall have in place internal controls commensurate with the risk to ensure compliance with U.S. economic sanctions programs administered by the Departments of Treasury and State, as well as controls (i) sufficient to ensure that funds flowing to Trustee or a third party with custody of Trust assets are not from suspect sources, and (ii) that meet all applicable U.S. anti-money laundering, anti-terrorism finance, and anti-corruption requirements.
2. The Employer and Matrix Trust agree that the following provisions are added to the Trust Agreement and shall control the interpretation thereof, notwithstanding anything to the contrary now or hereafter contained therein or in any other document governing the Plan:
 - (a) Unless and until otherwise agreed in writing between the Employer and the Trustee, the Trustee shall have no discretionary investment responsibility with respect to the trust fund, it being the intent of the parties that the Trustee be a directed trustee, and such discretionary investment responsibility shall be exercised by the Employer, the Participants, or one or more Investment Managers or other named fiduciary for the Plan (each, an "**Instructing Party**") (it being agreed that the Trustee shall have no responsibility for conveying investment instructions to any person or entity so long as it does not have custody of Trust assets); and further, the Trustee shall have no obligations or responsibilities with respect to developing a funding policy, any financial control functions (including, without limitation, account reconciliation, money movement or settlement and participant disbursements), participant

review for Office of Foreign Asset Control activity, complying with the accounting requirements of the Plan, the design or monitoring of the participant loan program, selecting or monitoring the selection of plan investments. The Employer or its designee agrees to notify the Trustee immediately in the event of any changes regarding plan investments.

- (b) This Amendment/Addendum shall be governed and administered under the laws of the State of Delaware, without regard to conflict of law principles. All controversies, disputes, and claims arising under this Amendment/Addendum and not otherwise resolved will be submitted to the United States District Court for the district where the Custodian has its principal place of business, and by executing this Amendment/Addendum, each party hereto consents to that court's exercise of personal jurisdiction over them.
- (c) Administrative Powers. The Trustee shall have the following administrative powers with respect to the Trust, which it may exercise in its sole discretion:
- (i) With advance notice to the Employer, to engage attorneys (who may also serve as counsel for the Employer or the Trustee), accountants and other professional advisors, and, anything contained herein to the contrary notwithstanding, to engage in legal or administrative proceedings as the Trustee deems reasonably required in connection with the administration of the Trust, and to compensate any persons so engaged at such wages, fees, remuneration, consideration or otherwise, and upon such terms and conditions as the Trustee deems reasonable under the circumstances. Unless otherwise noted in this Amendment/Addendum, such compensation shall be a charge upon the Trust and may be paid from the Trust with prior notice to the Employer and shall in no event be deducted from any compensation payable to the Trustee.
- (ii) To do all such acts, and exercise all such rights and privileges, although not specifically mentioned, unless specifically prohibited by the Employer or Plan Administrator, which shall be reasonably required in the performance of the Trustee's duties hereunder.
- (d) Judicial Settlement. With at least 10 days advance notice to the Employer, the Trustee shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of its accounts or for determination of any questions of construction which may arise or for instructions. The only necessary party defendant to any such action shall be the Plan Administrator, but the Trustee may, if it so elects, join in as a party defendant any other person or persons. The cost, including attorneys' fees, of any such accounting shall be a charge against the Trust with prior notice to the Employer.
- (e) Compensation. The Trustee shall receive compensation for the performance of its services in accordance with its schedule of compensation in effect when such services are rendered. In the event that the Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation in accordance with the schedule of compensation. To the extent not paid by Employer or another person or entity in its stead or on its behalf, such compensation shall constitute a charge against the Trust.
- (f) Expenses. Expenses for legal, accounting and all other proper charges and disbursements of the Trustee in connection with the administration of the Trust shall constitute a charge to be paid by the Trust with prior notice to the Employer.
- (g) Designation of Plan Administrator, Authorized Persons and Investment Manager. The Plan Administrator, Authorized Person and Investment Manager may be designated by providing the name and signatures of such person(s) to the Trustee. The Trustee shall be entitled to rely entirely, without having to make further inquiry, and shall not be held liable for any actions taken in assuming, that the identity and duties of such persons so designated are valid until such time as it is otherwise notified in writing. Notice of authorization or removal of the Plan Administrator shall be accompanied by evidence of proper action of the Employer approving such instruction.
- (h) Reliance on Instruction. The Trustee may rely in all respects, without having to make further inquiry, upon instructions appearing to be instructions from any person designated as the Employer, Plan

Administrator, Investment Manager or Authorized Person. Instructions given by an Authorized Person in accordance with this Amendment/Addendum shall be treated for all purposes hereof as instructions from the party appointing the Authorized Person. The Trustee shall be deemed to have received proper instructions upon receipt of written instruction given to the Trustee in a form and manner required by or acceptable to the Trustee.

- (i) Conflicting Instructions. In the event of any ambiguous or conflicting instructions to, or adverse claims or demands upon, the Trustee, the Trustee shall be entitled, at its option, to refuse to comply with any such instruction, claim or demand as long as such ambiguity or conflict shall continue, and in so refusing the Trustee may elect not to make any payment or other disposition of assets held pursuant to this Amendment/Addendum. The Trustee shall not be or become liable in any way for its failure or refusal to comply with any such ambiguous or conflicting instructions or adverse claims or demands, and it shall be entitled to continue to so refrain from acting until such ambiguous, conflicting or adverse demands (i) have been resolved and it has been notified in writing thereof or (ii) have finally been determined in a court of competent jurisdiction.
- (j) Reliance on Professional Advisors. The Trustee may consult with a professional advisor who may also be an advisor for the Employer, and the Trustee shall be fully protected in respect of any action taken or suffered by the Trustee in good faith and in accordance with the advice or opinion of such professional advisor.
- (k) Bond. The Trustee shall not be required to give any bond or other security for the faithful performance of the Trustee's duties under this Amendment/Addendum, except as may be required by Applicable Law.
- (l) Action by Employer. Except as otherwise agreed by Trustee, any action by Employer pursuant to any of the provisions of this Amendment/Addendum, the Plan, or Applicable Law shall be, (i) in the case of a corporation, partnership or similar organization, evidenced by (1) a resolution of its governing body certified to the Trustee over the signature of its secretary or assistant secretary or other duly authorized agent under seal, if there be one, or (2) by appropriate written authorization of any person or committee to which the governing body had delegated the authority to take such action, and (ii) in the case of a sole proprietorship or any other entity, evidenced by written certification of a duly and legally authorized agent, individual or entity. The Trustee shall not be liable for any actions taken in accordance with any such resolution or other authorization.
- (m) Bankruptcy. Trustee shall have no duty, in the event of the Employer's bankruptcy or insolvency, to take any action until directed to do so by the bankruptcy trustee or a court that has jurisdiction over Plan assets.
- (n) Scope of Trustee's Liability. To the full extent permitted by Applicable Law, the Trustee shall not be liable for assets that are not included in the Trust or for losses of any kind that may result (i) by reason of any action taken by it in accordance with the instructions of the Employer, the Plan Administrator, the Investment Manager, or Authorized Person, (ii) by reason of any failure to act as a result of the absence of, or ambiguity of, instructions, or (iii) by reason of any actions taken by any prior trustee, additional trustee, successor trustee or Appointed Custodian. The Trustee has no duty to perform any actions other than those specified in this Amendment/Addendum or pursuant to proper instructions. The Trustee shall not be responsible for any lost profits or any special, indirect or consequential damages in respect of any breach or wrongful conduct in any way related to this Amendment/Addendum. The Trustee shall have no liability for any matters beyond its control such as market loss or diminution, impact of government regulations, third-party bankruptcies or otherwise.
- (o) General Indemnity. The Employer shall, to the full extent permitted by Applicable Law, indemnify and hold harmless the Trustee and the Trustee's directors, officers, employees, agents and affiliates ("**Trustee Indemnitees**") from and against any and all damages, losses, costs, judgments, fines, penalties, and expenses (including attorney's fees and disbursements) of any kind or nature (collectively, "**Losses**") imposed on or incurred by the Trustee Indemnitees, by reason of its or their service pursuant to this Amendment/Addendum, including any Losses arising out of any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or

investigative (including any such action by or in the right of the Employer), except to the extent such Losses were caused by the negligence or willful misconduct of the Trustee or the Trustee Indemnitees. Reasonable expenses incurred in defending any such claim, action, suit or proceeding shall be paid by the Employer in advance of a final disposition of such claim, action, suit, or proceeding, upon presentation of statements therefore by the Trustee, provided that any such expenses that are incurred in the defense of any claim, action, suit or proceeding for which it is finally determined that the Trustee is not entitled to indemnification pursuant to the foregoing shall be reimbursed promptly by the Trustee to the extent of its non-entitlement.

- (p) **Specific Indemnities.** In addition to and not in derogation of any other indemnification or hold harmless provisions in this Amendment/Addendum, the Employer agrees to indemnify and hold the Trustee Indemnitees harmless from and against any liability that it or they may incur because of:
- (i) The Employer's failure to make any contribution to the Trust or the insufficiency of the Trust to discharge any liabilities under the Plan.
 - (ii) Actions taken or omitted by the Trustee pursuant to any instructions from the Employer, Plan Administrator, Investment Manager or Authorized Person, as the case may be, or actions not taken in the absence of any such instruction.
 - (iii) The application of any part of the Trust by the Trustee in accordance with the instructions of the Employer, Plan Administrator, Investment Manager or Authorized Person.
 - (iv) The failure of an individually directed account or participant loan to satisfy the requirements of the Plan and Applicable Law.
- (q) **Waiver.** The Trustee shall not, by act, delay, omission or otherwise, be deemed to have waived any right or remedy it may have either under this Amendment/Addendum or generally, unless such waiver is in writing, signed by the Trustee, and such waiver shall only be effective to the extent expressly therein set forth. A waiver by the Trustee of any right or remedy granted by this Amendment/Addendum shall not be construed as a bar to, or waiver of, the same or any other such right or remedy which it would otherwise have on any other occasion.
- (r) **No Affiliation.** The Trustee is not affiliated with the recordkeeper and there is no agency, partnership or joint venture relationship between the Trustee and the recordkeeper.
- (s) **Removal or Resignation.** The Trustee may be removed by the Employer at any time by written notice to the Trustee and the Trustee may resign at any time by written notice to the Employer; provided that, unless otherwise agreed, the effective date of such removal or resignation shall be greater than sixty (60) days from the date of said written notice. Notice of removal shall be accompanied by evidence of proper action of the Employer approving such removal.
- (t) **Successor.** The Employer shall appoint a successor trustee to act hereunder within sixty (60) days after notice provided. If within sixty (60) days after such notice the Employer has not designated a successor trustee, which has accepted such appointment, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or may appoint an employee of Employer as successor trustee in accordance with Applicable Law. Any business entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.
- (u) **Powers of Successor.** Each successor trustee shall have the powers and duties conferred upon the Trustee in this Amendment/Addendum and the term "Trustee" as used in this Amendment/Addendum shall be deemed to include any successor trustee.

- (v) **Notices.** Except as the parties may otherwise agree in writing, all notices, reports, accounts and other communications from the Trustee to the Employer, the Plan Administrator, the Investment Manager(s) or any Authorized Person shall be in writing and deemed to have been duly given as of the first date on which the Trustee transmits or otherwise makes the communication available. Except as the parties may otherwise agree in writing, all instructions, notices, objections and other communications to the Trustee shall be in writing and shall be deemed to have been given when received by the Trustee at its office below:

Matrix Trust Company
717 17th Street, Suite 1300
Denver, CO 80202
Attn: Senior Vice President

With a copy to:

Broadridge Financial Solutions, Inc.
2 Journal Square Plaza
Jersey City, NJ 07306
Attn: General Counsel

Matrix Trust Company
P.O. Box 52129
Phoenix, AZ 85072-2129
Attn: Vice President

To Plan Sponsor:

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

- (w) **Inspections/Audits.** To the extent that the Trust Agreement provides that the Trustee's records and statements are to be open for inspection and audit by the Employer, the Employer shall exercise such right with reasonable prior written notice to the Trustee, and except as required by applicable law, any such audit rights shall be exercised by the Employer not more frequently than annually.
- (x) **Force Majeure.** The Trustee shall have no liability for any losses arising out of delays in performing the services which it renders under this Amendment/Addendum when such delays result from events beyond its control, including without limitation, interruption of the business of the Trustee due to acts of God, acts of governmental authority, acts of war, terrorism, riots, civil commotions, insurrections, labor difficulties (including, but not limited to, strikes and other work stoppages due to slow-downs), unauthorized access to its systems that may breach its reasonable protection against such access, or any action of any courier or utility, mechanical or other malfunction, or electronic interruption.
- (y) **Governing Law.** This Amendment/Addendum shall be governed and administered under the laws of the State of Delaware, without regard to conflict of law principles. Any suit, action or proceeding arising out of this Amendment/Addendum may be instituted in any state or federal court sitting in the State of Delaware, and the parties irrevocably submit to the nonexclusive jurisdiction of any such court in any such suit, action or proceeding and waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such suit, action, or proceeding, brought in such a court and any claim that such suit, action, or proceeding was brought in an inconvenient forum.
- (z) **Entire Agreement.** This Amendment/Addendum, including all Appendices hereto, the Account Application, and the Authorized Persons List, contains the entire understanding between the parties

relating to the subject matter hereof, and supersedes all prior agreements or understandings between the parties relating to the subject matter hereof, whether written or oral, express or implied.

3. Except as amended and modified hereby, the terms and provisions of the Trust Agreement are hereby ratified, approved and confirmed.
4. Services to be Performed by Recordkeeper. The Employer has (or will) delegate to the Recordkeeper the sole responsibility to perform certain ministerial and administrative services set forth in the Administrative Services Agreement between the Employer and the Recordkeeper, and the Employer hereby instructs Trustee that Trustee shall relinquish any responsibility for the performance of said duties that it would otherwise have pursuant to the Trust Agreement as set forth below:
 - (a) Receive contributions directly from the Employer or its Plan Committee;
 - (b) Make distributions at the Employer's directions, in accordance with the terms of the Plan and the Trust Agreement;
 - (c) Perform the accounting for all assets including cash, as well as contributions, loans and withdrawals and the allocation of credited interest and allocate all income, gains and losses;
 - (d) Remit fees for services rendered to the Plan as directed by the Employer;
 - (e) Render reports to the Employer and the Trustee with respect to assets held as required or reasonably requested (e.g., SOC-1 or similar reports);
 - (f) Perform tax reporting and withholding in compliance with applicable Federal and State law in connection with payments to participants or beneficiaries and in accordance with instructions and directions provided by the Employer;
 - (g) Collect or cause to be collected all income, distributions, and proceeds relating to Plan assets and to invest the same and all contributions as directed by the Employer or another Instructing Party;
 - (h) Process or cause to be processed dividends, including reinvestment and/or payment, if applicable; and
 - (i) Forward or cause to be forwarded to the Employer all applicable proxies, corporate actions and other notices relating to the Plan assets, which the Employer shall process.
5. Confidentiality.
 - (a) Definitions. In connection with this Amendment/Addendum, including without limitation the evaluation of new services contemplated by the parties to be provided by Trustee under this Amendment/Addendum, information will be exchanged between Trustee and Plan. Trustee shall provide information that may include, without limitation, confidential information relating to the Trustee's products, trade secrets, strategic information, information about systems and procedures, confidential reports, customer information, vendor and other third party information, financial information including cost and pricing, sales strategies, computer software and tapes, programs, source and object codes, and other information that is provided under circumstances reasonably indicating it is confidential (collectively, the "**Trustee Information**"), and Plan shall provide information required for Plan to use the services received or to be received, including customer information, which may include Personal Information (defined below), to be processed by the services, and other information that is provided under circumstances reasonably indicating it is confidential ("**Plan Information**") (the Trustee Information and the Plan Information collectively referred to herein as the "**Information**"). Personal Information that is exchanged shall also be deemed Information hereunder. "**Personal Information**" means personal information about an identifiable individual including, without limitation, name, address, contact information, age, gender, income, marital status, finances, health, employment, social security number and trading activity or history. Personal Information shall not include the name, title or business address or business telephone number of an employee of an organization in relation to such individual's capacity as an employee of an organization. The Information of each party shall

remain the exclusive property of such party.

- (b) **Obligations.** The receiver of Information (the "**Receiver**") shall keep any Information provided by the other party (the "**Provider**") strictly confidential and shall not, without the Provider's prior written consent, disclose such Information in any manner whatsoever, in whole or in part, and shall not duplicate, copy or reproduce such Information, including, without limitation, by means of photocopying or transcribing of voice recording, except in accordance with the terms of this Amendment/Addendum. The Receiver shall only use the Information as reasonably required to carry out the purposes of this Amendment/Addendum.
- (c) **Disclosure Generally.** Trustee and Plan agree that the Information shall be disclosed by the Receiver only to: (i) the employees, agents and consultants of the Plan and the Designated Representative in connection with Receiver's performance or use of the services, as applicable, and (ii) auditors, counsel, and other representatives of the Plan and Designated Representative for the purpose of providing assistance to the Receiver in the ordinary course of Receiver's performance or use of the services, as applicable. Each party will take reasonable steps to prevent a breach of its obligations by any employee or third party.
- (d) **Compelled Disclosure.** If the Receiver or anyone to whom the Receiver transmits the Information pursuant to this Amendment/Addendum becomes legally compelled to disclose any of the Information, then the Receiver will provide the Provider with prompt notice before such Information is disclosed (or, in the case of a disclosure by someone to whom the Receiver transmitted the Information, as soon as the Receiver becomes aware of the compelled disclosure), if not legally prohibited from doing so, so that the Provider may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Amendment/Addendum. If such protective order or other remedy is not obtained, then the Receiver will furnish only that portion of the Information which the Receiver is advised by reasonable written opinion of counsel is legally required and will exercise its reasonable efforts to assist the Provider in obtaining a protective order or other reliable assurance that confidential treatment will be accorded to the Information that is disclosed.
- (e) **Exceptions.** Except with respect to Personal Information, nothing contained herein shall in any way restrict or impair either party's right to use, disclose or otherwise deal with:
 - (i) Information which at the time of its disclosure is publicly available, by publication or otherwise, or which the Provider publicly discloses either prior to or subsequent to its disclosure to the Receiver;
 - (ii) Information which the Receiver can show was in the possession of the Receiver, or its parent, subsidiary or affiliated company, at the time of disclosure and which was not acquired, directly or indirectly, under any obligation of confidentiality to the Provider; or
 - (iii) Information which is independently acquired or developed by the Receiver without violation of its obligations hereunder.

In addition, each employee of the Receiver shall be free to use for any purpose, upon completion of the services rendered under this Amendment/Addendum, any general knowledge, skill or expertise that (i) is acquired by such employee in performance of those services, (ii) remains part of the general knowledge of such employee after access to the tangible embodiment of the Provider's Information, (iii) does not contain or include any such Information, and (iv) is not otherwise specific to the Provider.

- (f) **Return or Destroy.** Upon the termination of this Amendment/Addendum for any reason, the parties shall return to each other, or destroy, any and all copies of Information of the other that are in their possession relating to the terminated Amendment/Addendum, except for any copies reasonably required to maintain such party's customary archives or computer back-up procedures, and as otherwise required by applicable law, rule or regulation. Notwithstanding the foregoing, Trustee shall have the right to keep one copy of such Information as may be reasonably required to evidence the fact that it has provided the services to Plan. In the event that Plan requires Trustee to return any Plan

Information, Plan shall pay Trustee (at the rates set forth in the applicable Schedule, or, if no such rates are set forth, at Trustee's then current charges) for Trustee's actual time spent and incidental expenses actually incurred in connection with such return.

IN WITNESS WHEREOF, the Employer and Trustee have executed this Amendment/Addendum, as of the date first written above.

Agreed To By:

TRUSTEE:
MATRIX TRUST COMPANY

BY: _____

NAME: _____

TITLE: _____

EMPLOYER:
Valley Clean Energy Alliance

BY: _____

NAME: MITCH SEARS

TITLE: INTERIM GENERAL MANAGER

APPENDIX A

Operational Guidelines

INSTRUCTIONS

The Trustee must receive instructions from an Instructing Party for each purchase, sale acquisition and disposition. The Trustee reserves the right not to effect any transaction unless given sufficient time and information to review and process the transaction. All purchases, sales, acquisitions and dispositions of assets must be made in accordance with terms of the Agreement, the Plan and Applicable Law.

LIQUIDITY

Sufficient liquidity must be maintained in accounts to meet foreseeable obligations of the Trust. The Trustee specifically reserves the right (a) not to follow any instruction that it reasonably believes would result in insufficient liquidity (b) not to make any disbursement unless the Investment Manager, Plan Administrator or other Authorized Person (the "**Instructing Party**") has provided instruction as to the assets to be converted to cash for the purposes of making such payment, and (c) to sell securities from the Trust to recover any funds advanced for any trades not settled immediately upon placement.

TRUST ASSETS

Acceptable Assets

Assets are considered to be acceptable assets depending upon the Trustee's ability to support and administer the asset, the Trustee's proposed responsibilities with respect to such assets, the type of account, the availability of the asset to be acquired through the Trustee or an affiliate (approved for this purpose by the Trustee) and other factors. The Instructing Party should consult with the Trustee prior to the acquisition of any asset to determine acceptability of such asset. The following types of assets are generally acceptable:

- (1) Cash.
- (2) Publicly traded stock listed on a U.S. stock exchange or regularly quoted over-the-counter.
- (3) Publicly traded bonds listed on a U.S. bond exchange or regularly quoted over-the-counter.
- (4) Mutual funds that are NSCC and DCC&S eligible.
- (5) Registered limited partnership interests, REITs and similar investments listed on a U.S. stock exchange or regularly quoted over-the-counter.
- (6) Commercial paper, bankers' acceptances eligible for rediscounting at the Federal Reserve, repurchase and reverse repurchase agreements and other "money market" instruments for which trading and custodial facilities are readily available.
- (7) U.S. Government and U.S. Government Agency issues.
- (8) Municipal securities whose bid and ask values are readily available.
- (9) Federally insured savings accounts, certificates of deposit and bank investment contracts. The Instructing Party is responsible for determining federal insurance coverage and limits and for diversifying account assets in accordance with those limits.
- (10) American Depository Receipts, Eurobonds, and similar instruments listed on a U.S. exchange or regularly quoted domestically over-the-counter for which trading and custodial facilities are readily available.
- (11) Life insurance, annuities, and guaranteed investment contracts issued by insurance companies licensed to do business in one or more states in the U.S. The Instructing Party is responsible for determining the safety of such investments and the economic viability of the underwriter and for diversifying account assets accordingly.

In certain circumstances a particular asset which otherwise may be considered an acceptable asset may be determined by the Trustee to be unacceptable or conditionally acceptable.

Unacceptable Assets

Trustee generally cannot acquire or hold the following assets:

- (1) Tangible personal property (e.g., precious metals, gems, works of art, coins, furniture and other household items, motor vehicles, etc.).
- (2) Foreign currency and bank accounts.
- (3) Short sales.
- (4) Commodity futures and forward contracts.
- (5) Oil, gas and mineral interests.
- (6) Intangible personal property (e.g., patents and rights).
- (7) Unsecured loans.
- (8) Interests in real property.
- (9) Loans secured by first deeds of trust.
- (10) Other secured loans.

Conditionally Acceptable Assets

The Trustee may, but shall not be obligated, to acquire or continue to hold any of the assets listed below:

- (1) General partnerships.
- (2) Unregistered limited partnerships.
- (3) Other unregistered securities, closely held stock and other securities for which there is no readily available market.
- (4) The securities of the broker/dealer's corporate entity or its affiliates and subsidiaries. These securities may be subject to legal and regulatory prohibitions or restrictions. In any event, no Trust may acquire and hold securities of the broker/dealer's corporate entity unless specifically authorized by the underlying Trust agreement.
- (5) Foreign securities for which trading and custodial facilities are readily available.
- (6) Options.
- (7) Securities of the Employer.
- (8) Any other asset not listed under "Acceptable Assets" or "Unacceptable Assets" above.

The acquisition and continued retention of the foregoing assets is subject to providing the Trustee with the cost basis, if any, of any such assets and with a valuation of the assets on at least an annual basis. The Trustee, in its sole discretion, may impose other conditions to acquire or hold such assets, including imposing additional fees.

PROXIES AND OTHER SHAREHOLDER ACTION**Calls, Conversions, Expirations, Tenders, etc.**

The Instructing Party must monitor and determine the existence of and initiate all actions necessary or appropriate in connection with calls, conversions, tenders, and similar events or transactions relating to Trust assets. The Trustee will pass on to the Instructing Party any information it receives regarding such actions.

Proxies

The Instructing Party is responsible for voting proxies and exercising other shareholder rights with respect to securities under the Instructing Party's investment authority, and the Trustee shall not vote proxies and exercise other shareholder rights with respect to any securities held by the Trust, unless the Trustee agrees to undertake such responsibility under a separate written agreement or as otherwise explicitly provided for in the Trust Agreement. The Instructing Party shall provide the Trustee with instructions as to where to deliver any proxies it receives and the Trustee will use commercially reasonable efforts to deliver proxies in a timely manner to such party. The Trustee is not responsible for ascertaining whether, or how, the proxies were subsequently voted or disposed of and shall bear no liability for the actions or inactions relating to voting of proxies by the Plan Administrator, Employer, "named fiduciary" of the Plan, or an Investment Manager. The Plan Administrator is exclusively responsible for reviewing whether the provisions of the Trust Agreement and these Operational Guidelines for the voting of securities and the exercise of other shareholder rights are consistent with the requirements of the Plan documents and Applicable Law.

Charges

Certain securities may impose charges and penalties on the sale and/or redemption of such security, including, without limitation, sales load, redemption, exchange, account, distribution, administrative and other charges. The Trustee is not responsible for notifying the Employer, any Instructing Party or any other party of the existence, potential or imposition of any such charges or penalties or to negotiate or attempt to negotiate the reduction, waiver, rebate or reimbursement of any such charges or penalties; nor shall the Trustee have any liability or responsibility for any such charges or penalties of any kind or nature, whether current, deferred or contingent, that are charged or imposed pursuant to the terms of any securities purchased, held, sold or redeemed in the Trust, and all such charges and penalties shall be borne by the Trust unless otherwise provided for.

UNITIZATIONS

In General

The Trustee may provide unitization services, if agreed by the Trustee in a separate written agreement with the Plan Administrator. Unitization services are not an investment product, but rather an administrative recordkeeping service that the Trustee provides for the convenience of the Plan and participants on request, and no person (including the Employer or Plan Administrator) may hold out, market or otherwise indicate that the unitization service is an investment product whose shares may be offered to retirement plans and their participants. The Plan Administrator shall provide the Trustee for approval a copy of any materials to be used by or on behalf of a Plan which refer to the unitization services before their distribution or use.

Unitization services are available only if the account to be unitized consists of assets eligible for daily valuation under the Trustee's procedures, as determined by the Trustee. In order for the Plan to receive unitization services, the Plan Administrator is required to provide the Trustee with all instructions, representations, and assurances and other information that the Trustee may in its sole discretion require from time to time for the proper administration. Such instructions shall include without limitation, instructions with respect to maintaining a cash component adequate to address anticipated distribution activity, the investment of the cash component, instructions for placing and settling transactions for the unitized account, valuation instructions, and accrual of fees and expenses.

Pricing

The Trustee will obtain pricing information from sources believed to be reliable, but the Trustee shall not be responsible or liable for the accuracy, completeness, timeliness or correct sequencing of any pricing information received or for any decision made or action taken in reliance upon such information. The Trustee makes no warranty of merchantability, warranty of fitness for a particular purpose, or other warranty of any kind, express or implied, regarding the pricing information received or transmitted by the Trustee. If the Plan Administrator does not, within ninety (90) days of receiving a unitization statement, notify the Trustee of any objection to the valuation, the unitization shall be deemed final and the Trustee will have no obligation to correct or reimburse the net asset value (NAV).

NAV Correction Procedures

The Trustee will apply its customary standards and procedures for NAV corrections, a copy of which may be provided upon request.

Expenses

Plan expenses can be charged directly to the unitized account. The Plan Administrator must instruct the Trustee as to any specific fees and expenses to be accrued in the unitized account and the rates at which such fees and expenses should be accrued. The Trustee requires five (5) business days advance notice of any adjustment or termination to fee accruals. The Plan Administrator is responsible for notifying the Trustee when money comes in or out of the unitized account and if, as a result of any such money movement, the fee accruals should be adjusted. From time to time, fee accruals may go negative. On a periodic basis, Trustee will provide to the Plan Administrator a written account of the fee accrual(s) for review. The Plan Administrator or Instructing Party is responsible for reviewing such account and for promptly advising Trustee of any necessary adjustments.

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
AUTHORIZING THE ADOPTION OF A
457 DEFERRED COMPENSATION PLAN**

WHEREAS, Valley Clean Energy Alliance (“VCEA”), is a public agency formed in January 2017 under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., between the County of Yolo and the City of Davis to provide Community Choice Energy (CCE) programs within the member agencies, and in June 2017, the City of Woodland also joined VCEA adding to the overall VCEA service territory;

WHEREAS, the establishment of a deferred compensation plan for such employees serves the interests of VCEA by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel; and

WHEREAS VCEA has determined that the establishment of a deferred compensation plan to be administered by the ICMA -Retirement Corporation serves the above objectives; and

WHEREAS VCEA desires that its deferred compensation plan be administered by ICMA-Retirement Corporation, and that some or all of the funds held under such plan be invested in VantageTrust, or a trust established by public employers for the collective investment of funds held under their retirement and deferred compensation plans;

NOW THEREFORE, BE IT RESOLVED that VCEA hereby adopts the VCEA Deferred Compensation Plan (Plan) in the form of:

The ICMA Retirement Corporation Deferred Compensation Plan and Trust and Optional Provisions Election Form, collectively referred to as Exhibit A

BE IT FURTHER RESOLVED that VCEA hereby adopts the Declaration of Trust of VantageTrust, included in Exhibit A, intending this adoption to be operative with respect to any retirement or deferred compensation plan subsequently established by VCEA, if the assets of the plan are to be invest in VantageTrust.

BE IT FURTHER RESOLVED that VCEA appoints ICMA-Retirement Corporation as administrator of the Plan as defined under Article II, Section 2.2 of the Plan.

BE IT FURTHER RESOLVED that VCEA authorizes the Interim General Manager (GM) or the Board Chair to execute the Administrative Services Agreement with ICMA Retirement Corporation attached hereto as Exhibit B.

BE IT FURTHER RESOLVED that VCEA appoints the Matrix Trust Company (“Matrix”) and Matrix agrees to serve as a non-discretionary trustee of the Plan.

BE IT FURTHER RESOLVED that VCEA authorizes the GM or the Board Chair to execute the trust agreement with Matrix attached hereto as Exhibit C.

BE IT FURTHER RESOLVED that the assets of the Plan shall be held in trust, with Matrix serving as the Trustee, for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose.

BE IT FURTHER RESOLVED that the VCEA shall appoint the GM as Plan Administrator of the Plan and delegate the duties and responsibilities of Plan administration to the GM which shall include receipt of necessary reports, notices, etc., from ICMA Retirement Corporation or VantageTrust; shall cast, on behalf of VCEA, any required votes under VantageTrust; Administrative duties to carry out the plan may be assigned to the appropriate departments; and

BE IT FURTHER RESOLVED that VCEA hereby authorizes the GM or the Board Chair to execute all necessary agreements with ICMA Retirement Corporation incidental to the administration of the Plan.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2018, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Lucas Frerichs, VCEA Chair

ATTEST: _____
Alisa M. Lembke, VCEA Secretary

457 GOVERNMENTAL DEFERRED COMPENSATION PLAN AND TRUST



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457 GOVERNMENTAL DEFERRED COMPENSATION PLAN AND TRUST

As Amended and Restated

Article I. Purpose

The Employer identified in Article 2.09 hereby establishes and maintains the Employer's Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." The Employer is a State, political subdivision of a State, or an agency or instrumentality of a State or political subdivision, as described in Section 457(e)(1)(A) of the Internal Revenue Code ("the Code").

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Employer and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Code.

The Employer has determined that the establishment of a deferred compensation plan for the Employees of the Employer serves the interests of the Employer by enabling it to provide reasonable retirement security for its employees, by providing increased flexibility in its personnel management system, and by assisting in the attraction and retention of competent personnel.

This Plan shall be an agreement solely between the Employer and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of Participants and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Employer or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

The Employer adopts the Group Trust created by the Declaration of Trust of VantageTrust Company.

Article II. Definitions

- 2.01 Account.** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.
- 2.02 Accounting Date.** For valuing the Trust's assets, as provided in Section 6.06, each business day that the New York Stock Exchange is open for trading.
- 2.03 Administrator.** The person or persons named in writing to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described. The Employer may remove any person as Administrator upon seventy-five (75) days' advance notice in writing to such person, in which case the Employer shall name another person or persons to act as Administrator. The Administrator may resign upon seventy-five (75) days' advance notice in writing to the Employer, in which case the Employer shall name another person or persons to act as Administrator. Unless otherwise provided in the Plan, the Administrator shall act at the direction of the Employer and shall be fully protected in acting on such direction. The Employer may enter into a separate agreement with the Administrator

detailing features of the Plan and any elections as to the administration of the Plan.

- 2.04 Automatic Distribution Date.** April 1 of the calendar year after the year the Participant attains age 70½ or, if later, has a Severance Event.
- 2.05 Beneficiary.** The person or persons named by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no Beneficiary is named in the Joinder Agreement, if the named Beneficiary predeceases the Participant, or if the named Beneficiary does not survive the Participant for a period of fifteen (15) days, then the estate of the Participant shall be the Beneficiary. If a married Participant resides in a community property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event the Participant names someone other than his or her spouse as Beneficiary; provided, however that solely for purposes of this sentence, the term "spouse" shall have the meaning determined by the Employer.
- For purposes of Section 7.09(c), relating to unforeseeable emergency withdrawals, the term Primary Beneficiary means an individual who is named as a Beneficiary under the Plan and who would have an unconditional right to all or a portion of the Participant's account balance under the Plan upon the death of the Participant (or Beneficiary who has inherited an account balance).
- 2.06 Deferred Compensation.** The amount of Includible Compensation otherwise payable to the Participant that the Participant and the Employer mutually agree to defer hereunder (including pursuant to automatic enrollment in Section 4.03), any amount credited to a Participant's Account by reason of a transfer under Section 6.09 or 6.10, a rollover under Section 6.11, or any other amount the Employer agrees to credit to a Participant's Account.
- 2.07 Dollar Limitation.** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code.
- 2.08 Employee.** Any individual who provides services for the Employer, whether as an employee of the Employer, as defined by state law, or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.
- 2.09 Employer.** _____ which is a State, political subdivision of a State, or agency or instrumentality of a State, as described in Section 457(e)(1)(A) of the Code.
- 2.10 457 Catch-Up Dollar Limitation.** Twice the Dollar Limitation.
- 2.11 Includible Compensation.** Includible Compensation of a Participant means "compensation," as defined in Section 415(c)(3) of the Code, for services performed for the Employer. Includible Compensation shall be determined without regard to any community property laws. For purposes of a Participant's Joinder Agreement only and not for purposes of the limitations in Article V, Includible Compensation shall include pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.
- 2.12 Joinder Agreement.** An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof, that fixes the amount of Deferred Compensation, specifies a preference among the investment alternatives designated by the Employer, names the Employee's Beneficiary or Beneficiaries, and incorporates the terms, conditions, and provisions of the Plan by

reference. A Joinder Agreement includes amounts that an Employer agrees to credit to the Employee's account as "employer contributions."

- 2.13 Normal Limitation.** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in Sections 6.09, 6.10, and 6.11).
- 2.14 Normal Retirement Age.** Age 70½, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to a Severance Event. A Participant's Normal Retirement Age determines the period during which a Participant may utilize the additional catch-up dollar limitation of Section 5.02(b) hereunder and determines the right to receive certain tax free distributions described in Section 7.14. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02(b), his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive immediate, unreduced retirement benefits under the Employer's basic defined benefit retirement plan covering the Participant (or a money purchase pension plan of the Employer in which the Participant also participates if the Participant is not eligible to participate in a defined benefit plan of the Employer), and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic defined benefit retirement plan (or money purchase pension plan, if applicable) maintained by the Employer, the Participant's alternate Normal Retirement Age may not be earlier than 65 and may not be later than age 70½ (except as provided in the next paragraph). Solely for purposes of the prior two sentences, a plan of the Employer includes a plan maintained by the state (or a political subdivision or agency or instrumentality of the state) in which the Employer is located. In no event may a Participant's normal retirement age be different than the normal retirement age under the Employer's other 457(b) plans, if any.

In the event the Plan has Participants that include qualified police or firefighters (as defined under Section 415(b)(2)(H)(ii)(I) of the Code), a normal retirement age may be designated for such qualified police or firefighters that is not earlier than age 40 or later than age 70½. Alternatively, qualified police or firefighters may be permitted to designate a normal retirement age that is between age 40 and age 70½.

- 2.15 Participant.** Any Employee who has joined the Plan pursuant to the requirements of Article IV. Unless the context requires otherwise, the term Participant includes an Employee or former Employee of the Employer who has not yet received all of the payments of benefits to which he/she is entitled under the Plan.
- 2.16 Percentage Limitation.** 100 percent of the Participant's Includible Compensation available to be contributed as Deferred Compensation for the taxable year.
- 2.17 Plan Year.** The calendar year, unless otherwise elected by the Employer.
- 2.18 Severance Event.** A severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii) of the Code.

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Employer, the employment relationship is considered to have actually terminated. If the Plan does not allow participation by independent contractors of the Employer, a Participant shall also be deemed to have experienced a Severance Event for purposes of the Plan when, in accordance with the established practices of the Employer, the Participant ceases to be an employee and becomes an independent contractor. If the Plan allows participation by independent contractors of the

Employer, then in the case of a Participant who is an independent contractor of the Employer, a Severance Event shall be deemed to have occurred when the Participant's contract under which services are performed has completely expired and terminated, there is no foreseeable possibility that the Employer will renew the contract or enter into a new contract for the Participant's services, and it is not anticipated that the Participant will become an Employee of the Employer, or such other events as may be permitted under the Code.

- 2.19 **Trust.** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

Article III. Administration

- 3.01 **Duties of the Employer.** The Employer shall have the authority to make all discretionary decisions affecting the rights or benefits of Participants that may be required in the administration of this Plan. The Employer's decisions shall be afforded the maximum deference permitted by applicable law.
- 3.02 **Duties of Administrator.** The Administrator, as agent for the Employer and subject to oversight by the Employer, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, and the disbursement of benefits on behalf of the Employer in accordance with the provisions of this Plan.

Article IV. Participation in the Plan

- 4.01 **Initial Participation.** An Employee that the Employer elects to be eligible for the Plan may become a Participant by entering into a Joinder Agreement (or by being treated as entering into a Joinder Agreement pursuant to Section 4.03) prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet paid or made available, or such other date as may be permitted under the Code. A new employee may defer compensation in the calendar month during which he or she first becomes an employee if a Joinder Agreement is entered into on or before the first day on which the employee performs services for the Employer.
- 4.02 **Amendment of Joinder Agreement.** A Participant may amend an executed Joinder Agreement to change the amount of Includible Compensation not yet paid or made available that is to be deferred (including the reduction of such future deferrals to zero). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed, or such other date as may be permitted under the Code. A Participant may at any time amend his or her Joinder Agreement to change the Beneficiary or specify investments, and such amendment shall become effective immediately.
- 4.03 **Automatic Enrollment.**
- (a) *If elected by the Employer, the Plan will provide for automatic enrollment.* In this case, an Employee will become a Participant, shall be treated as entering into a Joinder Agreement, and shall have compensation deferred, at the amount equal to the percentage of compensation specified by the Employer, unless the Employee affirmatively elects a different amount (or elects not to enter into a Joinder Agreement) within the initial "opt-out" period specified by the Employer. The "opt-out" period shall be no less than thirty (30) days and no more than ninety (90) days. The Participant will be treated as having entered into a Joinder Agreement at the end of such opt-out period and Default Elective Deferrals shall begin on the first pay period of the following calendar month. Unless otherwise elected by the Employer, these

automatic enrollment provisions will also apply when an Employee is rehired. An Employee who becomes a Participant pursuant to this Section 4.03 may amend the Joinder Agreement as provided in Section 4.02.

(b) **Definitions.** *The following definitions shall apply for this Section 4.03:*

- (1) **Eligible Automatic Contribution Arrangement (“EACA”).** An automatic contribution arrangement that satisfies the uniformity and notice requirements of this Section 4.03.
- (2) **Automatic Contribution Arrangement.** An arrangement under which, in the absence of an affirmative election by a Covered Employee, a specified percentage of compensation will be withheld from the Covered Employee’s pay and contributed to the Plan as Deferred Compensation.
- (3) **Covered Employee.** A Participant identified by the Employer as being covered under the EACA. An independent contractor cannot be a Covered Employee.
- (4) **Default Elective Deferrals.** The Deferred Compensation contributed to the Plan under the EACA on behalf of Covered Employees who do not have an affirmative election in effect regarding Deferred Compensation.
- (5) **Default Rate.** The percentage of a Covered Employee’s compensation contributed to the Plan as a Default Elective Deferral, per pay period, for a given Plan Year. The Default Rate is specified by the Employer.

(c) **Rules of Application**

- (1) Default Elective Deferrals will be made on behalf of Covered Employees who do not have an affirmative election in effect regarding Deferred Compensation. The amount of Default Elective Deferrals made for a Covered Employee each pay period is equal to the Default Rate multiplied by the Covered Employee’s compensation for that pay period. If the Employer elects, a Covered Employee’s Default Elective Deferrals will increase each Plan Year by a designated percentage, per pay period, beginning with the second Plan Year that begins after the Default Rate first applies to the Covered Employee. The increase will be effective beginning with the first pay period that begins in such Plan Year.
- (2) A Covered Employee will have a reasonable opportunity after receipt of the notice described in Section 4.03(e) to make an affirmative election regarding Deferred Compensation (either to have no Deferred Compensation contributed or to have a different amount of Deferred Compensation contributed) before Default Elective Deferrals are made on the Covered Employee’s behalf. Default Elective Deferrals being made on behalf of a Covered Employee will cease as soon as administratively feasible after the Covered Employee makes an affirmative election. An affirmative election to have no Deferred Compensation contributed, made no later than ninety (90) days after Default Elective Deferrals are first withheld from a Covered Employee’s pay, shall be deemed a request for distribution of the Covered Employee’s Default Elective Deferrals under Section 4.03(f) of the Plan, unless the Covered Employee affirmatively elects otherwise.

(d) **Uniformity Requirement**

- (1) Except as provided in (2), below, if the Employer has elected to have Covered Employees’ Default

Elective Deferrals increase each Plan Year by a designated percentage, the same percentage of compensation will be withheld as a Default Elective Deferral from all Covered Employees subject to the Default Rate.

- (2) Default Elective Deferrals will be reduced or stopped to meet the limitations under Section 457(b) of the Code, and to satisfy any suspension period required after a hardship distribution from another plan maintained by the Employer.

(e) Notice Requirement

- (1) At least thirty (30) days, but not more than ninety (90) days, before the beginning of the Plan Year, the Employer will provide each Covered Employee a comprehensive notice of the Covered Employee's rights and obligations under the EACA, written in a manner calculated to be understood by the average Covered Employee. If an employee becomes a Covered Employee after the 90th day before the beginning of the Plan Year and does not receive the notice for that reason, the notice will be provided no more than ninety (90) days before the employee becomes a Covered Employee but no later than the date the employee becomes a Covered Employee.
- (2) The notice must accurately describe:
 - (i) the amount of Default Elective Deferrals that will be made on the Covered Employee's behalf in the absence of an affirmative election;
 - (ii) the Covered Employee's right to elect to have no Deferred Compensation deferred on his or her behalf or to have a different amount of Deferred Compensation deferred;
 - (iii) how Default Elective Deferrals will be invested in the absence of the Covered Employee's investment instructions; and
 - (iv) the Covered Employee's right to make a withdrawal of Default Elective Deferrals and procedures for making such a withdrawal.

(f) Withdrawal of Default Elective Deferrals

- (1) No later than ninety (90) days after Default Elective Deferrals are first withheld from a Covered Employee's pay, the Covered Employee may request a distribution of his or her Default Elective Deferrals. No spousal consent is required for withdrawal under this provision.
- (2) The amount distributed from the Plan upon the Covered Employee's request is equal to the amount of Default Elective Deferrals made through the earlier of (a) the pay date for the second payroll period that begins after the Covered Employee's withdrawal request and (b) the first pay date that occurs after thirty (30) days following the Covered Employee's request, plus attributable earnings through the date of distribution. Any fee charged to the Covered Employee for the withdrawal may not be greater than any other fee charged for a cash distribution.
- (3) Unless the Covered Employee affirmatively elects otherwise, any withdrawal request will be treated as an affirmative election to stop having Deferred Compensation deferred on the Covered Employee's behalf as of the date specified in Section 4.03(f)(2) above.

- (4) Default Elective Deferrals distributed pursuant to this Section 4.03(f) are not counted towards the dollar limitation on Deferred Compensation contained in Section 457(b) of the Code. Matching contributions that might otherwise be allocated to a Covered Employee's account on behalf of Default Elective Deferrals will not be allocated to the extent the Covered Employee withdraws such Deferred Compensation pursuant to this Section 4.03(f) and any matching contributions already made on account of Default Elective Deferrals that are later withdrawn pursuant to this Section 4.03(f) will be forfeited.

4.04 Vesting of Employer Contributions. If a Participant's Joinder Agreement provides for the Employer to credit Deferred Compensation to a Participant's Account in the form of "employer contributions," such credits shall be immediately vested, except as provided in Section 4.03(f)(4).

Article V. Limitations on Deferrals

5.01 Normal Limitation. Except as provided in Section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year, shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

5.02 Catch-Up Limitations.

- (a) **Catch-up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the taxable year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of Section 5.01, may enter into a Joinder Agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of:
 - (1) The applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with Section 414(v)(2)(C) of the Code; or
 - (2) The excess (if any) of:
 - (i) The Participant's Includible Compensation for the year, or
 - (ii) Any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a).

An additional contribution made pursuant to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which a higher limit under Section 5.02(b) applies.

- (b) **Last Three Years Catch-up Contribution:** For each of the last three (3) taxable years for a Participant ending the year before the year he or she attains (or will attain) Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of:
 - (1) The 457 Catch-Up Dollar Limitation, or
 - (2) The sum of

- (i) The Normal Limitation for the taxable year, and
- (ii) The Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (x) the Participant was eligible to participate in the Plan for such year, and (y) compensation (if any) deferred under the Plan (or such other plan) was subject to the Normal Limitation.

Should the maximum Deferred Compensation under this Section 5.02(b) be lower in any of the three (3) years than the maximum Deferred Compensation under Section 5.02(a), the Participant may instead defer amounts under 5.02(a) if otherwise permitted and no further deferrals under Section 5.02(b) will be permitted.

5.03 Sick, Vacation and Back Pay. If the Employer so elects, a Participant may defer all or a portion of the value of the Participant's accumulated sick pay, accumulated vacation pay and/or back pay, provided that such deferral does not cause total deferrals on behalf of the Participant to exceed the Dollar Limitation or Percentage Limitation (including any catch-up dollar limitation) for the year of deferral. The election to defer such sick, vacation and/or back pay must be made in a manner and at a time permitted under Section 1.457-4(d) of the Income Tax Regulations.

For Plan Years beginning before January 1, 2009, pursuant to proposed IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid within 2½ months following severance from employment and the other requirements of Sections 457(b) and 415 of the Code are met. For Plan Years beginning on or after January 1, 2009, pursuant to final IRS regulations issued under Section 415 of the Code, the Plan may permit deferrals from compensation, including sick, vacation and back pay, so long as the amounts are paid by the later of: (i) 2½ months following severance from employment, and (ii) the end of the calendar year that includes the date of such severance from employment, and the other requirements of Sections 457(b) and 415 of the Code are met. Additionally, the agreement to defer such amounts must be entered into prior to the first day of the month in which the amounts otherwise would be paid or made available.

5.04 Other Plans. Notwithstanding any provision of the Plan to the contrary, the amount excludible from a Participant's gross income under this Plan or any other eligible deferred compensation plan under Section 457(b) of the Code shall not exceed the limits set forth in Sections 457(b) and 414(v) of the Code.

5.05 Excess Deferrals. Any amount that exceeds the maximum Dollar Limitation or Percentage Limitation (including any applicable catch-up dollar limitation) for a taxable year, shall constitute an excess deferral for that taxable year. Any excess deferral shall be distributed to the Participant in accordance with the requirements for excess deferrals under the Code and Section 1.457-4(e) of the Income Tax Regulations or other applicable Internal Revenue Service guidance.

5.06 Protection of Person Who Serves in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on leave of absence for qualified military service under Section 414(u) of the Code may elect to contribute additional Deferred Compensation upon resumption of employment with the Employer equal to the maximum Deferred Compensation that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of Includible Compensation) without the interruption or leave, reduced by Deferred Compensation, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

- 5.07 **Benefit Accruals with Respect to Qualified Military Service.** Notwithstanding any provision of the Plan to the contrary, if the Employer so elects, Participants who die or become Disabled while performing qualified military service (as defined in Code Section 414(u)) with respect to the Employer shall receive Plan contributions as permitted under Code Section 414(u)(9).
- 5.08 **Benefit Accruals with Respect to Differential Wage Payments.** Unless otherwise elected by the Employer, Plan contributions shall be made based on differential wage payments (as such term is defined in Section 3401(h)(2) of the Code).

Article VI. Trust and Investment of Accounts

- 6.01 **Investment of Deferred Compensation.** A Trust described in Section 457(g) of the Code is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The trustee shall be the Employer or such other person that agrees with the consent of the Employer to act in that capacity hereunder.
- 6.02 **Investment Powers.** The trustee shall have the powers listed in this Section with respect to investment of Trust assets, except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05 or to the extent that such powers are restricted by applicable law.
- (a) To invest and reinvest the Trust without distinction between principal and income in common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, certificates of deposit, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, guaranteed interest contracts, and deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit. Assets of the Trust may be invested in securities that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.
 - (b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under Sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plans, the declaration of trust of such commonly collective, or commingled, trust fund shall constitute a part of this Plan.
 - (c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under Section 401(a) of the Code or any other plan described in Section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Administrator, or such custodian as the Administrator may appoint, as agent and nominee for the Employer. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.
 - (d) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

- (e) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Employer, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.
- (f) Upon such terms as may be deemed advisable by the Employer or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plans to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.
- (g) To employ suitable consultants, depositories, agents, and legal counsel on behalf of the Plan.
- (h) To open and maintain any bank account or accounts in the name of the Plan, the Employer, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.
- (i) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

The trustee may authorize the Administrator to exercise these powers as an agent for the trustee, subject to the oversight of the trustee.

6.03 Taxes and Expenses. All taxes of any and all kinds whatsoever that may be levied or assessed under existing or future laws upon the Plan, or in respect to the Trust, or the income thereof, and all commissions or acquisitions or dispositions of securities and similar expenses of investment and reinvestment of the Trust, shall be paid from the Trust. Such reasonable compensation of the Administrator, as may be agreed upon from time to time by the Employer and the Administrator, and reimbursement for reasonable expenses incurred by the Administrator in performance of its duties hereunder (including but not limited to fees for legal, accounting, investment and custodial services) shall also be paid from the Trust.

6.04 Payment of Benefits. The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Employer to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Employer.

6.05 Investment Funds. In accordance with uniform and nondiscriminatory rules established by the Employer and the Administrator, the Participant may direct his or her Accounts to be invested in one (1) or more investment funds available under the Plan (including a fund or investment that consists of or is available through an open brokerage window); provided, however, that the Participant's investment directions shall

not violate any investment restrictions established by the Employer. Neither the Employer, the Administrator, nor any other person shall be liable for any losses incurred by virtue of following such directions or with any reasonable administrative delay in implementing such directions.

6.06 Valuation of Accounts. As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund-by-fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

6.07 Participant Loan Accounts. Participant loan accounts shall be invested in accordance with Section 8.03 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

6.08 Crediting of Accounts. The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Employer through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Employer's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Employer to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his or her Account.

6.09 Post-Severance Transfers Among Eligible Deferred Compensation Plans.

(a) *Incoming Transfers:* A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's or Beneficiary's Account under the Plan if:

- (1) In the case of a transfer for a Participant, the Participant has had a Severance Event with that employer and become an Employee of the Employer;
- (2) The other employer's plan provides that such transfer will be made; and
- (3) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Employer may refuse to accept a transfer in the form of assets other than cash, unless the Employer and the Administrator agree to hold such other assets under the Plan.

(b) *Outgoing Transfers:* An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's or Beneficiary's Account under this Plan, if:

- (1) In the case of a transfer for a Participant, the Participant has a Severance Event with the Employer and becomes an employee of the other employer;
- (2) The other employer's plan provides that such transfer will be accepted;

- (3) The Participant or Beneficiary and the employers have signed such agreements as are necessary to assure that the Employer's liability to pay benefits to the Participant has been discharged and assumed by the other employer; and
- (4) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer.

The Employer may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under Section 457 of the Code and the regulations thereunder.

6.10 Transfers Among Eligible Deferred Compensation Plans of the Employer.

- (a) *Incoming Transfers.* A transfer may be accepted from another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
 - (1) The Employer's other plan provides that such transfer will be made;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Plan unless the Participant or Beneficiary is performing services for the Employer.
- (b) *Outgoing Transfers.* An amount may be transferred to another eligible deferred compensation plan maintained by the Employer and credited to a Participant's or Beneficiary's Account under the Plan if:
 - (1) The Employer's other plan provides that such transfer will be accepted;
 - (2) The Participant or Beneficiary whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and
 - (3) The Participant or Beneficiary whose deferred amounts are being transferred is not eligible for additional annual deferrals in the Employer's other eligible deferred compensation plan unless the Participant or Beneficiary is performing services for the Employer.

6.11 Eligible Rollover Distributions.

- (a) *Incoming Rollovers:* An eligible rollover distribution may be accepted from an eligible retirement plan and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the Code. The Plan shall separately account (in one (1) or more separate accounts) for eligible rollover distributions from any eligible retirement plan.

(b) *Outgoing Rollovers:* Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(c) *Definitions:*

- (1) **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's named beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. Subject to Section 9.04 (related to rollovers of Roth amounts), for purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), such as after-tax contributions.
- (2) **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the Code, or an eligible deferred compensation plan described in Section 457(b) of the Code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code, that accepts the distributee's eligible rollover distribution. Effective for distributions after December 31, 2007, a Participant may elect to have any portion of an Eligible Rollover Distribution paid directly to a Roth IRA described in Section 408A of the Code. Such a direct payment, as a qualified rollover distribution described in Section 408A(e)(1) of the Code, would be taxable to the Participant to the extent required by Section 408A(d)(3) of the Code.
- (3) **Distributee:** A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. For distributions after December 31, 2006 (unless the Employer elected a different effective date in a prior plan document, a distributee includes the Employee's or former Employee's nonspouse designated Beneficiary, in which case, the distribution can only be transferred to a traditional or Roth IRA established on behalf of the nonspouse designated Beneficiary, in the Participant's name, for the purpose of receiving the distribution.
- (4) **Direct Rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee.

(d) *Rollover by a Non-Spouse Designated Beneficiary*

- (1) Unless otherwise elected by the Employer, for distributions in Plan Years beginning after December 31, 2006 but on or before December 31, 2009, a non-spouse Beneficiary who qualifies as a

“designated beneficiary” under Code Section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one (1) or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

- (2) Notwithstanding subsection (1), for distributions in Plan Years beginning after December 31, 2009, a non-spouse Beneficiary who qualifies as a “designated beneficiary” under Code Section 401(a)(9)(E) may establish an individual retirement plan that will be treated as an inherited IRA pursuant to the provisions of Code Section 402(c)(11) into which all or a portion of a death benefit distribution from this Plan can be transferred directly. A trust maintained for the benefit of one (1) or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.
- (3) Notwithstanding anything herein to the contrary, a death benefit distribution shall not be eligible for transfer to an inherited IRA to the extent such distribution is a required minimum distribution under Code Section 401(a)(9).
- (4) If the dates noted above are modified by the Employer’s prior plan document, the December 31, 2009 dates in subsections (1) and (2), above, will be modified, as applicable, by the Employer’s prior plan document.

6.12 Trustee-to-Trustee Transfers to Purchase Permissive Service Credit. All or a portion of a Participant’s Account may be transferred directly to the trustee of a defined benefit governmental plan (as defined in Section 414(d) of the Code) if such transfer is (a) for the purchase of permissive service credit (as defined in Section 415(n)(3)(A) of the Code) under such plan, or (b) a repayment to which Section 415 of the Code does not apply by reason of subsection (k)(3) thereof, within the meaning of Section 457(e)(17) of the Code.

6.13 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs. For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in Section 4974(c) of the Code).

6.14 Employer Liability. In no event shall the Employer’s liability to pay benefits to a Participant under this Plan exceed the value of the amounts credited to the Participant’s Account; neither the Employer nor the Administrator shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

Article VII. Benefits

7.01 Retirement Benefits and Election on Severance Event.

- (a) *General Rule:* Except as otherwise provided in this Article VII, the distribution of a Participant’s Account shall commence as of a Participant’s Automatic Distribution Date, and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraphs of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence, but not later than April 1 of

the year following the year of the Participant's retirement or attainment of age 70½, whichever is later. The Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed for those benefits administered by Administrator.

- (b) *Loans*: Notwithstanding the foregoing provisions of this Section 7.01, no election to defer the commencement of benefits after a Severance Event shall operate to defer the distribution of any amount in the Participant's loan account in the event of a default of the Participant's loan.

7.02 Payment Options. As provided in Sections 7.01 and 7.04, a Participant may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03:

- (a) Equal monthly, quarterly, semi-annual or annual payments in an amount chosen by the Participant, continuing until his or her Account is exhausted;
- (b) One (1) lump-sum payment;
- (c) Approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain chosen by the Participant;
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code, including the incidental death benefit requirements of Section 401(a)(9)(G), over the life expectancy of the Participant or over the life expectancies of the Participant and his or her Beneficiary;
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Employer;
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date permitted under Section 7.01;
- (g) Any other payment option elected by the Participant and agreed to by the Employer and Administrator.

A Participant's selection of a payment option under Subsections (a), (c), or (g) above may include the selection of an automatic annual cost-of living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

7.03 Limitation on Options. A Participant may not select a payment option under subsections 7.02(a) or (c) if the amount of any such periodic payment is less than \$100. No payment option may be selected by a Participant under Sections 7.02 or 7.04 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including the requirement that payments commencing before the death of the Participant shall satisfy the incidental death benefit requirements under Section 401(a)(9)(G) of the Code.

7.04 Minimum Required Distributions. Notwithstanding any provision of the Plan to the contrary, the Plan shall comply with the minimum required distribution rules set forth in Sections 457(d)(2) and 401(a)(9) of the

Code, including the incidental death benefit requirements of Section 401(a)(9)(G) of the Code.

- (a) *Application of Minimum Distribution Requirements:* The minimum distribution requirements of Section 401(a)(9) of the Code shall only apply to the Plan to the extent that such requirements are applicable by law for a year. Pursuant to the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), required minimum distributions were suspended for 2009.
- (b) *Special Rule for Scheduled Installment Payments:* All installment payments scheduled to be distributed to a Participant prior to the effective date of a suspension of the required minimum distribution provisions of Code Section 401(a)(9) shall be distributed as scheduled unless the Participant affirmatively elects to have the payments stopped. Notwithstanding the foregoing, for purposes of this Section 7.04(b), the effective date of the suspension of the required minimum distribution provisions for 2009 shall be deemed January 6, 2009.

7.05 Time and Manner of Distribution.

- (a) *Automatic Distribution Date.* The Automatic Distribution Date is April 1 of the year that follows the later of (1) the calendar year the Participant attains age 70½ or (2) retires due to a Severance Event. If the Participant postpones the required distribution due in the calendar year he or she attains age 70½ or severs employment, to the Automatic Distribution Date, the second required minimum distribution must be taken by the end of that year. The Participant's Account will be distributed, or begin to be distributed to the Participant no later than the Participant's Automatic Distribution Date.
- (b) *Death of Participant Before Distributions Begin.* Except as otherwise permitted by Section 401(a)(9) of the Code, if the Participant dies before distributions begin, the Participant's Account will be distributed, or begin to be distributed, no later than as follows:
 - (1) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, then, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
 - (2) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, then distributions to the Designated Beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
 - (3) If there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's Account will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
 - (4) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subparagraph 7.05(b), other than subsection 7.05(b)(1), will apply as if the surviving spouse were the Participant.

Distributions are considered to begin on the Participant's Automatic Distribution Date for purposes of this Section 7.05 and Section 7.07, unless Section 7.05(b)(4) applies. If Section 7.05(b)(4) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under Section 7.05(b)(1). If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Automatic Distribution Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under Section 7.05(b)(1)), the date distributions are considered to begin is the date distributions actually

commence.

- (c) *Death of Participant On or After Distributions Begin.* Except as otherwise permitted by Section 401(a)(9) of the Code, if the Participant dies on or after distributions begin and before depleting his or her Account, distributions must commence to the Designated Beneficiary by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (d) *Forms of Distribution.* Unless the Participant's Account is distributed in the form of an annuity purchased from an insurance company or in a single-sum on or before the Automatic Distribution Date, as of the first Distribution Calendar Year, distributions will be made in accordance with Sections 7.06 and 7.07. If the Participant's Account is distributed in the form of an annuity contract purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Section 401(a)(9) of the Code and the Income Tax Regulations.

7.06 Required Minimum Distributions During Participant's Lifetime.

- (a) *Amount of Required Minimum Distribution for Each Distribution Calendar Year.* During the Participant's lifetime, the minimum amount that will be distributed for each Distribution Calendar Year is the lesser of:
 - (1) the quotient obtained by dividing the Participant's Account Balance by the distribution period set forth in the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Income Tax Regulations using the Participant's age as of the Participant's birthday in the Distribution Calendar Year; or
 - (2) if the Participant's sole Designated Beneficiary for the Distribution Calendar Year is the Participant's spouse, the quotient obtained by dividing the Participant's Account Balance by the number in the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Income Tax Regulations using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the Distribution Calendar Year.
- (b) *Lifetime Required Minimum Distributions Continue Through Year of Participant's Death.* Required minimum distributions will be determined under this Section 7.06 beginning with the first Distribution Calendar Year and continuing up to, and including, the Distribution Calendar Year that includes the Participant's date of death.

7.07 Required Minimum Distributions After Participant's Death.

- (a) *Death On or After Date Distributions Begin.*
 - (1) Participant Survived by Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the longer of the remaining Life Expectancy of the Participant or the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as follows:
 - (i) The Participant's remaining Life Expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.
 - (ii) If the Participant's surviving spouse is the Participant's sole Designated Beneficiary, the remaining Life Expectancy of the surviving spouse is calculated for each Distribution Calendar Year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For Distribution Calendar Years

after the year of the surviving spouse's death, the remaining Life Expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(iii) If the Participant's surviving spouse is not the Participant's sole Designated Beneficiary, the Designated Beneficiary's remaining life expectancy is calculated using the age of the Beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.

(2) No Designated Beneficiary. If the Participant dies on or after the date distributions begin and there is no Designated Beneficiary as of September 30 of the year after the year of the Participant's death, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the Participant's remaining Life Expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

(b) *Death Before Date Distributions Begin.*

(1) Participant Survived by Designated Beneficiary. Except as permitted by Section 401(a)(9) of the Code, if the Participant dies before the date distributions begin and there is a Designated Beneficiary, the minimum amount that will be distributed for each Distribution Calendar Year after the year of the Participant's death is the quotient obtained by dividing the Participant's Account Balance by the remaining Life Expectancy of the Participant's Designated Beneficiary, determined as provided in Section 7.07(a).

(2) No Designated Beneficiary. If the Participant dies before the date distributions begin and there is no Designated Beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire Account will be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(3) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole Designated Beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under Section 7.05(b)(1), this Section 7.07(b) will apply as if the surviving spouse were the Participant.

7.08 Definitions.

(a) *Designated Beneficiary.* The individual who is a designated by the Participant (or the Participant's surviving spouse) as the Beneficiary of the Participant's interest under the Plan and who is the Designated Beneficiary under Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Income Tax Regulations.

(b) *Distribution Calendar Year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first Distribution Calendar Year is the calendar year immediately preceding the calendar year which contains the Participant's Automatic Distribution Date. For distributions beginning after the Participant's death, the first Distribution Calendar Year is the calendar year in which distributions are required to begin under Sections 7.05(b) and (c). The required minimum distribution for the Participant's first Distribution Calendar Year will be made on or before the Participant's Automatic Distribution Date. The required minimum distribution for other Distribution Calendar Years, including the required minimum distribution for the Distribution Calendar Year in which the Participant's Automatic Distribution Date occurs, will be made on or before December 31 of that Distribution Calendar Year.

- (c) *Life Expectancy.* Life Expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Income Tax Regulations.
- (d) *Participant's Account Balance.* The Account Balance as of the last Accounting Date in the calendar year immediately preceding the Distribution Calendar Year (valuation calendar year) increased by the amount of any contribution made and allocated or forfeitures allocated to the Account Balance as of dates in the valuation calendar year after the Accounting Date and decreased by distributions made in the valuation calendar year after the Accounting Date. The Account Balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the Distribution Calendar Year if distributed or transferred in the valuation calendar year.

7.09 Unforeseeable Emergencies.

- (a) In the event an unforeseeable emergency occurs, a Participant, or a Beneficiary with a current unconditional right to all or a portion of the Participant's account balance under the Plan following the death of the Participant, may, unless otherwise elected by the Employer, apply to the Employer (or the Administrator, acting on behalf of the Employer) to receive that part of the value of his or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Employer (or the Administrator, acting on behalf of the Employer), the Participant or Beneficiary shall be paid only such amount as the Employer or Administrator deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship of a Participant or Beneficiary resulting from an illness or accident of the Participant or Beneficiary, the Participant's or Beneficiary's spouse, or the Participant's or Beneficiary's dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code); loss of the Participant's or Beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or the Beneficiary. For example, the imminent foreclosure of or eviction from the Participant's or Beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. The need to pay for the funeral expenses of a spouse or a dependent (as defined in Section 152 of the Code, and, for taxable years beginning on or after January 1, 2005, without regard to Sections 152(b)(1), (b)(2), and (d)(1)(B) of the Code) may also constitute an unforeseeable emergency. In addition, loss of property due to theft, legal bills involving criminal charges, and lost or reduced wages of the Participant's or Beneficiary's household may constitute an unforeseeable emergency if extraordinary, unforeseeable, and arising as a result of events beyond the control of the Participant or Beneficiary and otherwise meeting the conditions described in Section 7.09(a). Except as otherwise specifically provided in this Section 7.09(b), the purchase of a home and the payment of college tuition are not unforeseeable emergencies.
- (c) Unless otherwise elected by the Employer, the determination of any unforeseeable emergency will be expanded to include circumstances of severe financial hardship resulting from an illness or accident of a Primary Beneficiary or other similar extraordinary and unforeseeable circumstances of a Primary Beneficiary that result in a severe financial hardship.

7.10 In-Service Distribution of Rollover Contributions. Effective January 1, 2006, the Employer may elect to allow Participants to receive an in-service distribution of amounts attributable to rollover contributions to the Plan. If the Employer has elected to make such distributions available, a Participant that has a separate account attributable to rollover contributions to the Plan may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

7.11 In-Service Distribution to Participants Age 70½ or Older. Unless otherwise elected by the Employer, a Participant who has reached age 70½ and has not yet had a Severance Event, may, at any time, request a distribution of all or a part of his or her Account.

7.12 Distribution of De Minimis Accounts. Notwithstanding the foregoing provisions of this Article VII:

(a) *Mandatory Distribution:* If the value of a Participant's Account is less than \$1,000, the Participant's Account shall be paid to the Participant in a single lump sum distribution, provided that:

- (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
- (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.12.

Notwithstanding any other provisions of the Plan to the contrary, if the amount of a Beneficiary's Account following notification of a Participant's death is less than \$1,000, the Beneficiary's Account may be paid to the Beneficiary in a single lump sum distribution.

(b) *Voluntary Distribution:* If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Section 411(a)(11)(A) of the Code, the Participant may elect to receive his or her entire Account in a lump sum payment if:

- (1) No amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution; and
- (2) There has been no prior distribution under the Plan to the Participant pursuant to this Section 7.12.

7.13 Deemed Severance from Employment.

(a) Unless otherwise elected by the Employer, effective January 1, 2009, a Participant shall be deemed to have a severance from employment solely for purposes of eligibility to receive distributions from the Plan during any period the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) for more than thirty (30) days.

(b) If a Participant receives a distribution pursuant to Section 7.13(a), then during the six-month period beginning on the date of the distribution the Participant shall not be permitted to defer compensation.

(c) If a Participant receives a distribution which could be attributable to: (i) a deemed severance from employment described in subsection (a); or (ii) another distribution event under the Plan, then the distribution shall be considered made pursuant to the distribution event referenced in (ii), and the Participant shall not be subject to the limitation on elective deferrals or Voluntary Employee

Contributions set forth in subsection (b).

7.14 Distributions for Health and Long-Term Care Insurance for Public Safety Officers.

- (a) If elected by the Employer, for Plan Years beginning after December 31, 2006, Eligible Retired Public Safety Officers may elect after separation from service to have up to \$3,000 distributed tax-free annually from the Plan in order to pay for Qualified Health Insurance Premiums for an accident or health plan (including a self-insured plan) or a qualified long-term care insurance contract. The Plan shall make such distributions directly to the provider of the accident or health plan or qualified long-term care insurance contract.
- (b) The term “Eligible Retired Public Safety Officer” means an individual who, by reason of disability or attainment of Normal Retirement Age, is separated from service as a Public Safety Officer with the Employer who maintains the eligible retirement plan from which distributions pursuant to this Section are made. The term “Public Safety Officer” has the same meaning given such term by Section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968.
- (c) The term “Qualified Health Insurance Premiums” means premiums for coverage for the Eligible Retired Public Safety Officer, his spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract (as defined in Code Section 7702B).

7.15 **EESA Provisions.** The provisions relating to qualified disaster recovery assistance distributions for Participants affected by certain 2008 severe storms, flooding, and tornadoes and repayment thereof, and relating to repayment of prior qualified distributions for home purchases, set forth in Section 702 of the Emergency Economic Stabilization Act of 2008 (“EESA”) shall apply to the Plan.

7.16 **KETRA and GOZA Provisions.** The provisions relating to qualified hurricane distributions and repayment thereof set forth in Section 1400Q(a) of the Code, and relating to repayment of prior qualified distributions for home purchases set forth in Code Section 1400Q(b), shall apply to the Plan. These provisions added to the Code by the Katrina Emergency Tax Relief Act of 2005 (“KETRA”) and the Gulf Opportunity Zone Act of 2005 (GOZA), permit plans to allow repayments of certain prior qualified distributions for home purchases for Participants affected by Hurricanes Katrina, Rita, and Wilma.

Article VIII. Loans to Participants

8.01 Availability of Loans to Participants.

- (a) If elected by the Employer, loans will be available to Participants in this Plan. A Participant may apply for a loan from the Plan subject to the limitations and other provisions of this Article.
- (b) The Employer shall establish written guidelines governing the granting of loans, provided that such guidelines are approved by the Administrator and are not inconsistent with the provisions of this Article, and that loans are made available to all applicable Participants on a reasonably equivalent basis.

8.02 **Terms and Conditions of Loans to Participants.** Any loan by the Plan to a Participant under Section 8.01 of the Plan shall satisfy the following requirements:

- (a) *Availability.* Loans shall be made available to all Participants who are active employees on a reasonably

equivalent basis. Loans shall not be made available to terminated Employees, Beneficiaries, or alternate payees.

- (b) *Interest Rate.* Loans must be adequately secured and bear a reasonable interest rate.
- (c) *Loan Limit.* No Participant loan shall exceed the present value of the Participant's Account.
- (d) *Foreclosure.* In the event of default on any installment payment, the outstanding balance of the loan shall be a deemed distribution. In such event, an actual distribution of a plan loan offset amount will not occur until a distributable event occurs in the Plan.
- (e) *Reduction of Account.* Notwithstanding any other provision of this Plan, the portion of the Participant's Account balance used as a security interest held by the Plan by reason of a loan outstanding to the Participant shall be taken into account for purposes of determining the amount of the Account balance payable at the time of death or distribution, but only if the reduction is used as repayment of the loan.
- (f) *Amount of Loan.* At the time the loan is made, the principal amount of the loan plus the outstanding balance (principal plus accrued interest) due on any other outstanding loans to the Participant from the Plan and from all other plans of the Employer that are either eligible deferred compensation plans described in Section 457(b) of the Code or qualified employer plans under Section 72(p)(4) of the Code shall not exceed the lesser of:
 - (1) \$50,000, reduced by the excess (if any) of
 - (i) The highest outstanding balance of loans from the Plan during the one (1) year period ending on the day before the date on which the loan is made; over
 - (ii) The outstanding balance of loans from the Plan on the date on which such loan is made; or
 - (2) One-half of the value of the Participant's interest in all of his or her Accounts under this Plan.

For the purpose of the above limitation, all loans from all qualified employer plans of the Employer under Code Section 72(p)(4) are aggregated.

- (g) *Application for Loan.* The Participant must give the Employer adequate written notice, as determined by the Employer, of the amount and desired time for receiving a loan. No more than one (1) loan may be made by the Plan to a Participant in any twelve-month period, unless a different period is elected by the Employer. No loan shall be approved if an existing loan from the Plan to the Participant is in default to any extent.
- (h) *Length of Loan.* Any loan issued shall require the Participant to repay the loan in substantially equal installments of principal and interest, at least monthly, over a period that does not exceed five (5) years from the date of the loan; provided, however, that if the proceeds of the loan are applied by the Participant to acquire any dwelling unit that is to be used within a reasonable time (determined at the time of the loan is made) after the loan is made as the principal residence of the Participant, the five (5) year limit shall not apply. In this event, the period of repayment shall not exceed a reasonable period determined by the Employer. Principal installments and interest payments otherwise due may be suspended for up to one (1) year during an authorized leave of absence, if the promissory note so provides, but not beyond the original term permitted under this subsection (h), with a revised payment schedule (within such term) instituted at the end of such period of suspension.

- (i) *Prepayment.* The Participant shall be permitted to repay the loan in whole or in part at any time prior to maturity, without penalty.
- (j) *Promissory Note.* The loan shall be evidenced by a promissory note executed by the Participant and delivered to the Employer, and shall bear interest at a reasonable rate determined by the Employer.
- (k) *Security.* The loan shall be secured by an assignment of the participant's right, title and interest in and to his or her Account.
- (l) *Assignment or Pledge.* For the purposes of paragraphs (f) and (g), assignment or pledge of any portion of the Participant's interest in the Plan and a loan, pledge, or assignment with respect to any insurance contract purchased under the Plan, will be treated as a loan.
- (m) *Other Terms and Conditions.* The Employer shall fix such other terms and conditions of the loan as it deems necessary to comply with legal requirements, to maintain the eligibility of the Plan and Trust under Section 457 of the Code, or to prevent the treatment of the loan for tax purposes as a distribution to the Participant. The Employer, in its discretion for any reason, may also fix other terms and conditions of the loan, not inconsistent with the provisions of this Article, including:
 - (1) the circumstances under which a loan becomes immediately due and payable, provided, however, with respect to loans issued after December 31, 2012, that the loan program shall not provide that a loan becomes due and payable solely because the Participant requests or receives a partial distribution of the Participant's account balance after termination of employment;
 - (2) rules relating to reamortization of loans; and
 - (3) rules relating to refinance of loans.

8.03 Participant Loan Accounts.

- (a) Upon approval of a loan to a Participant by the Employer, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's loan account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's loan account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 8.01 of the Plan or in cash. Uninvested cash balances in a Participant's loan account shall not bear interest. Neither the Employer, the Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by payroll deduction or, Automated Clearing House (ACH) transfer, or with respect to a terminated Employee solely by ACH, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's loan account. A payment intended to be a prepayment or payment of the loan in full may also be made by cashier's check or money order, and shall be invested in accordance with this provision.
- (d) The Employer shall have the authority to establish other reasonable rules, not inconsistent with the

provisions of the Plan, governing the establishment and maintenance of Participant loan accounts.

Article IX. Roth Provisions

This Article IX has no effect unless and until the Employer affirmatively elects to offer Designated Roth Accounts.

9.01 Definitions. The following definitions shall apply for purposes of this Article IX.

- (a) *Designated Roth Account.* A bookkeeping account established and maintained to record the Participant's Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth account under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Designated Roth Account.
- (b) *In-Plan Roth Conversion.* (1) A distribution from a Participant's Pre-Tax Account that is rolled over to the Participant's Designated Roth Account under the Plan, as described in Code Section 402A(c)(4)(B); or (2) A transfer from an amount in the Participant's Pre-Tax Account not otherwise distributable from the Plan to the Participant's Designated Roth Account under the Plan, as described in Code Section 402A(c)(4)(E), to the extent permitted by Section 9.05(e).
- (c) *Pre-Tax Account.* A bookkeeping account established and maintained to record the portion of the Participant's Account attributable to amounts other than Roth Elective Deferrals, In-Plan Roth Conversions, rollovers from designated Roth accounts under other eligible retirement plans, and the income gains and losses thereon. Unless specifically stated otherwise, all references in the Plan to a Participant's Account shall include a Participant's Pre-Tax Account.
- (d) *Qualified Roth Contribution Program.* A program described in paragraph (1) of Code Section 402A(b), under which a Participant may make Roth Elective Deferrals in lieu of all or a portion of the elective deferrals the Participant is otherwise eligible to make under the Plan.
- (e) *Roth Elective Deferrals.* Deferred Includible Compensation contributed pursuant to Section 9.02 by a Participant, which amounts are:
 - (1) designated irrevocably by the Participant at the time of the deferral election as a Roth elective deferral that is being made in lieu of all or a portion of the pre-tax deferrals the Participant is otherwise eligible to make under the Plan; and
 - (2) treated by the Employer as includible in the Participant's income at the time the Participant otherwise would have received that amount as Includible Compensation.

9.02 Permitted Roth Elective Deferrals

- (a) If the Employer elects to offer Designated Roth Accounts, as of the effective date of such election, a Participant shall be permitted to make Roth Elective Deferrals from his or her Includible Compensation in such amount or percentage as may be specified in the Joinder Agreement. A Participant's Roth Elective Deferrals will be allocated to a separate Designated Roth Account maintained for such deferrals as defined in Section 9.01(a) above.
- (b) Unless specifically stated otherwise, Roth Elective Deferrals will be treated as Deferred Compensation for all purposes under the Plan.

9.03 Separate Accounting

- (a) Contributions and withdrawals of Roth Elective Deferrals, In-Plan Roth Conversions and rollovers from a designated Roth account under an eligible retirement plan will be credited and debited to a Participant's Designated Roth Account.
- (b) The Plan will maintain a record of the amount of Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan in each Participant's Designated Roth Account.
- (c) Gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to each Participant's Designated Roth Account and Pre-Tax Account under the Plan.
- (d) No contributions other than Roth Elective Deferrals, In-Plan Roth Conversions, and rollovers from a designated Roth account under an eligible retirement plan and properly attributable earnings thereon will be credited to each Participant's Designated Roth Account.

9.04 Direct Rollovers

- (a) Notwithstanding anything to the contrary in the Plan, a direct rollover of a distribution from a Designated Roth Account under the Plan shall be made only to another designated Roth account under an eligible retirement plan described in Section 402A(e)(1) of the Code or to a Roth IRA described in Section 408A of the Code, and only to the extent the rollover is permitted under the rules of Section 402(c) of the Code.
- (b) Notwithstanding anything to the contrary in the Plan, unless otherwise elected by the Employer, the Plan will accept a rollover contribution to a Designated Roth Account only if it is a direct rollover from another designated Roth account under an eligible retirement plan described in Section 402A(e)(1) of the Code, or if the rollover is an In-Plan Roth Conversion defined in Section 10.05.
- (c) Eligible rollover distributions from a Participant's Designated Roth Account are taken into account in determining whether the total amount of the Participant's Account balances under the Plan exceeds \$1,000 for purposes of mandatory distributions from the Plan.

9.05 In-Plan Roth Conversions. Unless otherwise elected by the Employer, as of the effective date of this Article the Plan shall allow for In-Plan Roth Conversions.

- (a) *Tax Treatment.* The amount of an In-Plan Roth Conversion shall be includible in the Participant's gross income, as though it were not part of a qualified rollover contribution.
- (b) *Irrevocability.* Any election made by the Participant pursuant to Section 9.05(a) to do an In-Plan Roth Conversion shall be irrevocable.
- (c) *Treatment of Loans.* Outstanding plan loans shall be excluded from In-Plan Roth Conversions. Notwithstanding anything herein to the contrary, an In-Plan Roth Conversion shall not accelerate or otherwise cause a Participant to default on an outstanding plan loan.
- (d) *Spousal Consent.* Notwithstanding anything herein to the contrary, if the Plan requires spousal consent for a distribution, a married Participant shall not be required to obtain spousal consent in connection

with an election to make an In-Plan Roth Conversion.

- (e) *In-Plan Roth Conversions of Non-Distributable Amounts.* Effective January 1, 2013, a Participant may transfer, as part of an In-Plan Roth Conversion, an amount that is not otherwise distributable from the Participant's Pre-Tax Account to the Participant's Designated Roth Account. Such transfer shall be treated as a distribution which was contributed in a qualified rollover contribution within the meaning of Code Section 408A(e). Any distribution restrictions that were applicable to the amount before the In-Plan Roth Conversion shall apply to such amount (and earnings and losses thereon) in the Participant's Designated Roth Account. If the Participant's Account or a portion of the Account is subject to a vesting schedule, an In-Plan Roth Conversion is available only if the Account or portion of the Account is fully vested. The Participant may not transfer under this Section 9.05(e) any portion of the Account that is partially vested.

9.06 Availability of Loans from Designated Roth Accounts. A Participant's Designated Roth Account balance can be included to determine a Participant loan amount under Article VIII. However, unless the Employer elects otherwise, Designated Roth Accounts will not be available as a source for loans under the Plan.

Article X. Non-Assignability

10.01 General. Except as provided in Article VIII and Section 10.02, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be non-assignable and non-transferable.

10.02 Domestic Relations Orders.

- (a) *Allowance of Transfers:* To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) that (1) relates to the provision of child support, alimony payments, or marital property rights and (2) is made pursuant to a state domestic relations law, and (3) is permitted under Sections 414(p)(11) and (12) of the Code, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the Participant (an "Alternate Payee"). Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the Alternate Payee who shall be entitled to make investment selections with respect thereto in the same manner as the Participant. Any amount so set aside for an Alternate Payee shall be paid in accordance with the form and timing of payment specified in the order. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code and is explicitly permitted under the uniform procedures described in Section 10.02(d) below. Notwithstanding the foregoing sentence, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State, then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding. An Account maintained by the Alternate Payee shall otherwise be treated as if it were a Participant Account.

- (b) *Release from Liability to Participant:* The Employer's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to an Alternate Payee to paragraph (a) of this Section and the Participant and his or her Beneficiaries shall be deemed to have released the Employer and the Plan Administrator from any claim with respect to such amounts.
- (c) *Participation in Legal Proceedings:* The Employer and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Employer or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Employer's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Employer and Administrator shall be authorized to disclose information relating to the Participant's Account to the Alternate Payee (including the legal representatives of the Alternate Payee), or to a court.
- (d) *Determination of Validity of Domestic Relations Orders:* The Administrator shall establish uniform procedures for determining the validity of any domestic relations order. The Administrator's determinations under such procedures shall be conclusive and binding on all parties and shall be afforded the maximum amount of deference permitted by law.

10.03 IRS Levy. Notwithstanding Section 10.01, the Administrator may pay from a Participant's or Beneficiary's Account balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

10.04 Mistaken Contribution. To the extent permitted by applicable law, if any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

10.05 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such persons as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

10.06 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on the Employer or Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guarantee Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within six (6) months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust shall continue to hold the benefits due such person to the extent consistent with applicable law.

Article XI. Relationship to Other Plans and Employment Agreements

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Employer's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Employer or to give any Participant the right to be retained in the employ of the Employer. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Employer.

Article XII. Amendment or Termination of Plan

The Employer may at any time amend this Plan provided that it transmits such amendment in writing to the Administrator at least thirty (30) days prior to the effective date of the amendment. The consent of the Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Employer. Such amendment shall become effective unless, within the 30-day period beginning on the date the Administrator transmits such amendment, the Employer notifies the Administrator in writing that it disapproves such amendment, in which case such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

The Employer may at any time terminate this Plan. In the event of termination, assets of the Plan shall be distributed to Participants and Beneficiaries as soon as administratively practicable following termination of the Plan. Alternatively, assets of the Plan may be transferred to an eligible deferred compensation plan maintained by another eligible governmental employer within the same State if (a) all assets held by the Plan are transferred; (b) the receiving plan provides for the receipt of transfers; (c) the Participants and Beneficiaries whose deferred amounts are being transferred will have an amount immediately after the transfer at least equal to the deferred amount immediately before the transfer; and (d) the Participants or Beneficiaries whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless the Participants or Beneficiaries are performing services for the employer maintaining the receiving plan. In addition, unless otherwise prohibited by applicable law, with respect to Participants or Beneficiaries who cannot be located or who do not elect otherwise, the assets held in the accounts of such Participants or Beneficiaries may be transferred to an individual retirement plan (as defined in Section 7701(a)(37) of the Code) selected by the Employer.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under Section 457(b) of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

Article XIII. Applicable Law

This Plan and Trust shall be construed under the laws of the state where the Employer is located and is established with the intent that it meet the requirements of an "eligible deferred compensation plan" under Section 457(b) of the Code, as amended. The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of Section 414(u) of the Code.

Article XIV. Miscellaneous Items

14.01 Gender and Number. The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

14.02 Electronic Communication and Consent. Unless expressly required otherwise, where this Plan provides that a document, election, notification, direction, signature, or consent will be in writing, such writing may occur through an electronic medium, including but not limited to electronic mail, intranet or internet web posting and online account access, to the fullest extent permitted by applicable law.

DECLARATION OF TRUST

This Declaration of Trust (the “Group Trust Agreement”) is made as of the 19th day of May, 2001, by VantageTrust Company, which declares itself to be the sole Trustee of the trust hereby created.

WHEREAS, the ICMA Retirement Trust was created as a vehicle for the commingling of the assets of governmental plans and governmental units described in Section 818(a)(6) of the Internal Revenue Code of 1986, as amended, pursuant to a Declaration of Trust dated October 4, 1982, as subsequently amended, a copy of which is attached hereto and incorporated by reference as set out below (the “ICMA Declaration”); and

WHEREAS, the trust created hereunder (the “Group Trust”) is intended to meet the requirements of Revenue Ruling 81-100, 1981-1 C.B. 326, and is established as a common trust fund within the meaning of Section 391:1 of Title 35 of the New Hampshire Revised Statutes Annotated, to accept and hold for investment purposes the assets of the Deferred Compensation and Qualified Plans held by and through the ICMA Retirement Trust.

NOW, THEREFORE, the Group Trust is created by the execution of this Declaration of Trust by the Trustee and is established with respect to each Deferred Compensation and Qualified Plan by the transfer to the Trustee of such Plan’s assets in the ICMA Retirement Trust, by the Trustees thereof, in accord with the following provisions:

- (a) Incorporation of ICMA Declaration by Reference; ICMA By-Laws. Except as otherwise provided in this Group Trust Agreement, and to the extent not inconsistent herewith, all provisions of the ICMA Declaration are incorporated herein by reference and made a part hereof, to be read by substituting the Group Trust for the Retirement Trust and the Trustee for the Board of Trustees referenced therein. In this respect, unless the context clearly indicates otherwise, all capitalized terms used herein and defined in the ICMA Declaration have the meanings assigned to them in the ICMA Declaration. In addition, the By-Laws of the ICMA Retirement Trust, as the same may be amended from time-to-time, are adopted as the By-Laws of the Group Trust to the extent not inconsistent with the terms of this Group Trust Agreement.

Notwithstanding the foregoing, the terms of the ICMA Declaration and By-Laws are further modified with respect to the Group Trust created hereunder, as follows:

1. any reporting, distribution, or other obligation of the Group Trust vis-à-vis any Deferred Compensation Plan, Qualified Plan, Public Employer, Public Employer Trustee, or Employer Trust shall be deemed satisfied to the extent that such obligation is undertaken by the ICMA Retirement Trust (in which case the obligation of the Group Trust shall run to the ICMA Retirement Trust); and
2. all provisions dealing with the number, qualification, election, term and nomination of Trustees shall not apply, and all other provisions relating to trustees (including, but not limited to,

resignation and removal) shall be interpreted in a manner consistent with the appointment of a single corporate trustee.

(b) *Compliance with Revenue Procedure 81-100.* The requirements of Revenue Procedure 81-100 are applicable to the Group Trust as follows:

1. Pursuant to the terms of this Group Trust Agreement and Article X of the By-Laws, investment in the Group Trust is limited to assets of Deferred Compensation and Qualified Plans, investing through the ICMA Retirement Trust.
2. Pursuant to the By-Laws, the Group Trust is adopted as a part of each Qualified Plan that invests herein through the ICMA Retirement Trust.
3. In accord with the By-Laws, that part of the Group Trust's corpus or income which equitably belongs to any Deferred Compensation and Qualified Plan may not be used for or diverted to any purposes other than for the exclusive benefit of the Plan's employees or their beneficiaries who are entitled to benefits under such Plan.
4. In accord with the By-Laws, no Deferred Compensation Plan or Qualified Plan may assign any or part of its equity or interest in the Group Trust, and any purported assignment of such equity or interest shall be void.

(c) *Governing Law.* Except as otherwise required by federal, state or local law, this Declaration of Trust (including the ICMA Declaration to the extent incorporated herein) and the Group Trust created hereunder shall be construed and determined in accordance with applicable laws of the State of New Hampshire.

(d) *Judicial Proceedings.* The Trustee may at any time initiate an action or proceeding in the appropriate state or federal courts within or outside the state of New Hampshire for the settlement of its accounts or for the determination of any question of construction which may arise or for instructions.

IN WITNESS WHEREOF, the Trustee has executed this Declaration of Trust as of the day and year first above written.

VANTAGETRUST COMPANY



ICMA RETIREMENT CORPORATION
777 NORTH CAPITOL STREET, NE | WASHINGTON, DC 20002-4240
800-669-7400
WWW.ICMARC.ORG
BRC000-28794-0416

Governmental 457 Plan and Trust Optional Provisions Election Form

Employers should execute this form to make elections, or change prior elections, related to optional provisions contained in the ICMA Retirement Corporation *457 Governmental Deferred Compensation Plan and Trust* document. This form may also be used by plan sponsors utilizing an individually designed plan document.

Plan Number: 30⁷⁶⁰¹ _____ Employer Plan Name: Valley Clean Energy Alliance 457 (b) Plan

I. PLAN DOCUMENT (If you are establishing a new plan, please skip this section.)

Our Plan currently uses:

- ICMA-RC's model plan document
- An individually designed plan document

II. PLAN YEAR

The Plan Year will be (select one):

- January 1 – December 31 (*Default*); or
- The 12 month period beginning _____
Month Day

III. ELIGIBILITY REQUIREMENTS

The following group or groups of Employees are eligible to participate in the Plan:

- All Employees (*Default*)
- All Full Time Employees
- Salaried Employees
- Non-union Employees
- Management
- Public Safety Employees
- General Employees
- Other Employees (specify the group(s) of eligible employees):

The group specified must correspond to a group of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other material in effect in the state or locality of the Employer.

IV. LOANS

Loans are allowed under the Plan.

Yes No (*Default*)

If you select "Yes" above, you must also complete and return the Loan Guidelines Agreement in the Loan Implementation Package for 457/401 Plan Sponsors.

V. DISTRIBUTIONS

a. Distributions while employed with the Employer (in-service distributions) at 70½ will be allowed.

Yes (*Default*) No

a. In-service distributions of rollovers are allowed at any time.

Yes No (*Default*)

b. Tax-free distributions for the payment of qualifying insurance premiums for eligible retired public safety officers are available under the Plan.

Yes No (*Default*)

c. Unforeseeable emergency withdrawals are permitted.

Yes (*Default*) No

i. In applying the rules for unforeseeable emergency withdrawals, the determination of any unforeseen emergency shall include circumstances applying to a Primary Beneficiary.

Yes (*Default*) No

VI. ROTH PROVISIONS

a. The Plan will offer Designated Roth Accounts as described in Article IX.

Yes No (*Default*)

[If No is selected, skip the remainder of this Section VI]

b. The Plan will allow In-Plan Roth Conversions as provided in Section 9.05.

Yes (*Default*) No

c. Designated Roth Accounts will be available as a source for loans under the Plan.

Yes No or N/A (*Default*)

VII. AUTOMATIC ENROLLMENT

The Plan will offer automatic enrollment.

Yes No (*Default*)

If you select "Yes" above, further steps are required to implement this feature, including completing implementation forms. We will contact you.

VIII. DEFERRAL OF SICK PAY, VACATION AND BACK PAY (CHOOSE ANY/ALL THAT APPLY)

Participants may elect to defer

- Accumulated Sick Pay
- Accumulated Vacation Pay
- Back Pay

Note: If no election is made, a Participant will not be able to defer any of these.

The Participant's election to defer accumulated sick pay, accumulated vacation pay, or back pay must be made before the beginning of the month in which these amounts would otherwise be paid or made available to the employee.

IX. EMPLOYER MATCH

Employer will match Elective Deferrals and Default Elective Deferrals ("Deferrals"), beginning with the first payroll period occurring 91 days after a Participant's first Deferral.

- Yes
- No (*Default*)

[If No is selected, skip the remainder of this Section IX. IF YES, COMPLETE ALL THAT APPLY]

Employer Percentage Match of Deferrals

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

_____ % of the Deferrals made on behalf of the Participant for the Plan Year (not including Deferrals exceeding _____ % of Earnings or \$ _____);

PLUS _____ % of the Deferrals made on behalf of the Participant for the Plan Year in excess of those included in the above paragraph (but not including Deferrals exceeding in the aggregate _____ % of Earnings or \$ _____).

Employer matching contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____ % of Earnings, whichever is (CHOOSE ONE) more less.

Employer Dollar Match of Deferrals

The Employer shall contribute on behalf of each Participant an amount determined as follows (subject to the limitations of Article V of the Plan):

\$ _____ for each _____ % of Earnings or \$ _____ that the Employer contributes on behalf of the Participant as Deferrals for the Plan Year (not including Deferrals exceeding _____ % of Earnings or \$ _____);

PLUS \$ _____ for each _____ % of Earnings or \$ _____ that the Employer contributes on behalf of the Participant as Deferrals for the Plan Year in excess of those included in the above paragraph (but not including Deferrals exceeding in the aggregate % of Earnings or \$ _____).

Employer matching contributions on behalf of a Participant for a Plan Year shall not exceed \$ _____ or _____ % of Earnings, whichever is
(CHOOSE ONE) more less.

X. MILITARY SERVICE ELECTIONS

- a. Plan contributions shall be made under the plan for differential wage payments (i.e. payments made by the employer to an individual performing military service that represents all or a portion of the wages he/she would have received).

Yes (*Default*) No

If yes is selected, this is effective beginning January 1, 2009 (or if later, the effective date of the Plan), unless another effective date is filled in here:

- b. A participant shall be deemed to have a severance from employment for purposes of eligibility for a distribution during any period of military service for more than 30 days.

Yes No (*Default*)

- c. A participant who dies or becomes Disabled (as defined in the Plan) while performing qualified military service shall receive Plan contributions as if the individual had resumed employment on the day preceding death or disability and then terminated employment on the actual date of death or disability.

Yes No (*Default*)

If yes is selected, this is effective for participants who died or became disabled while performing military service on or after January 1, 2007 (or if later, the effective date of the Plan), unless another effective date is filled in here:

_____ (date cannot be prior to January 1, 2007)

XI. SPOUSAL CONSENT (APPLIES ONLY TO COMMUNITY PROPERTY STATES). If your state is not a community property state, skip the remainder of section xi.

Where spousal consent is required, it will apply to:

- Only to persons who are married (*Default*)
- A person who is married, who is a domestic partner under state law, or who is a person in a civil union or other formally recognized personal partnership
- A person who is married or who is a domestic partner under state law

- A person who is married or is a person in a civil union or other formally recognized personal partnership

Note: This election applies only for Plans in community property states requiring the consent of a spouse to name someone other than the spouse as a beneficiary, and only for determining who is treated as a "spouse" for this purpose and not for any other Plan purposes.

XII. SUMMARY OF CHANGES. If you are making changes to an existing plan, please summarize the changes along with the effective dates of the changes below and identify the applicable Optional Provisions Election Form section number. If you are establishing a new plan, please skip this section.

- a. _____ Effective Date:
b. _____ Effective Date:
c. _____ Effective Date:
d. _____ Effective Date:

XIII. EMPLOYER SIGNATURE

By signing, the employer confirms he or she is authorized to make the elections specified on this form.

Employer hereby appoints ICMA-RC as the non-discretionary Plan Administrator in accordance with the terms and conditions of the ICMA Retirement Corporation 457 Governmental Deferred Compensation Plan and Trust.

Employer hereby attests that it is a unit of state or local government or an agency or instrumentality of one or more units of state or local government.

Employer acknowledges that applicable state law may or may not allow for the addition of an Automatic Enrollment Feature in their 457(b) plan administered by ICMA-RC, and Employer assumes full responsibility for the decision to add such a feature to their plan.

Employer Signature: _____

Date (mm/dd/yyyy) ____/____/____

Name (Please Print): _____

Title: _____

Preferred Phone Number: (____) _____

Email Address: _____

Plan Number: _____

ADMINISTRATIVE SERVICES AGREEMENT

Between

ICMA Retirement Corporation

and

Valley Clean Energy Alliance

Type: 457

Account #: 307601

Type: 401

Account #: 109971

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (“Agreement”), made as of the day of , 20___ between the International City Management Association Retirement Corporation (“ICMA-RC”), a nonprofit corporation organized and existing under the laws of the State of Delaware, and the Valley Clean Energy Alliance (“Employer”), an entity organized and existing under the laws of the State of California with an office at 604 2nd Street, Davis, California 95616.

RECITALS

Employer acts as public plan sponsor of a retirement plan (“Plan”), and in that capacity, has responsibility to obtain administrative services and investment alternatives for the Plan;

VantageTrust is a group trust established and maintained in accordance with New Hampshire Revised Statutes Annotated section 391:1 and Internal Revenue Service Revenue Ruling 81-100, 1981-1 C.B. 326, which provides for the commingled investment of retirement funds;

ICMA-RC acts as investment adviser to VantageTrust Company, LLC, the Trustee of VantageTrust;

ICMA-RC has designed, and VantageTrust offers, a series of separate funds (the “Funds”) for the investment of plan assets as referenced in VantageTrust’s principal disclosure documents, the VantageTrust Disclosure Memorandum and the Funds’ Fact Sheets (together, “VT Disclosures”); and

In addition to serving as investment adviser to VantageTrust Company LLC, ICMA-RC provides a range of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account recordkeeping, investment and tax reporting, transaction processing, and benefit disbursement.

AGREEMENTS

1. Appointment of ICMA-RC

Employer hereby appoints ICMA-RC as Administrator of the Plan to perform all nondiscretionary functions necessary for the administration of the Plan. The functions to be performed by ICMA-RC shall be those set forth in Exhibit A to this Agreement.

2. Adoption of Trust

Employer has adopted the Declaration of Trust of VantageTrust Company and agrees to the commingled investment of assets of the Plan within VantageTrust. Employer agrees that the investment, management, and distribution of amounts deposited in VantageTrust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the VT Disclosures or Employer Bulletins) as those terms and conditions may be adjusted from time to time.

3. Employer Duty to Furnish Information

Employer agrees to furnish to ICMA-RC on a timely basis such information as is necessary for ICMA-RC to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in VantageTrust, and information as to the employment status of participants, and participant ages, addresses, and other identifying information (including tax identification numbers). Employer also agrees that it will notify ICMA-RC in a timely manner regarding changes in staff as it relates to various roles. This is to be completed through the online EZLink employer contact options. ICMA-RC shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and ICMA-RC shall not be responsible for any error arising from its reliance on such information. ICMA-RC will provide reports, statements and account information to the Employer through EZLink, the online plan administrative tool.

Employer is required to send in contributions through EZLink, the online plan administration tool provided by ICMA-RC. Alternative electronic methods may be allowed, but must be approved by ICMA-RC for use. Contributions may not be sent through paper submittal documents.

To the extent Employer selects third-party funds that do not have fund profile information provided to ICMA-RC through our electronic data feeds from external sources (such as Morningstar) or third party fund providers, the Employer is responsible for providing to ICMA-RC timely fund investment updates for disclosure to Plan participants. Such updates may be provided to ICMA-RC through the Employer's investment consultant or other designated representative.

Failure to provide timely fund profile update information, including the source of the information, may result in a lack of fund information for participants, as ICMA-RC will remove outdated fund profile information from the systems that provide fund information to Plan participants.

4. Certain Representations and Warranties

ICMA-RC represents and warrants to Employer that:

- (a) ICMA-RC is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of ICMA-RC to serve as investment adviser to VantageTrust is dependent upon the continued willingness of VantageTrust for ICMA-RC to serve in that capacity.
- (b) ICMA-RC is an investment adviser registered as such with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended.
- (c) (i) ICMA-RC shall maintain and administer the Plan in accordance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code and other applicable federal law; provided, however, that ICMA-RC shall not be responsible for the eligible status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the Plan not to be carried out in accordance with its terms. Further, in the event that the Employer uses its own customized plan document, ICMA-RC shall not be responsible for the eligible status of the Plan to the extent affected by terms in the Employer's plan document that differ from those in ICMA-RC's standard plan document. ICMA-RC shall not be responsible for monitoring state or local law applicable to retirement plans or for administering the Plan in compliance with local or state requirements unless Employer notifies ICMA-RC of any such local or state requirements.
- (c) (ii) ICMA-RC shall maintain and administer the Plan in accordance with the requirements for plans which satisfy the qualification requirements of Section 401 of the Internal Revenue Code and other applicable federal law; provided, however, ICMA-RC shall not be responsible for the qualified status of the Plan in the event that the Employer directs ICMA-RC to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 401 or otherwise causes the Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of ICMA-RC's standardized plan document, ICMA-RC shall not be responsible for the qualified status of the Plan to the extent affected by the differing terms in the Employer's plan document. ICMA-RC shall not be

responsible for monitoring state or local law applicable to retirement plans or for administering the Plan in compliance with local or state requirements unless Employer notifies ICMA-RC of any such local or state requirements.

Employer represents and warrants to ICMA-RC that:

- (d) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.
- (e) Employer understands and agrees that ICMA-RC's sole function under this Agreement is to act as recordkeeper and to provide administrative, investment or other services at the direction of Plan participants, the Employer, its agents or designees in accordance with the terms of this Agreement. Under the terms of this Agreement, ICMA-RC does not render investment advice, is neither the "Plan Administrator" nor "Plan Sponsor" as those terms are defined under applicable federal, state, or local law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the Plan and its related trust. ICMA-RC does not perform any service under this Agreement that might cause ICMA-RC to be treated as a "fiduciary" of the Plan under applicable law, except, and only, to the extent that ICMA-RC provides investment advisory services to individual participants enrolled in Guided Pathways Advisory Services.
- (f) Employer acknowledges and agrees that ICMA-RC does not assume any responsibility with respect to the selection or retention of the Plan's investment options. Employer shall have exclusive responsibility for the Plan's investment options, including the selection of the applicable mutual fund share class. Where applicable, Employer understands that the VT Retirement Income Advantage Fund is an investment option for the Plan and that the fund invests in a separate account available through a group variable annuity contract. By entering into this Agreement, Employer acknowledges that it has received the Important Considerations document and the VT Disclosures and that it has read the information therein concerning the VT Retirement Income Advantage Fund.
- (g) Employer acknowledges that certain such services to be performed by ICMA-RC under this Agreement may be performed by an affiliate or agent of ICMA-RC pursuant to one or more other contractual arrangements or relationships, and that ICMA-RC reserves the right to

change vendors with which it has contracted to provide services in connection with this Agreement without prior notice to Employer.

- (h) Employer acknowledges that it has received ICMA-RC's Fee Disclosure Statement, prepared in substantial conformance with ERISA regulations regarding the disclosure of fees to plan sponsors.
- (i) Employer approves the use of its Plan in ICMA-RC external media, publications and materials. Examples include press releases announcements and inclusion of the general plan information in request for proposal responses.

5. Participation in Certain Proceedings

The Employer hereby authorizes ICMA-RC to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Plan. Unless Employer notifies ICMA-RC otherwise, Employer consents to the disbursement by ICMA-RC of benefits that have been garnished or transferred to a former spouse, current spouse, or child pursuant to a domestic relations order or child support order.

6. Compensation and Payment

- (a) **Plan Administration Fee.** The amount to be paid for plan administration services under this Agreement shall be 0.55% per annum of the amount of Plan assets invested in VantageTrust. Such fee shall be computed based on average daily net Plan assets in VantageTrust.
- (b) **Compensation for Management Services to VantageTrust, Compensation for Advisory and other Services to the VT III Vantagepoint Funds and Payments from Third-Party Mutual Funds.** Employer acknowledges that, in addition to amounts payable under this Agreement, ICMA-RC receives fees from VantageTrust for investment advisory services and plan and participant services furnished to VantageTrust. Employer further acknowledges that ICMA-RC, including certain of its wholly owned subsidiaries, receives compensation for advisory and other services furnished to the VT III Vantagepoint Funds, which serve as the underlying portfolios of a number of Funds offered through VantageTrust. For a VantageTrust Fund that invests substantially all of its assets in a third-party mutual fund not affiliated with ICMA-RC, ICMA-RC or its wholly owned subsidiary receives payments from the third-party mutual fund families or their service providers in the form of 12b-1 fees, service fees, compensation for sub-accounting and other services provided based on assets in the underlying third-party mutual fund. These fees are described in the VT Disclosures and ICMA-RC's fee disclosure statement. In addition, to the extent that third party mutual

funds are included in the investment line-up for the Plan, ICMA-RC receives administrative fees from its third party mutual fund settlement and clearing agent for providing administrative and other services based on assets invested in third party mutual funds; such administrative fees come from payments made by third party mutual funds to the settlement and clearing agent.

- (c) **Trustee Services Fee.** ICMA-RC makes available passive-directed trustee services via Matrix. There shall be an annual fee of \$850 per plan for these services. This fee will be invoiced quarterly to the Employer.
- (d) **Payment Procedures.** All payments to ICMA-RC pursuant to Section 6(a) shall be paid out of the Plan assets held by VantageTrust or received from third-party mutual funds or their service providers in connection with Plan assets invested in such third-party mutual funds, to the extent not paid by the Employer, to the extent not paid by the Employer. All payments to ICMA-RC pursuant to Section 6(c) shall be paid directly by Employer, and shall not be deducted from Plan Assets. The amount of Plan assets administered by ICMA-RC shall be adjusted as required to reflect any such payments as are made from the Plan. In the event that the Employer agrees to pay amounts owed pursuant to this Section 6 directly, any amounts unpaid and outstanding after 30 days of invoice to the Employer shall be withdrawn from Plan assets.

The compensation and payment set forth in this Section 6 are contingent upon the Employer's use of ICMA-RC's EZLink system for contribution processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement.

7. Contribution Remittance

Employer understands that amounts invested through VantageTrust are to be remitted directly to VantageTrust in accordance with instructions provided to Employer by ICMA-RC and are not to be remitted to ICMA-RC. In the event that any check or wire transfer is incorrectly labeled or transferred to ICMA-RC, ICMA-RC may return it to Employer with proper instructions.

8. Indemnification

ICMA-RC shall not be responsible for any acts or omissions of any person with respect to the Plan or its related trust, other than ICMA-RC in connection with the administration or operation of the Plan. Employer shall indemnify ICMA-RC against, and hold ICMA-RC harmless from, any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney's fees, that may be incurred by, imposed upon, or asserted against ICMA-RC by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan or its related trust, excepting only any and all loss, damage,

penalty, liability, cost or expense resulting from ICMA-RC's negligence, bad faith, or willful misconduct.

9. Term

This Agreement shall be in effect and commence on the date all parties have signed and executed this Agreement ("Inception Date"). This Agreement may be terminated without penalty by either party on sixty days advance notice in writing to the other; provided however, that the Employer understands and acknowledges that, in the event the Employer terminates this Agreement (or replaces the Vantagepoint PLUS Fund, offered by VantageTrust, as an investment option in its investment line-up), ICMA-RC retains full discretion to release Plan assets invested in the Vantagepoint PLUS Fund in an orderly manner over a period of up to 12 months from the date ICMA-RC receives written notification from the Employer that it has made a final and binding selection of a replacement for ICMA-RC as administrator of the Plan (or a replacement investment option for the Vantagepoint PLUS Fund).

10. Amendments and Adjustments

- (a) This Agreement may be amended by written instrument signed by the parties.
- (b) ICMA-RC may modify this agreement by providing 60 days' advance written notice to the Employer prior to the effective date of such proposed modification. Such modification shall become effective unless, within the 60-day notice period, the Employer notifies ICMA-RC in writing that it objects to such modification.
- (c) The parties agree that enhancements may be made to administrative and operations services under this Agreement. The Employer will be notified of enhancements through the Employer Bulletin, quarterly statements, electronic messages or special mailings. Likewise, if there are any reductions in fees, these will be announced through the Employer Bulletin, quarterly statement, electronic messages or special mailing.

11. Notices

All notices required to be delivered under this Agreement shall be in writing and shall be delivered, mailed, e-mailed or faxed to the location of the relevant party set forth below or to such other address or to the attention of such other persons as such party may hereafter specify by notice to the other party.

ICMA-RC: Legal Department, ICMA Retirement Corporation, 777 North Capitol Street, N.E., Suite 600, Washington, D.C., 20002-4240
Facsimile; (202) 962-4601

Employer: at the office set forth in the first paragraph hereof, or to any other address, facsimile number or e-mail address designated by the Employer to receive the same by written notice similarly given.

Each such notice, request or other communication shall be effective: (i) if given by facsimile, when transmitted to the applicable facsimile number and there is appropriate confirmation of receipt; (ii) if given by mail or e-mail, upon transmission to the designated address with no indication that such address is invalid or incorrect; or (iii) if given by any other means, when actually delivered at the aforesaid address.

12. Complete Agreement

This Agreement shall constitute the complete and full understanding and sole agreement between ICMA-RC and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. This Agreement supersedes all written and oral agreements, communications or negotiations among the parties. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

13. Titles

The headings of Sections of this Agreement and the headings for each of the attached schedules are for convenience only and do not define or limit the contents thereof.

14. Incorporation of Schedules

All Schedules (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

In Witness Whereof, the parties hereto certify that they have read and understand this Agreement and all Schedules attached hereto and have caused this Agreement to be executed by their duly authorized officers as of the Inception Date first above written.

VALLEY CLEAN ENERGY ALLIANCE

By _____
Signature/Date

By _____
Name and Title (Please Print)

INTERNATIONAL CITY MANAGEMENT
ASSOCIATION RETIREMENT CORPORATION

By 
Erica McFarquhar
Assistant Secretary

Please return an executed copy of the Agreement to a Delivery Address, either:

- (a) Electronically to PlanAdoptionServices@icmarc.org, or
- (b) In paper form to ICMA-RC
ATTN: PLAN ADOPTION SERVICES
777 North Capitol Street NE
Suite 600
Washington DC 20002-4240

Exhibit A

Administrative Services

The administrative services to be performed by ICMA-RC under this Agreement shall be as follows:

- (a) Participant enrollment services, including providing a welcome package and enrollment kit containing instructions and notices necessary to implement the Plan's administration. Employees will enroll online or through a paper form. Employer can also enroll employees through EZLink.
- (b) Establishment of participant accounts for each employee participating in the Plan for whom ICMA-RC receives appropriate enrollment instructions. ICMA-RC is not responsible for determining if such Plan participants are eligible under the terms of the Plan.
- (c) Allocation in accordance with participant directions received in good order of individual participant accounts to investment funds offered under the Plan.
- (d) Maintenance of individual accounts for participants reflecting amounts deferred, income, gain or loss credited, and amounts distributed as benefits.
- (e) Maintenance of records for all participants for whom participant accounts have been established. These files shall include enrollment instructions (provided to ICMA-RC through Account Access or EZLink), beneficiary designation instructions and all other documents concerning each participant's account.
- (f) Provision of periodic reports to the Employer through EZLink. Participants will have access to account information through Investor Services, Voice Response System, Account Access, TextAccess and through quarterly statements that can be delivered electronically through Account Access or by postal service.
- (g) Communication to participants of information regarding their rights and elections under the Plan.
- (h) Making available Investor Services Representatives through a toll-free telephone number from 8:30 a.m. to 9:00 p.m. Eastern Time, Monday through Friday (excluding holidays and days on which the securities markets or ICMA-RC are closed for business (including emergency closings), to assist participants.
- (i) Making available access to ICMA-RC's web site, to allow participants to access certain account information and initiate certain plan transactions at any time. Account access is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance. The scheduled maintenance window is outlined at <https://harper1.icmarc.org/login.jsp>.
- (j) Maintaining the security and confidentiality of client information through a system of controls including but not limited to, as appropriate: restricting plan and

participant information only to those who need it to provide services, software and hardware security, access controls, data back-up and storage procedures, non-disclosure agreements, security incident response procedures, and audit reviews.

- (k) Making available access to ICMA-RC's plan sponsor EZLink web site to allow plan sponsors to access certain plan information and initiate plan transactions such as enrolling participants and managing contributions at any time. EZLink is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance. The scheduled maintenance window is outlined at <https://harper1.icmarc.org/login.jsp>
- (l) Distribution of benefits as agent for the Employer in accordance with terms of the Plan. Participants who have separated from service can request distributions through Account Access or via form.
- (m) Upon approval by the Employer that a domestic relations order is an acceptable qualified domestic relations order under the terms of the Plan, ICMA-RC will establish a separate account record for the alternate payee and provide for the investment and distribution of assets held there under.
- (n) Loans may be made available on the terms specified in the Loan Guidelines, if loans are adopted by the Employer. Participants can request loans through Account Access.
- (o) Guided Pathways Advisory Services – ICMA-RC's participant advice service, "Fund Advice", and asset allocation service, "Asset Class Guidance" may be made available through a third party vendor on the terms specified on ICMA-RC's website.
- (p) ICMA-RC will determine appropriate delivery method (electronic and/or print) for plan sponsor/participant communications and education based on a number of factors (audience, effectiveness, etc.).

MATRIX TRUST COMPANY**Account Application and Agreements****For Trustee Services****Governmental Plans****ICMA Retirement Corporation ("ICMA RC")**

Disclaimer: No representation or warranty is made by Matrix Trust Company that the documents provided hereunder, including without limitation any trust agreement amendment and (as applicable) associated ministerial services agreement are appropriate for a particular plan or employer or that they comply with the requirements of law applicable to any particular plan or employer. Plan sponsors should consult with their legal, tax and other advisors in designing, drafting and/or reviewing the appropriate plan and trust agreements, amendments, and associated agreements and documents and to consider their effect on any existing or contemplated IRS tax qualification letters or determinations as well as compliance with applicable law.

Documentation Requirements

Please return **ALL** of the following documents:

- Account Application (please complete)
- Certificate of Appointment (please complete and execute)
- Certificate of Authorized Representatives (please complete and execute)
- Trustee (or Successor Trustee) Appointment and Amendment of Trust Agreement (please complete and execute)
- Most current Asset Statement
- Copy of executed Plan and Trust Document (If prototype, copy of executed Adoption Agreement is also required)
- USA PATRIOT Act Customer Identification Program requirements
 - IRS Form W-9
 - Additional requested documentation as may be necessary

USA PATRIOT Act Customer Identification Program

Important Information about Opening a New Account

To help the U.S. government fight the funding of terrorism and money laundering activities, Federal law requires us to obtain, verify and record information that identifies each person or entity that opens an account.

What this means for you: When you open an account, we will ask for your name or your business name, an address, date of birth and an identification number, such as a Social Security Number or Employer Identification Number that federal law requires us to obtain. We may ask to see your driver's license or other identifying documents that will allow us to identify you.

We appreciate your cooperation.

Failure to return all documents properly executed
may result in delays with Matrix Trust Company accepting its Trustee appointment.

Contact Information

Return all New Account Documents to the following location:

Matrix Trust Company
Attention: Transition Team Manager
2800 North Central Avenue, Suite 900
Phoenix, AZ 85004
(800) 458- 9269 phone

For ongoing administration questions contact the client services team at:

Matrix Trust Company
Melissa Tanzilli
(602) 296-1372 phone

Account Application – Trustee Services
Plan/Plan Sponsor Information

Legal Plan Name	VALLEY CLEAN ENERGY ALLIANCE 457(b) DEFERRED COMPENSATION PLAN (the "Plan")
Plan Sponsor Legal Name	VALLEY CLEAN ENERGY ALLIANCE (the "Employer" or "Plan Sponsor")
Entity Type	Governmental Entity
Place of Formation/Incorporation	USA
Primary Street Address	604 2ND STREET
City, State, Zip	DAVIS, CA 95616
Primary Contact Name/Title	MITCH SEARS / INTERIM GENERAL MANAGER
Country	USA
Telephone Number	530-446-2751
Fax Number	
Email Address	mitch.sears@valleycleanenergy.org
Plan Trust Tax I.D. (TIN)	(if applicable)
Plan Sponsor EIN	82-3782814
Plan Year End	DECEMBER 31
Plan Inception Date	NOVEMBER 1, 2018
Current Plan Custodian(s)	
Current Plan Trustee(s)	
Plan Type	457(b) Other
Trust Type	Select One Other
Participant Directed Plan	Yes (the plan is participant directed)
Account will be used for wire transactions outside of the country where the customer relationship is established	No If yes, list anticipated transaction countries (where funds move to/from):

CERTIFICATE OF APPOINTMENT

VALLEY CLEAN ENERGY ALLIANCE (the "Client")

I, ALISA LEMBKE, the duly appointed representative of Client, in the capacity indicated below, am authorized to certify the approved actions with respect to the **VALLEY CLEAN ENERGY ALLIANCE 457(B) DEFERRED COMPENSATION PLAN** (the "Plan") which is not qualified under Section 401(a) of the Internal Revenue Code of 1986 as amended and is maintained by the Client, a governmental entity organized or operating under the laws of the State of California, hereby certify that at a meeting of the Client's Board of Directors or other governing body (the "Board") duly called and held, or by unanimous written consent or other method provided by applicable law or governing document, the following resolutions were duly adopted and remain in full force and effect.

NOW, THEREFORE, BE IT:

- RESOLVED, that Matrix Trust Company ("Matrix Trust") is appointed to act as a non-discretionary Trustee of the Trust established as part of or with respect to the Plan and is authorized to hold the assets of such under the terms of the Trust, Custody, or Agent Agreement (the "Agreement"), as applicable.
- Further, that there currently is not an appointed Trustee(s) of the Plan.
And if so, it is resolved that **INSERT NAME OF CURRENT TRUSTEE(S) TO BE REMOVED** currently serving as Trustee(s) of the Plan, be removed effective as of the date Matrix Trust accepts its appointment.
- RESOLVED, that the individual(s) designated on the attached are, and each of them is, authorized in the name and on behalf of the Client, to complete, execute and deliver the Agreements to Matrix Trust substantially in the form presented to this governing body, with such revision thereto and any amendments and ancillary agreements or other documents related thereto (collectively, the "Matrix Trust Documents"), all as deemed necessary or appropriate from time to time; and each is hereby designated as a "Authorized Person" and/or "Designated Representative" under agreements with Matrix Trust who, subject to such agreements, may execute or effect transactions under and give notices, certifications and instructions with respect to such agreements, such individuals designated as "Authorized Representatives".
- RESOLVED, that Matrix Trust be and hereby is authorized to rely on the actual or purported signatures of any of Client's Authorized Representatives until Matrix Trust has actually received and had a reasonable time to act on written notice from Client revoking such authority.
- RESOLVED, that Client shall defend, indemnify and hold Matrix Trust harmless from and against all liabilities, costs, and expenses (including, but not limited to, attorneys' fees and disbursements) incurred by Matrix Trust in connection with honoring of any signature, instruction or action of any Authorized Representative, or the refusal to honor any signature, instruction or action of any person who has not been designated by the Client as an Authorized Representative of Client.
- RESOLVED, that these resolutions supersede all prior resolutions on the subject to which they pertain, and shall remain in full force and effect and binding upon Client until Matrix Trust has actually received and had a reasonable time to act on any subsequent Certificate of Authority; provided that these resolutions are limited in application to the aforesaid services to be provided by Matrix Trust and do not supersede or affect in any way the continuing validity of other resolution provided to Matrix Trust in regard to accounts that are serviced or services that are provided by any other division or department of Matrix Trust or with respect to any accounts that are not the subject of these resolutions.



IN WITNESS WHEREOF, I have executed this Certificate of Appointment this day of **September, 2018**.

ALISA LEMBKE, SECRETARY

CERTIFICATE OF AUTHORIZED REPRESENTATIVES

VALLEY CLEAN ENERGY ALLIANCE 457(b) DEFERRED COMPENSATION PLAN (the "Plan") Trust Account (the "Account")

Effective this _____ day of **September, 2018**, the following individuals are designated as authorized representatives ("Authorized Representatives") of the Plan Trust Account(s), Custodial Account(s), or Account(s), with (except as limited below) the full authority to give Matrix Trust Company ("Matrix Trust") orders, directions or instructions with respect to the Plan and Account. Matrix Trust is entitled to rely on any such order, direction or instruction signed by any one (or as otherwise indicated below) of the Authorized Representatives until such time as Matrix Trust receives written notice of the revocation of this certificate.

By any 1 of the individuals shown below.

Signature: _____	
Name:	MITCH SEARS
Title:	INTERIM GENERAL MANAGER
DOB:	AUGUST 22, 1967
Email Address:	mitch.sears@valleycleanenergy.org
U.S. Citizen:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If No, provide country of citizenship: Insert Country
Limitations:	N/A
Signature: _____	
Name:	Lucas Frerichs
Title:	Board Chair
DOB:	██████████
Email Address:	lucasf@cityofdavis.org
U.S. Citizen:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	If No, provide country of citizenship: Insert Country
Limitations:	N/A

CERTIFICATE OF AUTHORIZED REPRESENTATIVES (CONTINUED)

Insert Plan Name (the "Plan")

Signature: _____	
Name:	Insert Authorized Representative's Name
Title:	Insert Authorized Representative's Title
DOB:	Insert Date Of Birth
Email Address:	Insert Email Address
U.S. Citizen:	<input type="checkbox"/> Yes <input type="checkbox"/> No If No, provide country of citizenship: Insert Country
Limitations:	Insert Limitations or "N/A"
Signature: _____	
Name:	Insert Authorized Representative's Name
Title:	Insert Authorized Representative's Title
DOB:	Insert Date Of Birth
Email Address:	Insert Email Address
U.S. Citizen:	<input type="checkbox"/> Yes <input type="checkbox"/> No If No, provide country of citizenship: Insert Country
Limitations:	Insert Limitations or "N/A"
Signature: _____	
Name:	Insert Authorized Representative's Name
Title:	Insert Authorized Representative's Title
DOB:	Insert Date Of Birth
Email Address:	Insert Email Address
U.S. Citizen:	<input type="checkbox"/> Yes <input type="checkbox"/> No If No, provide country of citizenship: Insert Country
Limitations:	Insert Limitations or "N/A"

By: _____

ALISA LEMBKE, SECRETARY

AMENDMENT OF TRUST AGREEMENT/ ADDENDUM TO ADOPTION AGREEMENT

THIS AMENDMENT/ADDENDUM (the "**Amendment/Addendum**") is entered into by and between the Employer named on the signature page hereof (the "**Employer**" or "**Plan Sponsor**") and **Matrix Trust Company ("Matrix Trust")**, as non-discretionary trustee (the "**Trustee**") for the **Insert Plan Name** (the "**Plan**") and is entered into as of this day of **Select Month, Select Year**.

PRELIMINARY STATEMENTS

WHEREAS, the Trustee is a trust company that is subject to supervision of the United States or a State;

WHEREAS, the Employer is a governmental entity;

WHEREAS, the Employer is adopting or has heretofore adopted the above referenced Plan;

WHEREAS, in connection with the adoption of the Plan, the Employer is entering into or has entered into a trust agreement or a combined plan and trust agreement (the "**Trust Agreement**");

WHEREAS, the Employer has duly appointed Matrix Trust as non-discretionary directed trustee or non-discretionary directed successor trustee, as applicable, under the Trust Agreement, and Matrix Trust is willing to serve as non-discretionary directed trustee or non-discretionary directed successor trustee, as applicable; and

WHEREAS, the Employer is entering (or has entered) into an Administrative Services Agreement with ICMA Retirement Corporation ("**Recordkeeper**").

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound, the Employer and Matrix Trust hereby mutually agree as follows:

1. The Employer hereby appoints Matrix Trust as non-discretionary directed trustee or non-discretionary directed successor trustee as applicable, and Matrix Trust hereby accepts such appointment subject to the terms of this Amendment/Addendum. The Employer hereby represents and warrants that the Plan is and, during the term of this Amendment/Addendum, shall remain a "governmental plan" as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**") and pursuant to Section 4(b) of ERISA is exempt from Title I of ERISA, and the Employer hereby agrees that it shall notify Matrix Trust immediately if the Plan is or will no longer be exempt therefrom. To the extent applicable, the Employer agrees that it has or shall have in place internal controls commensurate with the risk to ensure compliance with U.S. economic sanctions programs administered by the Departments of Treasury and State, as well as controls (i) sufficient to ensure that funds flowing to Trustee or a third party with custody of Trust assets are not from suspect sources, and (ii) that meet all applicable U.S. anti-money laundering, anti-terrorism finance, and anti-corruption requirements.
2. The Employer and Matrix Trust agree that the following provisions are added to the Trust Agreement and shall control the interpretation thereof, notwithstanding anything to the contrary now or hereafter contained therein or in any other document governing the Plan:
 - (a) Unless and until otherwise agreed in writing between the Employer and the Trustee, the Trustee shall have no discretionary investment responsibility with respect to the trust fund, it being the intent of the parties that the Trustee be a directed trustee, and such discretionary investment responsibility shall be exercised by the Employer, the Participants, or one or more Investment Managers or other named fiduciary for the Plan (each, an "**Instructing Party**") (it being agreed that the Trustee shall have no responsibility for conveying investment instructions to any person or entity so long as it does not have custody of Trust assets); and further, the Trustee shall have no obligations or responsibilities with respect to developing a funding policy, any financial control functions (including, without limitation, account reconciliation, money movement or settlement and participant disbursements), participant review for Office of Foreign Asset Control activity, complying with the accounting requirements of the

Plan, the design or monitoring of the participant loan program, selecting or monitoring the selection of plan investments. The Employer or its designee agrees to notify the Trustee immediately in the event of any changes regarding plan investments.

- (b) This Amendment/Addendum shall be governed and administered under the laws of the State of Delaware, without regard to conflict of law principles. All controversies, disputes, and claims arising under this Amendment/Addendum and not otherwise resolved will be submitted to the United States District Court for the district where the Custodian has its principal place of business, and by executing this Amendment/Addendum, each party hereto consents to that court's exercise of personal jurisdiction over them.
- (c) Administrative Powers. The Trustee shall have the following administrative powers with respect to the Trust, which it may exercise in its sole discretion:
- (i) With advance notice to the Employer, to engage attorneys (who may also serve as counsel for the Employer or the Trustee), accountants and other professional advisors, and, anything contained herein to the contrary notwithstanding, to engage in legal or administrative proceedings as the Trustee deems reasonably required in connection with the administration of the Trust, and to compensate any persons so engaged at such wages, fees, remuneration, consideration or otherwise, and upon such terms and conditions as the Trustee deems reasonable under the circumstances. Unless otherwise noted in this Amendment/Addendum, such compensation shall be a charge upon the Trust and may be paid from the Trust with prior notice to the Employer and shall in no event be deducted from any compensation payable to the Trustee.
- (ii) To do all such acts, and exercise all such rights and privileges, although not specifically mentioned, unless specifically prohibited by the Employer or Plan Administrator, which shall be reasonably required in the performance of the Trustee's duties hereunder.
- (d) Judicial Settlement. With at least 10 days advance notice to the Employer, the Trustee shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of its accounts or for determination of any questions of construction which may arise or for instructions. The only necessary party defendant to any such action shall be the Plan Administrator, but the Trustee may, if it so elects, join in as a party defendant any other person or persons. The cost, including attorneys' fees, of any such accounting shall be a charge against the Trust with prior notice to the Employer.
- (e) Compensation. The Trustee shall receive compensation for the performance of its services in accordance with its schedule of compensation in effect when such services are rendered. In the event that the Trustee shall be called upon to render any extraordinary services, it shall be entitled to additional compensation in accordance with the schedule of compensation. To the extent not paid by Employer or another person or entity in its stead or on its behalf, such compensation shall constitute a charge against the Trust.
- (f) Expenses. Expenses for legal, accounting and all other proper charges and disbursements of the Trustee in connection with the administration of the Trust shall constitute a charge to be paid by the Trust with prior notice to the Employer.
- (g) Designation of Plan Administrator, Authorized Persons and Investment Manager. The Plan Administrator, Authorized Person and Investment Manager may be designated by providing the name and signatures of such person(s) to the Trustee. The Trustee shall be entitled to rely entirely, without having to make further inquiry, and shall not be held liable for any actions taken in assuming, that the identity and duties of such persons so designated are valid until such time as it is otherwise notified in writing. Notice of authorization or removal of the Plan Administrator shall be accompanied by evidence of proper action of the Employer approving such instruction.
- (h) Reliance on Instruction. The Trustee may rely in all respects, without having to make further inquiry, upon instructions appearing to be instructions from any person designated as the Employer, Plan Administrator, Investment Manager or Authorized Person. Instructions given by an Authorized Person

in accordance with this Amendment/Addendum shall be treated for all purposes hereof as instructions from the party appointing the Authorized Person. The Trustee shall be deemed to have received proper instructions upon receipt of written instruction given to the Trustee in a form and manner required by or acceptable to the Trustee.

- (i) Conflicting Instructions. In the event of any ambiguous or conflicting instructions to, or adverse claims or demands upon, the Trustee, the Trustee shall be entitled, at its option, to refuse to comply with any such instruction, claim or demand as long as such ambiguity or conflict shall continue, and in so refusing the Trustee may elect not to make any payment or other disposition of assets held pursuant to this Amendment/Addendum. The Trustee shall not be or become liable in any way for its failure or refusal to comply with any such ambiguous or conflicting instructions or adverse claims or demands, and it shall be entitled to continue to so refrain from acting until such ambiguous, conflicting or adverse demands (i) have been resolved and it has been notified in writing thereof or (ii) have finally been determined in a court of competent jurisdiction.
- (j) Reliance on Professional Advisors. The Trustee may consult with a professional advisor who may also be an advisor for the Employer, and the Trustee shall be fully protected in respect of any action taken or suffered by the Trustee in good faith and in accordance with the advice or opinion of such professional advisor.
- (k) Bond. The Trustee shall not be required to give any bond or other security for the faithful performance of the Trustee's duties under this Amendment/Addendum, except as may be required by Applicable Law.
- (l) Action by Employer. Except as otherwise agreed by Trustee, any action by Employer pursuant to any of the provisions of this Amendment/Addendum, the Plan, or Applicable Law shall be, (i) in the case of a corporation, partnership or similar organization, evidenced by (1) a resolution of its governing body certified to the Trustee over the signature of its secretary or assistant secretary or other duly authorized agent under seal, if there be one, or (2) by appropriate written authorization of any person or committee to which the governing body had delegated the authority to take such action, and (ii) in the case of a sole proprietorship or any other entity, evidenced by written certification of a duly and legally authorized agent, individual or entity. The Trustee shall not be liable for any actions taken in accordance with any such resolution or other authorization.
- (m) Bankruptcy. Trustee shall have no duty, in the event of the Employer's bankruptcy or insolvency, to take any action until directed to do so by the bankruptcy trustee or a court that has jurisdiction over Plan assets.
- (n) Scope of Trustee's Liability. To the full extent permitted by Applicable Law, the Trustee shall not be liable for assets that are not included in the Trust or for losses of any kind that may result (i) by reason of any action taken by it in accordance with the instructions of the Employer, the Plan Administrator, the Investment Manager, or Authorized Person, (ii) by reason of any failure to act as a result of the absence of, or ambiguity of, instructions, or (iii) by reason of any actions taken by any prior trustee, additional trustee, successor trustee or Appointed Custodian. The Trustee has no duty to perform any actions other than those specified in this Amendment/Addendum or pursuant to proper instructions. The Trustee shall not be responsible for any lost profits or any special, indirect or consequential damages in respect of any breach or wrongful conduct in any way related to this Amendment/Addendum. The Trustee shall have no liability for any matters beyond its control such as market loss or diminution, impact of government regulations, third-party bankruptcies or otherwise.
- (o) General Indemnity. The Employer shall, to the full extent permitted by Applicable Law, indemnify and hold harmless the Trustee and the Trustee's directors, officers, employees, agents and affiliates ("**Trustee Indemnitees**") from and against any and all damages, losses, costs, judgments, fines, penalties, and expenses (including attorney's fees and disbursements) of any kind or nature (collectively, "**Losses**") imposed on or incurred by the Trustee Indemnitees, by reason of its or their service pursuant to this Amendment/Addendum, including any Losses arising out of any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (including any such action by or in the right of the Employer), except to the extent such

Losses were caused by the negligence or willful misconduct of the Trustee or the Trustee Indemnitees. Reasonable expenses incurred in defending any such claim, action, suit or proceeding shall be paid by the Employer in advance of a final disposition of such claim, action, suit, or proceeding, upon presentation of statements therefore by the Trustee, provided that any such expenses that are incurred in the defense of any claim, action, suit or proceeding for which it is finally determined that the Trustee is not entitled to indemnification pursuant to the foregoing shall be reimbursed promptly by the Trustee to the extent of its non-entitlement.

- (p) Specific Indemnities. In addition to and not in derogation of any other indemnification or hold harmless provisions in this Amendment/Addendum, the Employer agrees to indemnify and hold the Trustee Indemnitees harmless from and against any liability that it or they may incur because of:
- (i) The Employer's failure to make any contribution to the Trust or the insufficiency of the Trust to discharge any liabilities under the Plan.
 - (ii) Actions taken or omitted by the Trustee pursuant to any instructions from the Employer, Plan Administrator, Investment Manager or Authorized Person, as the case may be, or actions not taken in the absence of any such instruction.
 - (iii) The application of any part of the Trust by the Trustee in accordance with the instructions of the Employer, Plan Administrator, Investment Manager or Authorized Person.
 - (iv) The failure of an individually directed account or participant loan to satisfy the requirements of the Plan and Applicable Law.
- (q) Waiver. The Trustee shall not, by act, delay, omission or otherwise, be deemed to have waived any right or remedy it may have either under this Amendment/Addendum or generally, unless such waiver is in writing, signed by the Trustee, and such waiver shall only be effective to the extent expressly therein set forth. A waiver by the Trustee of any right or remedy granted by this Amendment/Addendum shall not be construed as a bar to, or waiver of, the same or any other such right or remedy which it would otherwise have on any other occasion.
- (r) No Affiliation. The Trustee is not affiliated with the recordkeeper and there is no agency, partnership or joint venture relationship between the Trustee and the recordkeeper.
- (s) Removal or Resignation. The Trustee may be removed by the Employer at any time by written notice to the Trustee and the Trustee may resign at any time by written notice to the Employer; provided that, unless otherwise agreed, the effective date of such removal or resignation shall be greater than sixty (60) days from the date of said written notice. Notice of removal shall be accompanied by evidence of proper action of the Employer approving such removal.
- (t) Successor. The Employer shall appoint a successor trustee to act hereunder within sixty (60) days after notice provided. If within sixty (60) days after such notice the Employer has not designated a successor trustee, which has accepted such appointment, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or may appoint an employee of Employer as successor trustee in accordance with Applicable Law. Any business entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.
- (u) Powers of Successor. Each successor trustee shall have the powers and duties conferred upon the Trustee in this Amendment/Addendum and the term "Trustee" as used in this Amendment/Addendum shall be deemed to include any successor trustee.

- (v) **Notices.** Except as the parties may otherwise agree in writing, all notices, reports, accounts and other communications from the Trustee to the Employer, the Plan Administrator, the Investment Manager(s) or any Authorized Person shall be in writing and deemed to have been duly given as of the first date on which the Trustee transmits or otherwise makes the communication available. Except as the parties may otherwise agree in writing, all instructions, notices, objections and other communications to the Trustee shall be in writing and shall be deemed to have been given when received by the Trustee at its office below:

Matrix Trust Company
717 17th Street, Suite 1300
Denver, CO 80202
Attn: Senior Vice President

With a copy to:

Broadridge Financial Solutions, Inc.
2 Journal Square Plaza
Jersey City, NJ 07306
Attn: General Counsel

Matrix Trust Company
P.O. Box 52129
Phoenix, AZ 85072-2129
Attn: Vice President

To Plan Sponsor:

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

- (w) **Inspections/Audits.** To the extent that the Trust Agreement provides that the Trustee's records and statements are to be open for inspection and audit by the Employer, the Employer shall exercise such right with reasonable prior written notice to the Trustee, and except as required by applicable law, any such audit rights shall be exercised by the Employer not more frequently than annually.
- (x) **Force Majeure.** The Trustee shall have no liability for any losses arising out of delays in performing the services which it renders under this Amendment/Addendum when such delays result from events beyond its control, including without limitation, interruption of the business of the Trustee due to acts of God, acts of governmental authority, acts of war, terrorism, riots, civil commotions, insurrections, labor difficulties (including, but not limited to, strikes and other work slippages due to slow-downs), unauthorized access to its systems that may breach its reasonable protection against such access, or any action of any courier or utility, mechanical or other malfunction, or electronic interruption.
- (y) **Governing Law.** This Amendment/Addendum shall be governed and administered under the laws of the State of Delaware, without regard to conflict of law principles. Any suit, action or proceeding arising out of this Amendment/Addendum may be instituted in any state or federal court sitting in the State of Delaware, and the parties irrevocably submit to the nonexclusive jurisdiction of any such court in any such suit, action or proceeding and waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any such suit, action, or proceeding, brought in such a court and any claim that such suit, action, or proceeding was brought in an inconvenient forum.
- (z) **Entire Agreement.** This Amendment/Addendum, including all Appendices hereto, the Account Application, and the Authorized Persons List, contains the entire understanding between the parties

relating to the subject matter hereof, and supersedes all prior agreements or understandings between the parties relating to the subject matter hereof, whether written or oral, express or implied.

3. Except as amended and modified hereby, the terms and provisions of the Trust Agreement are hereby ratified, approved and confirmed.
4. Services to be Performed by Recordkeeper. The Employer has (or will) delegate to the Recordkeeper the sole responsibility to perform certain ministerial and administrative services set forth in the Administrative Services Agreement between the Employer and the Recordkeeper, and the Employer hereby instructs Trustee that Trustee shall relinquish any responsibility for the performance of said duties that it would otherwise have pursuant to the Trust Agreement as set forth below:
 - (a) Receive contributions directly from the Employer or its Plan Committee;
 - (b) Make distributions at the Employer's directions, in accordance with the terms of the Plan and the Trust Agreement;
 - (c) Perform the accounting for all assets including cash, as well as contributions, loans and withdrawals and the allocation of credited interest and allocate all income, gains and losses;
 - (d) Remit fees for services rendered to the Plan as directed by the Employer;
 - (e) Render reports to the Employer and the Trustee with respect to assets held as required or reasonably requested (e.g., SOC-1 or similar reports);
 - (f) Perform tax reporting and withholding in compliance with applicable Federal and State law in connection with payments to participants or beneficiaries and in accordance with instructions and directions provided by the Employer;
 - (g) Collect or cause to be collected all income, distributions, and proceeds relating to Plan assets and to invest the same and all contributions as directed by the Employer or another Instructing Party;
 - (h) Process or cause to be processed dividends, including reinvestment and/or payment, if applicable; and
 - (i) Forward or cause to be forwarded to the Employer all applicable proxies, corporate actions and other notices relating to the Plan assets, which the Employer shall process.
5. Confidentiality.
 - (a) Definitions. In connection with this Amendment/Addendum, including without limitation the evaluation of new services contemplated by the parties to be provided by Trustee under this Amendment/Addendum, information will be exchanged between Trustee and Plan. Trustee shall provide information that may include, without limitation, confidential information relating to the Trustee's products, trade secrets, strategic information, information about systems and procedures, confidential reports, customer information, vendor and other third party information, financial information including cost and pricing, sales strategies, computer software and tapes, programs, source and object codes, and other information that is provided under circumstances reasonably indicating it is confidential (collectively, the "**Trustee Information**"), and Plan shall provide information required for Plan to use the services received or to be received, including customer information, which may include Personal Information (defined below), to be processed by the services, and other information that is provided under circumstances reasonably indicating it is confidential ("**Plan Information**") (the Trustee Information and the Plan Information collectively referred to herein as the "**Information**"). Personal Information that is exchanged shall also be deemed Information hereunder. "**Personal Information**" means personal information about an identifiable individual including, without limitation, name, address, contact information, age, gender, income, marital status, finances, health, employment, social security number and trading activity or history. Personal Information shall not include the name, title or business address or business telephone number of an employee of an organization in relation to such individual's capacity as an employee of an organization. The Information of each party shall

remain the exclusive property of such party.

- (b) **Obligations.** The receiver of Information (the "**Receiver**") shall keep any Information provided by the other party (the "**Provider**") strictly confidential and shall not, without the Provider's prior written consent, disclose such Information in any manner whatsoever, in whole or in part, and shall not duplicate, copy or reproduce such Information, including, without limitation, by means of photocopying or transcribing of voice recording, except in accordance with the terms of this Amendment/Addendum. The Receiver shall only use the Information as reasonably required to carry out the purposes of this Amendment/Addendum.
- (c) **Disclosure Generally.** Trustee and Plan agree that the Information shall be disclosed by the Receiver only to: (i) the employees, agents and consultants of the Plan and the Designated Representative in connection with Receiver's performance or use of the services, as applicable, and (ii) auditors, counsel, and other representatives of the Plan and Designated Representative for the purpose of providing assistance to the Receiver in the ordinary course of Receiver's performance or use of the services, as applicable. Each party will take reasonable steps to prevent a breach of its obligations by any employee or third party.
- (d) **Compelled Disclosure.** If the Receiver or anyone to whom the Receiver transmits the Information pursuant to this Amendment/Addendum becomes legally compelled to disclose any of the Information, then the Receiver will provide the Provider with prompt notice before such Information is disclosed (or, in the case of a disclosure by someone to whom the Receiver transmitted the Information, as soon as the Receiver becomes aware of the compelled disclosure), if not legally prohibited from doing so, so that the Provider may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Amendment/Addendum. If such protective order or other remedy is not obtained, then the Receiver will furnish only that portion of the Information which the Receiver is advised by reasonable written opinion of counsel is legally required and will exercise its reasonable efforts to assist the Provider in obtaining a protective order or other reliable assurance that confidential treatment will be accorded to the Information that is disclosed.
- (e) **Exceptions.** Except with respect to Personal Information, nothing contained herein shall in any way restrict or impair either party's right to use, disclose or otherwise deal with:
- (i) Information which at the time of its disclosure is publicly available, by publication or otherwise, or which the Provider publicly discloses either prior to or subsequent to its disclosure to the Receiver;
 - (ii) Information which the Receiver can show was in the possession of the Receiver, or its parent, subsidiary or affiliated company, at the time of disclosure and which was not acquired, directly or indirectly, under any obligation of confidentiality to the Provider; or
 - (iii) Information which is independently acquired or developed by the Receiver without violation of its obligations hereunder.

In addition, each employee of the Receiver shall be free to use for any purpose, upon completion of the services rendered under this Amendment/Addendum, any general knowledge, skill or expertise that (i) is acquired by such employee in performance of those services, (ii) remains part of the general knowledge of such employee after access to the tangible embodiment of the Provider's Information, (iii) does not contain or include any such Information, and (iv) is not otherwise specific to the Provider.

- (f) **Return or Destroy.** Upon the termination of this Amendment/Addendum for any reason, the parties shall return to each other, or destroy, any and all copies of Information of the other that are in their possession relating to the terminated Amendment/Addendum, except for any copies reasonably required to maintain such party's customary archives or computer back-up procedures, and as otherwise required by applicable law, rule or regulation. Notwithstanding the foregoing, Trustee shall have the right to keep one copy of such Information as may be reasonably required to evidence the fact that it has provided the services to Plan. In the event that Plan requires Trustee to return any Plan

Information, Plan shall pay Trustee (at the rates set forth in the applicable Schedule, or, if no such rates are set forth, at Trustee's then current charges) for Trustee's actual time spent and incidental expenses actually incurred in connection with such return.

IN WITNESS WHEREOF, the Employer and Trustee have executed this Amendment/Addendum, as of the date first written above.

Agreed To By:

TRUSTEE:
MATRIX TRUST COMPANY

BY: _____

NAME: _____

TITLE: _____

EMPLOYER:
VALLEY CLEAN ENERGY ALLIANCE

BY: _____

NAME: MITCH SEARS

TITLE: Interim General Manager

APPENDIX A

Operational Guidelines

INSTRUCTIONS

The Trustee must receive instructions from an Instructing Party for each purchase, sale acquisition and disposition. The Trustee reserves the right not to effect any transaction unless given sufficient time and information to review and process the transaction. All purchases, sales, acquisitions and dispositions of assets must be made in accordance with terms of the Agreement, the Plan and Applicable Law.

LIQUIDITY

Sufficient liquidity must be maintained in accounts to meet foreseeable obligations of the Trust. The Trustee specifically reserves the right (a) not to follow any instruction that it reasonably believes would result in insufficient liquidity (b) not to make any disbursement unless the Investment Manager, Plan Administrator or other Authorized Person (the "**Instructing Party**") has provided instruction as to the assets to be converted to cash for the purposes of making such payment, and (c) to sell securities from the Trust to recover any funds advanced for any trades not settled immediately upon placement.

TRUST ASSETS

Acceptable Assets

Assets are considered to be acceptable assets depending upon the Trustee's ability to support and administer the asset, the Trustee's proposed responsibilities with respect to such assets, the type of account, the availability of the asset to be acquired through the Trustee or an affiliate (approved for this purpose by the Trustee) and other factors. The Instructing Party should consult with the Trustee prior to the acquisition of any asset to determine acceptability of such asset. The following types of assets are generally acceptable:

- (1) Cash.
- (2) Publicly traded stock listed on a U.S. stock exchange or regularly quoted over-the-counter.
- (3) Publicly traded bonds listed on a U.S. bond exchange or regularly quoted over-the-counter.
- (4) Mutual funds that are NSCC and DCC&S eligible.
- (5) Registered limited partnership interests, REITs and similar investments listed on a U.S. stock exchange or regularly quoted over-the-counter.
- (6) Commercial paper, bankers' acceptances eligible for rediscounting at the Federal Reserve, repurchase and reverse repurchase agreements and other "money market" instruments for which trading and custodial facilities are readily available.
- (7) U.S. Government and U.S. Government Agency issues.
- (8) Municipal securities whose bid and ask values are readily available.
- (9) Federally insured savings accounts, certificates of deposit and bank investment contracts. The Instructing Party is responsible for determining federal insurance coverage and limits and for diversifying account assets in accordance with those limits.
- (10) American Depositary Receipts, Eurobonds, and similar instruments listed on a U.S. exchange or regularly quoted domestically over-the-counter for which trading and custodial facilities are readily available.
- (11) Life insurance, annuities, and guaranteed investment contracts issued by insurance companies licensed to do business in one or more states in the U.S. The Instructing Party is responsible for determining the safety of such investments and the economic viability of the underwriter and for diversifying account assets accordingly.

In certain circumstances a particular asset which otherwise may be considered an acceptable asset may be determined by the Trustee to be unacceptable or conditionally acceptable.

Unacceptable Assets

Trustee generally cannot acquire or hold the following assets:

- (1) Tangible personal property (e.g., precious metals, gems, works of art, coins, furniture and other household items, motor vehicles, etc.).
- (2) Foreign currency and bank accounts.
- (3) Short sales.
- (4) Commodity futures and forward contracts.
- (5) Oil, gas and mineral interests.
- (6) Intangible personal property (e.g., patents and rights).
- (7) Unsecured loans.
- (8) Interests in real property.
- (9) Loans secured by first deeds of trust.
- (10) Other secured loans.

Conditionally Acceptable Assets

The Trustee may, but shall not be obligated, to acquire or continue to hold any of the assets listed below:

- (1) General partnerships.
- (2) Unregistered limited partnerships.
- (3) Other unregistered securities, closely held stock and other securities for which there is no readily available market.
- (4) The securities of the broker/dealer's corporate entity or its affiliates and subsidiaries. These securities may be subject to legal and regulatory prohibitions or restrictions. In any event, no Trust may acquire and hold securities of the broker/dealer's corporate entity unless specifically authorized by the underlying Trust agreement.
- (5) Foreign securities for which trading and custodial facilities are readily available.
- (6) Options.
- (7) Securities of the Employer.
- (8) Any other asset not listed under "Acceptable Assets" or "Unacceptable Assets" above.

The acquisition and continued retention of the foregoing assets is subject to providing the Trustee with the cost basis, if any, of any such assets and with a valuation of the assets on at least an annual basis. The Trustee, in its sole discretion, may impose other conditions to acquire or hold such assets, including imposing additional fees.

PROXIES AND OTHER SHAREHOLDER ACTION**Calls, Conversions, Expirations, Tenders, etc.**

The Instructing Party must monitor and determine the existence of and initiate all actions necessary or appropriate in connection with calls, conversions, tenders, and similar events or transactions relating to Trust assets. The Trustee will pass on to the Instructing Party any information it receives regarding such actions.

Proxies

The Instructing Party is responsible for voting proxies and exercising other shareholder rights with respect to securities under the Instructing Party's investment authority, and the Trustee shall not vote proxies and exercise other shareholder rights with respect to any securities held by the Trust, unless the Trustee agrees to undertake such responsibility under a separate written agreement or as otherwise explicitly provided for in the Trust Agreement. The Instructing Party shall provide the Trustee with instructions as to where to deliver any proxies it receives and the Trustee will use commercially reasonable efforts to deliver proxies in a timely manner to such party. The Trustee is not responsible for ascertaining whether, or how, the proxies were subsequently voted or disposed of and shall bear no liability for the actions or inactions relating to voting of proxies by the Plan Administrator, Employer, "named fiduciary" of the Plan, or an Investment Manager. The Plan Administrator is exclusively responsible for reviewing whether the provisions of the Trust Agreement and these Operational Guidelines for the voting of securities and the exercise of other shareholder rights are consistent with the requirements of the Plan documents and Applicable Law.

Charges

Certain securities may impose charges and penalties on the sale and/or redemption of such security, including, without limitation, sales load, redemption, exchange, account, distribution, administrative and other charges. The Trustee is not responsible for notifying the Employer, any Instructing Party or any other party of the existence, potential or imposition of any such charges or penalties or to negotiate or attempt to negotiate the reduction, waiver, rebate or reimbursement of any such charges or penalties; nor shall the Trustee have any liability or responsibility for any such charges or penalties of any kind or nature, whether current, deferred or contingent, that are charged or imposed pursuant to the terms of any securities purchased, held, sold or redeemed in the Trust, and all such charges and penalties shall be borne by the Trust unless otherwise provided for.

UNITIZATIONS

In General

The Trustee may provide unitization services, if agreed by the Trustee in a separate written agreement with the Plan Administrator. Unitization services are not an investment product, but rather an administrative recordkeeping service that the Trustee provides for the convenience of the Plan and participants on request, and no person (including the Employer or Plan Administrator) may hold out, market or otherwise indicate that the unitization service is an investment product whose shares may be offered to retirement plans and their participants. The Plan Administrator shall provide the Trustee for approval a copy of any materials to be used by or on behalf of a Plan which refer to the unitization services before their distribution or use.

Unitization services are available only if the account to be unitized consists of assets eligible for daily valuation under the Trustee's procedures, as determined by the Trustee. In order for the Plan to receive unitization services, the Plan Administrator is required to provide the Trustee with all instructions, representations, and assurances and other information that the Trustee may in its sole discretion require from time to time for the proper administration. Such instructions shall include without limitation, instructions with respect to maintaining a cash component adequate to address anticipated distribution activity, the investment of the cash component, instructions for placing and settling transactions for the unitized account, valuation instructions, and accrual of fees and expenses.

Pricing

The Trustee will obtain pricing information from sources believed to be reliable, but the Trustee shall not be responsible or liable for the accuracy, completeness, timeliness or correct sequencing of any pricing information received or for any decision made or action taken in reliance upon such information. The Trustee makes no warranty of merchantability, warranty of fitness for a particular purpose, or other warranty of any kind, express or implied, regarding the pricing information received or transmitted by the Trustee. If the Plan Administrator does not, within ninety (90) days of receiving a unitization statement, notify the Trustee of any objection to the valuation, the unitization shall be deemed final and the Trustee will have no obligation to correct or reimburse the net asset value (NAV).

NAV Correction Procedures

The Trustee will apply its customary standards and procedures for NAV corrections, a copy of which may be provided upon request.

Expenses

Plan expenses can be charged directly to the unitized account. The Plan Administrator must instruct the Trustee as to any specific fees and expenses to be accrued in the unitized account and the rates at which such fees and expenses should be accrued. The Trustee requires five (5) business days advance notice of any adjustment or termination to fee accruals. The Plan Administrator is responsible for notifying the Trustee when money comes in or out of the unitized account and if, as a result of any such money movement, the fee accruals should be adjusted. From time to time, fee accruals may go negative. On a periodic basis, Trustee will provide to the Plan Administrator a written account of the fee accrual(s) for review. The Plan Administrator or Instructing Party is responsible for reviewing such account and for promptly advising Trustee of any necessary adjustments.

RESOLUTION NO. _____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE
APPROVAL OF THE
401(a) DISCRETIONARY DEFINED CONTRIBUTION PLAN EMPLOYER MATCHING
CONTRIBUTION FORMULA**

WHEREAS, Valley Clean Energy Alliance (“VCEA”), is a public agency formed in January 2017 under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq., between the County of Yolo and the City of Davis to provide Community Choice Energy (CCE) programs within the member agencies, and in June 2017, the City of Woodland also joined VCEA adding to the overall VCEA service territory;

WHEREAS, it is determined to be in the best interest of the VCEA and its employees to provide a 401(a) Discretionary Defined Contribution Plan (Plan) for its eligible employees and their beneficiaries in the event of death; and

WHEREAS, VCEA has established the Plan by resolution to be administered by ICMA-RC;

WHEREAS, the VCEA has decided that the Plan shall provide for a discretionary employer matching contribution (“matching contribution”);

NOW, THEREFORE BE IT RESOLVED that under Plan, the VCEA has the discretion to make an employer matching contribution on the elective deferrals made by eligible participants to the VCEA Deferred Compensation Plan (457 Plan). The matching contribution shall be one hundred percent (100%) of the elective deferrals made by the participant to the 457 Plan up to three (3) percent of the 457 Plan participant’s earnings. Such VCEA matching contributions will be made and allocated on a payroll by payroll basis. This VCEA matching contribution shall remain in effect until the VCEA Board changes it by adoption of a new resolution.

BE IT FURTHER RESOLVED that VCEA hereby authorizes the Interim General Manager or the Board Chair to execute all necessary agreements with ICMA Retirement Corporation incidental to the administration of the discretionary employer matching contribution under the Plan.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Lucas Frerichs, VCEA Chair

ATTEST: _____
Alisa M. Lembke, VCEA Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

TO: Valley Clean Energy Alliance Board of Directors

FROM: Lisa Limcaco, Finance and Operations Director, VCEA
Chad Rinde, Asst. Chief Financial Officer, Yolo County
Mitch Sears, Interim General Manager, VCEA

SUBJECT: Contract Extensions

DATE: September 13, 2018

RECOMMENDATION:

Authorize the Interim General Manger to extend the following VCEA’s existing contracts to December 31, 2018:

1. LEAN Energy
2. Donald Dame, Consultant

BACKGROUND & DISCUSSION:

The contracts with LEAN Energy and Consultant Donald Dame were to terminate on or around VCEA’s launch date, which was in June 2018. LEAN Energy continues to provide Staff with CCA support services post-launch and in cultivating new opportunities to grow VCEA as a Joint Powers Agency. Approximately \$11,800 remains on LEAN Energy’s contract as of June 30, 2018.

Donald Dame continues to provide professional consulting services, technical review, electric utility expertise, and program implementation assistance among other related skills. Approximately \$6,400 remains on the contract as of June 30, 2018.

CONCLUSION:

Staff continues to use these consultant services with monies available within the contract terms and recommends to the Board that the two contract terms expire on December 31, 2018.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 9

TO: Valley Clean Energy Alliance Board of Directors
FROM: Mitch Sears, Interim General Manager
SUBJECT: YCPARMIA Membership
DATE: September 13, 2018

Recommendation

Approve resolution authorizing VCEA and CEO/Risk Manager of Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) to make application to the Director of Industrial Relations for a Certificate of Consent to Self-Insure workers' compensation liabilities and authorize representatives to execute the necessary documents.

Background

On December 12, 2017 VCEA Board adopted Resolution #2017-008 approving associate membership in YCPARMIA, which provides VCEA workers compensation and liability insurance coverage.

YCPARMIA has requested that the attached Resolution be adopted by the VCEA Board. The resolution authorizes VCEA and YCPARMIA CEO/Risk Manager to submit an Application (see attached) for Certificate of Consent to Self-Insure as a Public Agency Employer to the State of California Department of Industrial Relations.

Staff is recommending the Board approve authorization of VCEA and YCPARMIA's CEO/Risk Manager to submit and execute the necessary paperwork and application to the Department of Industrial Relations.

Attachment

1. Resolution including Application

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2018 - ____

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE
AUTHORIZING APPLICATION TO THE DIRECTOR OF INDUSTRIAL
RELATIONS, STATE OF CALIFORNIA, FOR A CERTIFICATE OF CONSENT
TO SELF-INSURE WORKERS' COMPENSATION LIABILITIES**

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

WHEREAS, VCEA on December 12, 2017 adopted Resolution #2017-008 approving associate membership in the Yolo County Public Agency Risk Management Insurance Authority (YCPARMIA) and adopting YCPARMIA’s Joint Powers Agreement effective January 1, 2018 and in each year following.

NOW, THEREFORE, BE IT RESEOLVED, that VCEA and the CEO/Risk Manager of YCPARMIA is authorized and empowered to make application to the Director of Industrial Relations, State of California, for a Certificate of Consent to Self-Insure workers’ compensation liabilities and representatives of Agency are authorized to execute any and all documents required for such application.

ADOPTED, this ____ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lucas Frerichs, VCEA Board Chair

Alisa M. Lembke, VCEA Board Secretary

Attachment: Application for Certificate of Consent to Self-Insure



State of California
Department of Industrial Relations
OFFICE OF SELF-INSURANCE PLANS

**APPLICATION FOR CERTIFICATE OF CONSENT
TO SELF-INSURE AS A PUBLIC AGENCY EMPLOYER SELF-INSURER**

All questions must be answered. If not applicable, enter "N/A".

To the Director of the Department of Industrial Relations: The public agency employer identified below submits the following information to obtain a Certificate of Consent to Self-Insure the payment of workers' compensation under California Labor Code Section 3700.

LEGAL NAME OF APPLICANT (Show exactly as on Charter or other official documents):

VALLEY CLEAN ENERGY ALLIANCE

Address: 604 2nd Street

City: Davis State: CA Zip + 4: 95616 - _____

Federal Tax ID # of Group: 82-3782814

CONTACT - Who Should Correspondence Regarding This Applicant Be Addressed To:

Name: Lisa Limcaco Title: Dir of Finance

Company Name: Valley Clean Energy Alliance

Address: 604 2nd Street

City: Davis State: CA Zip + 4: 95616 - _____

Phone: 530-446-2752 E-Mail: lisa.limcaco@valleycleanenergy.org

TYPE OF PUBLIC ENTITY (Check one):

City and/or County School District Police and/or Fire District Hospital District

Joint Powers Authority Other (describe): _____

TYPE OF APPLICATION (Check one):

New Application Reapplication (Merger/Unification) Reapplication (Name Change)

Other (describe): _____

Date Self-Insurance Program will begin: 07/01/2017

Not Applicable - first employee hired 4/25/2018

CURRENT WORKERS' COMPENSATION PROGRAM

- Currently Insured with State Fund Policy # _____ Expiration Date: _____
- Currently Self Insured, Certificate # _____
- Other (describe): _____

CLAIMS ADMINISTRATION

Who will be administering your agency's workers' compensation claims? (Check one)

- JPA will administer
- Third Party Administrator, TPA Certificate # 152
- Public entity will self-administer Insurance Carrier will administer

Name of Third Party Administrator:

Name: Judy Adlam Title: President

Company Name: LWP Claims Solutions

Address: 2081 Arena Blvd. #200

City: Sacramento State: CA Zip + 4: 95834

Phone: (415) 384-0370 E-Mail: J_adlam@lwpclaims.com

of claims reporting locations to be used to handle Agency's claims: 1

Does applicant currently have a California Certificate of Consent to Self-Insure? Yes No

If yes, what is the current Certificate Number: _____

Total Number of Affiliate's California employees to be covered by Group: _____

AGENCY EMPLOYER

Current # of Agency Employees: 2 # of Public Safety Employees (police/fire): _____

If school District, # of certificated employees: _____

Will all Agency employees be covered by this self-insurance plan? Yes No

If 'No', explain who is not covered and how workers' compensation coverage will be provided to the excluded employees:

JOINT POWERS AUTHORITY

Will applicant be a member of a JPA for workers' compensation ?

Yes No (If 'yes', complete the following)

Effective date of JPA Membership: 07/01/2017 JPA Certificate # 5007

Name of JPA: Yolo County Public Agency Risk Management Insurance Authority

AGENCY SAFETY PROGRAM

Does the Agency have a written Injury and Illness Prevention Program (IIPP)? Yes No

Individual responsible for Agency workplace safety and IIPP program:

Name: _____ Title: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip + 4: _____ - _____

Phone: _____ E-Mail: _____

SUPPLEMENTAL COVERAGE

1.) Will your program be supplemented by any insurance or pooled coverage under a **STANDARD** workers' compensation insurance policy? Yes No (If 'Yes', complete the following):

Name of Excess Pool/Carrier: CSAC-EIA

Policy #: EIA-PE 18 EWC-71 Effective Date of Coverage: 07/01/2018

2.) Will your program be supplemented by any insurance or pooled coverage under a **SPECIFIC EXCESS** workers' compensation insurance policy? Yes No (If 'Yes', complete the following):

Name of Excess Pool/Carrier: _____

Policy #: _____ Effective Date of Coverage: _____

Retention Limits: _____

3.) Will your program be supplemented by any insurance or pooled coverage under an **AGGREGATE EXCESS** (stop loss) specific excess workers' compensation insurance policy? Yes No (If 'Yes', complete the following):

Name of Excess Pool/Carrier: _____

Policy #: _____ Effective Date of Coverage: _____

Retention Limits: _____

RESOLUTION FROM GOVERNING BOARD

Attach a properly executed Governing Board Resolution. See attached sample resolution on page 5.

CERTIFICATION

The undersigned on behalf of the applicant hereby applies for a Certificate of Consent to Self-Insure the payment of workers' compensation liabilities pursuant to Labor Code Section 3700. The above information is submitted for the purpose of procuring said Certificate from the Director of Industrial Relations, State of California. If the Certificate is issued, the applicant agrees to comply with applicable California statutes and regulations pertaining to the payment of compensation that may become due to the applicant's employees covered by the Certificate.

X _____ DATE: _____
SIGNED: Authorized Official / Representative

Printed Name

Title

Agency Name

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Regulatory Monitoring Report

Date: September 13, 2018

RECOMMENDATION: Receive regulatory monitoring report.

Regulatory Priorities

The Keyes and Fox Board report includes several priority issues including:

- **The PCIA Track 2 Proposed Decision and Alternate Proposed Decision were issued.** The Alternate Proposed Decision would result in a higher Power Charge Indifference Adjustment (PCIA) charge on VCE's customers than the Proposed Decision. (The utilities will calculate the actual rate impacts for bundled and departing load customers by vintage and rate schedule, and provide this information later today, August 31.) The Proposed Decision and Alternate Proposed Decision will be considered, at the earliest, at the CPUC's September 13, 2018 Business Meeting.
- **PG&E issued three Advice Letters (ALs) implementing CPUC's Decision on CCA Reentry Fees.** Of note, one of the ALs specified VCE's financial security requirement, and requested CCAs submit a compliance Tier 1 AL to the Energy Division within 30 days of approval.
- **The CPUC issued a Decision in PG&E's Phase II General Rate Case.** The Decision results in significant changes to PG&E's distribution rates applicable to both its bundled and CCA customers, including changing the "on-peak" period to 4pm - 9pm for non-residential customers, creating a super off-peak period in the spring, and reducing the summer season to the June - September period, among other important changes. The Decision also directs PG&E to make substantial changes to its rate designs in its next general rate case.

Attachment:

Keyes & Fox August 31, 2018 Regulatory Memorandum

Valley Clean Energy Alliance

Regulatory Monitoring Report

To: Valley Clean Energy Alliance Board of Directors

From: Tim Lindl, Partner, Keyes & Fox LLP
Ben Inskeep, Energy Analyst, EQ Research, LLC

Subject: Regulatory Update

Date: August 31, 2018

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), California Energy Commission (CEC), and California Air Resources Board (CARB).

This month's report includes regulatory updates on the following priority issues:

- Power Charge Indifference Adjustment (PCIA)
- PG&E's 2019 Energy Resource and Recovery Account (ERRA) Forecast
- Resource Adequacy (RA)
- CCA Reentry Fees & Financial Security Requirements
- RPS Rulemaking
- RPS Procurement Plans
- RPS Compliance Reports
- Integrated Resource Plans
- Tree Mortality Nonbypassable Charge (NBC)
- PG&E Rate Design Window (RDW)
- Other Regulatory Developments

PCIA Rulemaking

On August 14, 2018, Commissioner Peterson issued an Alternate Proposed Decision on Track 2 issues. Comments and reply comments, respectively, were due on September 4 and 10. Comments were also filed on the August 1 Proposed Decision. An all-Party meeting was held September 7.

- **Background:** This proceeding has two tracks. Track 1 addresses the PCIA exemption currently in place for CCA customers participating in the California Alternate Rates for Energy (CARE) and Medical Baseline (MB) programs. Track 2 is considering alternatives to the current PCIA methodology.

In Track 1, PG&E filed a Settlement Agreement on behalf of several parties on March 28, 2018. The Settlement Agreement resolves the availability of the exemption for MB customers taking energy from CCAs in PG&E's service territory, and it will be addressed in a forthcoming decision.

In Track 2, both a Proposed Decision and Alternate Proposed Decision have been issued.

- **Details:** A Track 1 decision pertaining to PG&E’s pending Settlement Agreement has not yet been issued.

The Track 2 Proposed Decision (PD) rejects the utilities’ proposals (*i.e.*, the Green Allocation Methodology and Portfolio Monetization Mechanism (GAM/PMM)) and CalCCA’s proposal for higher administrative benchmarks, and leaves the current PCIA in place, maintaining the current brown power index, but adopting revised inputs to the benchmarks used to calculate the PCIA for RPS resources and resource adequacy. It determines that CCAs do not need to pay for either pre-2002 or post-2002 costs of non-renewable utility owned generation (UOG), or for storage-related costs beyond the 10-year limit. It also adopts an annual PCIA true-up mechanism and a “rate collar” (*i.e.*, a floor set at zero and a cap initially set at \$0.022/kWh, with the annual change of the PCIA limited to \$0.005/kWh for any PCIA charge above \$0.015/kWh) intended to limit the change of the PCIA rate from one year to the next.

The Track 2 Alternate Proposed Decision (APD) differs from the PD in four significant ways. First, it finds that legacy UOG is PCIA-eligible and should be recovered from CCA customers. Second, the APD terminates the 10-year limit on PCIA cost recovery for post-2002 UOG and certain storage costs, meaning these costs would be included in the PCIA going forward. Third, the APD establishes a PCIA collar starting in 2020, with the cap limiting upward or downward changes in the PCIA to 25% in either direction from the prior year. Finally, the APD adopts the Platt’s Portfolio Content Category 1 REC index value for the Market Price Benchmark’s RPS Adder, but only for the 2019 Energy Resource and Recovery Account Forecast.

- **Analysis:** The Track 2 APD would result in a higher PCIA for VCE’s customers than under the Track 2 PD. (The utilities were directed by the judge to provide detailed information on Total Costs and Total Above-Market Costs directly for each resource -- and actual rate impacts for bundled and departing load customers by vintage and rate schedule for the PD and APD -- by August 31.) The revised PCIA methodology will be used to calculate the PCIA that takes effect on January 1, 2019. In addition, the PD and APD create new reporting requirements for LSEs, including CCAs, requiring them to submit specific resource contract information on January 31 each year, beginning in 2019.
- **Next Steps:** The PD and APD may be heard, at the earliest, at the CPUC’s September 13, 2018 Business Meeting. The PD and APD would also open a second phase of this proceeding, forming a working group to “consider the development and implementation of a comprehensive solution to the issue of excess resources in utility portfolios.” A decision regarding PG&E’s pending Settlement Agreement of Track 1 issues is forthcoming.
- **Additional Information:** [Track 2 Alternate Proposed Decision](#) (August 14, 2018); [Track 2 Proposed Decision](#) (August 1, 2018); [D.18-07-009](#) resolving SCE & SDG&E PCIA exemption issues (July 23, 2018); [PG&E Settlement Agreement](#) pending on MB customer PCIA exemption (March 28, 2018); [Track 2 Scheduling Memo](#) (May 2, 2018); Docket No. [R.17-06-026](#).

PG&E’s 2019 Energy Resource and Recovery Account Forecast

On August 16, 2018, the judge issued a Scoping Memo and Ruling in PG&E’s 2019 Energy Resource and Recovery Account (ERRA) Forecast application proceeding. The Northern California CCAs (CCA Parties) submitted opening testimony on August 21, and PG&E’s rebuttal testimony was filed on September 7.

- **Background:** Utility ERRA proceedings establish the amount of the PCIA and other nonbypassable charges for 2019. More specifically, they determine fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates. PG&E is forecasting a 2019 total revenue requirement of \$2.893 billion, comprised of \$1.597 billion related to its ERRA, plus three nonbypassable charges: the ongoing Competition Transition Charge (CTC), \$82.2 million; the PCIA, \$1.068 billion; and the Cost Allocation Mechanism, \$146.1 million. PG&E also requested approval of its 2019 sales forecast, as well as its 2019 GHG-related

forecasts, which includes a net GHG revenue return of \$314.2 million. PG&E's application was protested by CCA Parties and the Office of Ratepayer Advocates.

- **Details:** The Scoping Memo and Ruling identified the issues that will be considered in this proceeding, determined an evidentiary hearing is needed, and established a procedural schedule.
- **Analysis:** This proceeding will establish the amount of the PCIA for VCE's 2019 rates and the level of PG&E's generation rates for bundled customers. VCE will not know the final amount of any PCIA increase or generation rate decrease until November, when an update to PG&E's testimony will be provided, although estimates can be made from PG&E's initial testimony, which was filed with the application.
- **Next Steps:** An evidentiary hearing (if required) is scheduled for September 20-21, opening briefs are due October 2, and reply briefs are due October 16. PG&E will update the requested revenue requirements, including NBCs, as well as more current CCA load forecast information, in its November Update, due on the later of November 7 or five business days after the Energy Division sets the Market Price Benchmark.
- **Additional Information:** [Scoping Memo and Ruling](#) (August 16, 2018); [CCA Parties' Protest](#) (July 5, 2018); [PG&E's Application](#) (June 1, 2018); [PG&E's Testimony](#) (June 1, 2018); Docket No. [A.18-06-001](#).

Resource Adequacy (RA)

A prehearing conference was held on August 2, 2018, and comments were filed on August 8. The CPUC cancelled a workshop for August 29. The Energy Division also issued its 2017 RA Report and preliminary RA filing materials in early August.

- **Background:** This proceeding has three tracks, and is currently focused on Track 2. [Track 1](#) addressed 2019 local and flexible RA capacity obligations and several near-term refinements to the RA program and is closed. [Track 2](#) issues include consideration of the adoption of multi-year local RA requirements, a "Central Buyer" proposal for potential major revisions to RA procurement, refinements to local RA rules, seasonal local capacity requirements, local RA penalty waiver requirements, and increased transparency regarding which resources are essential for local and sub-area reliability. [Track 3](#) issues include 2020 RA requirements, potential revisions to RA counting rules for weather-sensitive and local demand response resources, and other issues that arise.
- **Details:** The August 29 workshop would have focused on a discussion of developing multiyear RA requirements. With the workshop's cancellation, it is unclear what the next steps will be.
The CPUC released its 2017 RA Report, finding that the RA program successfully provided sufficient resources to meet peak load in 2017. The CPUC has also released 2019 RA compliance materials, including a draft redlined RA compliance guide (updated from the 2018 version), RA deadlines, and RA compliance templates.
- **Analysis:** This proceeding affects VCE's RA compliance obligations for 2019 and 2020, and could potentially result in a new RA procurement framework in California that may impact VCE's ability to procure RA capacity on its own behalf. Changes being considered include requiring LSEs like VCE to procure RA for 3-5 years in advance instead of only for the year ahead, as well as moving to a central buyer model for local capacity requirements, where, under various proposals, PG&E, CAISO or another entity would be responsible for procuring RA capacity on VCE's behalf.
- **Next Steps:** A new procedural schedule for Track 2 is forthcoming. The draft 2019 RA guide provides that the deadline to file final 2019 year-ahead RA filings is October 31, 2018, among other deadlines.
- **Additional Information:** [2017 Resource Adequacy Report](#) (August 3, 2018); [D.18-06-030](#) setting local capacity requirements and resource adequacy program revisions and [D.18-06-031](#) adopting

flexible capacity requirements for 2019 (both on June 22, 2018); [Scoping Memo and Ruling](#) (January 1, 2018; [modified](#) in part on May 2, 2018); Docket No. [R.17-09-020](#).

CCA Reentry Fees & Financial Security Requirements

In August 2018, PG&E submitted three Advice Letters (ALs) implementing the CPUC's decision on CCA financial security requirements (FSR), including one establishing VCE's FSR.

- **Background:** Reentry fees include utility administrative costs and procurement costs resulting from a mass involuntary return of CCA customers to utility service. The FSR is used to cover those potential costs. The reentry fee for incremental procurement costs is based on six months of incremental procurement. The CPUC's Decision adopted on June 7, 2018 provided that the administrative per-customer reentry fee is \$4.24 for PG&E (compared to \$1.12 for SDG&E and \$0.50 for SCE) and that the minimum FSR is \$147,000, which can be satisfied by letters of credit, surety bonds, or cash held by a third party.
- **Details:** [AL 5350-E](#) (Tier 2) specifies VCE's and other CCA's FSRs, which are redacted in the Public version. The advice letter requests that, upon approval of AL 5350-E, each CCA post the financial security instrument covering their FSR with PG&E within 30 days. Going forward, PG&E will update the FSR amounts biannually (on May 10 and November 10 each year).

[AL 5359-E](#) (Tier 1) provides a detailed description of the specific services that are covered under the CCA customer reentry fee for utility administrative costs and how those costs were calculated. It states that PG&E intends to identify the administrative fee as a separate item in its 2020 General Rate Case Phase II testimony and include a description of the components of the fee, how it is calculated, and a comparison of its fee with other major California utilities.

[AL 5354-E](#) (Tier 2) proposes revisions to electric Rule 23 Community Choice Aggregator Service to incorporate the reentry fees and FSRs.

- **Analysis:** This rulemaking proceeding is closed. PG&E's ALs are related to implementing various requirements established in the final decision issued in this proceeding.
- **Next Steps:** Protests for each of the three ALs were due between late August and early September. The advice letters request CCAs submit a compliance Tier 1 AL to the Energy Division within 30 days of approval of AL 5350-E, providing notice of compliance with the FSR and requesting return of any interim financial security posted with the CPUC.
- **Additional Information:** [AL 5359-E](#) describing reentry fee (August 17, 2018); [AL 5354-E](#) revising electric Rule 23 (August 15, 2018); [AL 5350-E](#) on financial security requirements (August 6, 2018); [D.18-05-022](#) establishing CCA reentry fees and financial security requirements (June 7, 2018); Docket No. [R.03-10-003](#).

Renewables Portfolio Standard (RPS) Rulemaking

On August 13, 2018, Parties filed comments on the preliminary scoping memo. Furthermore, on August 22, the Independent Energy Producers Association requested that that CPUC direct the Energy Division to prepare a report on 2018 RPS Procurement Plans (filed in R.15-02-020).

- **Background:** On July 12, 2018, the CPUC adopted an Order Instituting Rulemaking (OIR) establishing a new proceeding addressing RPS-related issues. The preliminary scoping memo provides that the existing RPS rulemaking (R.15-02-020) is now closed except for the limited purpose of addressing pending petitions for modification. Going forward, this rulemaking proceeding will cover topics relevant to the RPS.
- **Details:** Topics to be covered in this proceeding, as identified in the preliminary scope, include general implementation and administration of the RPS, resolving remaining issues from the predecessor RPS docket (e.g., implementing RPS compliance waiver determinations), and

continued monitoring and improvement of the RPS (e.g., possible RPS compliance obligations beyond 2030, integrating GHG emission reduction goals into the RPS, reviewing confidentiality rules, RPS procurement plan and compliance review, RPS enforcement, and safety issues related to the RPS program and/or climate change).

The Independent Energy Producers Association has requested the Energy Division be directed to prepared a report by November 20 on the LSE's 2018 RPS Procurement Plans submitted on August 20. The report would include a comprehensive review of the 2018 RPS Procurement Plans, using aggregated data as appropriate, and address the extent to which the LSEs individually and collectively are meeting or are preparing to meet their RPS obligations in a timely manner.

- **Analysis:** This proceeding will affect VCE's RPS compliance obligations in 2019 and thereafter. This proceeding will also impact PG&E's RPS compliance obligations and impacts on above-market costs for the PCIA calculation (pending changes to the PCIA in R.17-02-026). However, a final scope and procedural schedule have not yet been established.
- **Next Steps:** A prehearing conference has been set for September 24. A final scoping memo is expected in Q4 2018.
- **Additional Information:** [Order Instituting Rulemaking](#) (July 23, 2018); [R-18-07-003](#).

RPS Procurement Plans

On August 17, 2018, the CPUC issued a Proposed Decision closing the docket, with RPS matters to be addressed in the new RPS proceeding, R.18-07-003, going forward. On August 20, LSEs including VCE submitted their 2018 RPS Procurement Plans.

- **Background:** CCAs and other retail sellers are required to submit annual RPS Procurement Plans to the CPUC.
- **Details:** The CPUC has opened a new rulemaking docket (see above) to address RPS issues going forward and is closing this proceeding except for the limited purpose of addressing pending petitions for modification.
- **Analysis:** VCE has now completed this compliance filing for 2018, although it can file a motion to update its plan if needed. In 2019, the filing deadline will be July 20 for VCE's RPS Procurement Plan.
- **Next Steps:** Comments on RPS Procurement Plans and Ruling questions are due September 14, and reply comments on RPS Procurement Plans are due September 28. Motions to update RPS Procurement Plans are due September 28.
- **Additional Information:** [VCE 2018 RPS Procurement Plan](#) (August 20, 2018); [Proposed Decision](#) closing proceeding (August 17, 2018); [Ruling](#) setting requirements and schedule for 2018 RPS Procurement filings (June 21, 2018); [D.18-05-026](#) implementing provisions in SB 350 (2015) related to penalties and compliance waivers (June 6, 2018); Docket No. [R.15-02-020](#).

RPS Compliance Report

On August 31, 2018, LSEs including VCE submitted their 2017 Annual RPS Compliance Reports.

- **Background:** RPS Compliance Reports filed in 2018 are used to demonstrate RPS Compliance for the 2017 calendar year. In an email to EQ Research staff, CPUC Staff clarified that the Energy Division required all LSEs to submit the compliance reports even if they did not serve load in 2017.
- **Details:** VCE's 2017 RPS Compliance Report provided details on its load forecasts and procurement up through August 31, 2018. VCE also submitted information on the executed RPS

contracts procured through August 31. In future RPS Compliance Reports, VCE will also need to submit information demonstrating retirements for RPS compliance purposes for the prior year.

- **Analysis:** VCE has now completed this compliance filing for 2018. In 2019, the filing deadline will be August 1 for VCE's 2018 RPS Compliance Report.
- **Next Steps:** The CPUC will use the LSE's RPS Compliance Reports to create a report to the Legislature each November on the progress of the RPS program.
- **Additional Information:** CPUC Notice of Revised RPS Compliance Report Template (emailed July 17, 2018); Docket No. [R.15-02-020](#).

Integrated Resource Planning (IRP)

On August 18, 2018, PG&E provided its first set of data requests regarding IRPs submitted by eleven CCAs, including VCE, on August 1.

- **Background:** In February 2018, the CPUC established the 2017-2018 IRP filing requirements and statewide reference system plan. In May 2018, the CPUC adopted a methodology to apportion GHG emissions to load-serving entities based on their projected hourly demand. The focus going forward in this proceeding will be: (1) actual LSE IRPs (filed August 1, 2018), (2) consideration of those IRPs and the adoption of a Preferred System Plan (PSR), and (3) groundwork and preparation (e.g., policy issues) for the 2019-2020 IRP cycle.
- **Details:** VCE submitted its IRP on August 1, and a workshop was held on August 7 to discuss the IRP filings of 44 different LSEs in California. Parties filed confidential versions of their IRPs by August 20.
- **Analysis:** Comments on VCE's IRP, if any are submitted, will shed light on the degree to which PG&E and other parties consider VCE's IRP to be in compliance with the CPUC's directives.
- **Next Steps:** Comments on IRPs were due September 12, and reply comments are due September 26.
- **Additional Information:** [VCE's 2018 IRP](#) (August 1, 2018); [Ruling](#) adopting final load forecasts and GHG reduction benchmarks (June 18, 2018); [Ruling](#) adopting GHG accounting method and benchmarks (May 25, 2018); [D.18-02-018](#) adopting IRP reference plan and load-serving entity requirements (February 13, 2018); Docket No. [R.16-02-007](#).

Tree Mortality Nonbypassable Charge (NBC)

Parties filed opening briefs on August 13, 2018, and reply briefs on August 31.

- **Background:** On November 14, 2016, PG&E, SCE, and SDG&E filed an application seeking a "Tree Mortality Non-Bypassable Charge," and proposed cost recovery through the Public Purpose Program Charge. The utilities asserted that SB 859 (2016) required these costs be allocated to all customers, including unbundled customers. The utilities define the costs to be allocated as net costs factoring in all contract costs net of energy, ancillary service, and renewable energy credit values.
- **Details:** The judge also denied an August 13 motion filed by the Office of Ratepayer Advocates (ORA) that had requested that the record be kept open in the proceeding so that parties can provide proposals and further comment on how to allocate tree mortality contracts' resource adequacy benefits that cannot be credited retrospectively. In an Email Ruling, the judge found ORA's motion untimely, as the proceeding remained open until reply briefs were filed on August 31. Parties are now awaiting the issuance of a Proposed Decision.
- **Analysis:** This proceeding could result in additional costs being recovered through the Public Purpose Program Charge on CCA and bundled customers.

- **Next Steps:** A Decision is expected by late Fall 2018.
- **Additional Information:** [ORA Motion](#) (August 13, 2018); [Scoping Memo and Ruling](#) establishing the scope and procedural schedule (May 30, 2018); [Ruling](#) denying CalCCA's Motion to include consolidated cost recovery in the scope of this proceeding (March 14, 2018); Docket No. [A.16-11-005](#).

PG&E Rate Design Window (RDW)

On August 17, 2018, PG&E, SDG&E and SCE filed Supplemental Testimony on Phase IIB topics, which include a number of CCA issues related to the roll-out of residential TOU rates.

- **Background:** The IOUs' RDW applications have been consolidated into one proceeding. This proceeding is divided into three phases, with the second phase further bifurcated. A May 2018 [Phase I](#) Decision granted PG&E approval to begin transitioning eligible residential customers to TOU rates beginning in October 2020.

The proceeding is now focused on [Phase II](#), which is considering the IOUs' specific rate design proposals for default TOU and other rate options, as well as implementation issues for default TOU. With respect to PG&E, [Phase IIA](#) is focused on PG&E's proposal to restructure the CARE discounts into a single line item percentage discount to the customer's total bill, and [Phase IIB](#) is addressing its rate design proposals and implementation, including a number of issues impacting CCA customers (e.g., PG&E's CCA rate comparison tool and TOU rate design roll out to CCA customers).

[Phase III](#) will consider the IOUs' proposals for fixed charges and/or minimum bills. PG&E proposed raising its minimum bill from \$10/month to \$15/month and implementing a fixed charge beginning at \$3.70/month in the first year and rising to \$7.40/month in the second year.

- **Details:** The Ruling observes that although the IOUs used the same methodology to calculate GHG reductions, they did not use consistent values or assumptions, and that PG&E and SDG&E specifically did not explain all of the values and assumptions they used in the calculations. Furthermore, it states that the Energy Division might want to propose a variant of the "Itron Methodology" used in the GHG calculations. Accordingly, it directs the IOUs to consult with the Energy Division and parties to discuss the accuracy of the Itron model, and to develop a consistent set of values and assumptions to be used in their calculations of cost estimates and GHG reductions, and to present revised calculations in supplemental testimony.
- **Analysis:** This proceeding will impact the timing, details, and implementation of residential TOU rates for bundled PG&E customers as well as VCE customers via rate design changes to the distribution component of customer bills. It could affect the level of VCE's rates compared to PG&E's, and to the extent VCE mirrors PG&E's residential rate design, lead to changes in the way VCE structures its residential rates.
- **Next Steps:** In Phase IIA, a Proposed Decision is expected in November, with a final Decision by December 13, 2018. The Office of Ratepayer Advocates and other Parties will file Testimony on September 26. In addition, the IOUs will file supplemental testimony on September 26 regarding GHG reduction cost estimates. There are no Phase III procedural deadlines scheduled until March 2019.
- **Additional Information:** [Ruling](#) requesting supplemental testimony on GHG reduction cost estimates (August 17, 2018); [PG&E Supplemental Testimony](#) (August 17, 2018); [Ruling](#) clarifying scope (July 31, 2018); [D.18-05-011](#) (Phase I) on the timing of a transition to default TOU rates (May 17, 2018); [Amended Scoping Memo](#) (April 10, 2018); PG&E Rate Design Window Application & Testimony (December 20, 2017); Docket No. [A.17-12-011](#) (consolidated).

Other Regulatory Developments

- PG&E Phase 2 General Rate Case (GRC).** The CPUC has issued a [Decision](#) in PG&E's Phase 2 GRC. The Decision approves settlements among parties that result in significant changes to PG&E's rate design, including (1) creating 4pm – 9pm peak period for most non-residential customers and a 5pm – 8pm peak period for agricultural customers, (2) creating a super off-peak period in the spring, (3) reducing PG&E's summer season from the six-month May – October period to the four-month June – September period, and (4) creating an "Option S" rate for certain energy storage customers, among other changes. The CPUC criticized PG&E for its non-residential TOU customer rate design proposals, finding the substantial increases to PG&E's non-coincident demand charges "promote inefficient use of energy contrary to state policy goals encouraging economically efficient and socially beneficial energy usage." Although the Decision ultimately approves most of the rate designs that parties agreed to in Settlement Agreements, it also requires PG&E to propose specific, different rate designs in their next GRC Phase 2 proceeding that reflect more cost-based rates, based on full Equal Percent of Marginal Cost (EPMC) scaling of all marginal cost components, for its non-residential TOU customers. It must also propose a menu of TOU options for all non-residential TOU customers, and file a transmission cost causation study that examines the appropriate allocation of transmission costs between non-coincident demand charges and system peak demand charges.
- PG&E Energy Storage Procurement Application.** In August, stakeholders filed comments on on prioritizing technology diversity in utility energy storage procurements under California's energy storage mandate in response to a CPUC issued a [Ruling](#). Topics on which the CPUC had requested addition comments include whether the CPUC's goal of "transforming" the energy storage market can be considered achieved if only one technology (lithium ion batteries, comprising 89% of existing contracts entered into under the mandate) comprises the majority of systems in the IOUs' service territories; potential grid or customer benefits associated with attributes of storage technologies other than lithium ion batteries; and how a non-lithium ion carve-out for the 2018 solicitation could be designed.
- California Customer Choice.** On August 7, 2018, the CPUC issued its [Final California Customer Choice Paper](#), addressing "the changing electric market in California and resulting new challenges that are confronting the state's energy future and reliability." The paper examines California's current electricity market and analyzes customer choice trends in which fewer and fewer customers are getting power from traditional large regional utilities, so as to address the following overarching problem statement: "How does increased customer choice occurring in the electric sector impact California's ability to achieve its policy objectives of affordability, decarbonization, and reliability?" The associated email notice describes the changes compared to the May 2018 draft as "non-material" in nature.

The CPUC stated it would conduct a gap analysis and draft an action plan for addressing the issues identified in the paper, with the customer choice project team identifying critical issues requiring resolution, mapping those issues to current CPUC proceedings and determining the appropriate forum(s) where they can be addressed (CPUC or elsewhere), identifying areas requiring further analysis, and developing recommendations. A draft action plan is slated for publication in September, followed by a public workshop in mid-October. Specific dates for future stakeholder engagement have not yet been established.

- PG&E Distribution-Rate Cost Recovery of TOU Expenses.** PG&E filed a [Proposal](#) requesting to recover \$20.5 million in 2015-2016 costs plus interest recorded in the Residential Rate Reform Memorandum Account (RRRMA) through its distribution rates. The costs relate to those PG&E spent implementing rate design reforms, including TOU pilots and studies, marketing, education and outreach, IT, data analysis, and other reasonable expenditures required to implement residential TOU rates. On August 10, CCA Parties filed a protest of PG&E's proposal.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager, VCEA

SUBJECT: Customer Enrollment Update (Information)

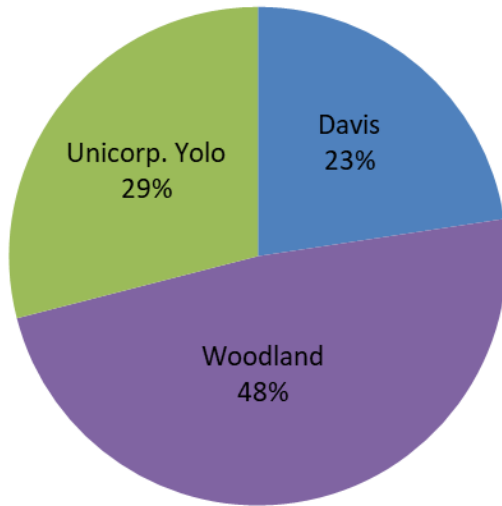
DATE: September 13, 2018

RECOMMENDATION

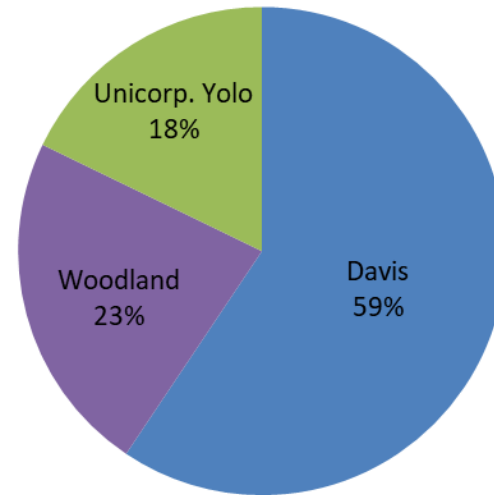
Receive and review the attached Customer Enrollment update provided by SMUD.

Enrollment Update

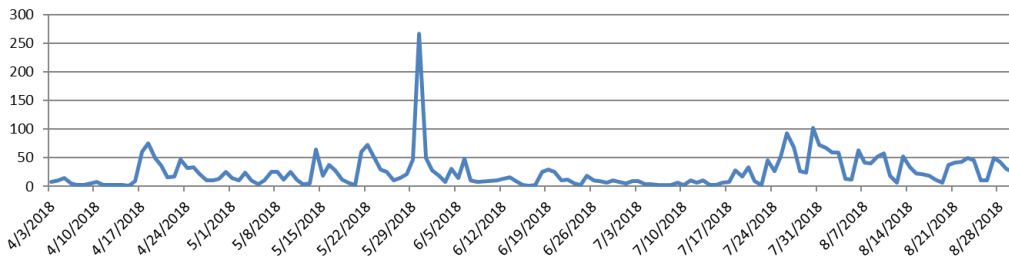
3,423 Opt Outs
5.3% of customers



101 Opt Ups



Daily Opt Outs



Opt Out Channel

CSR	35%
IVR	32%
Web	33%

	Eligible	Opt-Out	% Opt Out
Residential	56,500	2,833	5.0%
Non-Residential	8,500	590	6.9%
Total	65,000	3,423	5.3%



Status Date: 8/31/18

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Valley Clean Energy Alliance Board of Directors
FROM: Mitch Sears, Interim General Manager
SUBJECT: Approval of revised base energy product name
DATE: September 13, 2018

RECOMMENDATION

1. Approve name change of VCE’s base energy product to “Standard Green”

BACKGROUND AND ANALYSIS

In late 2017 the Board approved naming VCE’s base and 100% renewable energy products. Earlier this year MCE informed VCE that their base product was also named “Light Green” and that they were concerned it might lead to customer confusion. They requested that VCE phase out the name based on their trademark of the term. VCE staff agreed to phase out the Light Green term as a courtesy. For the last several months “Light Green” has not appeared on the VCE web site or on promotional materials – there has been no noticeable impact.

Staff is returning to the Board to confirm this approach and name change since changes to the customer opt-up/opt-out billing system are more involved than simply removing the name from the web site. With Board approval, staff will proceed with using Standard Green for VCE’s base energy product.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Community Advisory Committee Report
- July 30, 2018 meeting summary
- August 29, 2018 meeting summary

DATE: September 13, 2018

This report transmits the Community Advisory Committee's (CAC) summaries from its July 30, 2018 and August 29, 2018 meetings.

The July 30, 2018 CAC summary provides a recap of what was discussed and recommended to the Board. This summary would have been provided to the Board at your August 9, 2018 meeting; however, said meeting was cancelled due to a lack of quorum. It is included for your information.

The August 29, 2018 summary includes recommendations, which are provided below.

Staff Recommendations from August 29th meeting:

1. Approve the recommendation on the terms of service and officer position of Members who serve on the Advisory Committee.
2. Approve Staff to move forward with the recording of VCE Board meetings.

Background:

In December 2016, the VCE Board formed the Community Advisory Committee (CAC) and charged the CAC to the following:

- advise the VCE Board of Directors on VCEA's general policy and operational objectives, including portfolio mix and objectives, as well as technical, market, program and policy areas;
- collaborate with VCE staff and consultants with community outreach to and liaison with member communities;
- provide a public forum to inform, advise and consult through community discussions on energy related issues and a wide variety of strategies to reduce carbon emissions; and,
- collaborate with VCE staff with monitoring legislative and regulatory activities related to Community Choice Energy issues.

In order to achieve the goals and mission of VCE, the CAC was asked to develop, periodically review and update a workplan for the short and longer terms. The CAC would also engage, evaluate, and make recommendations on select items to the VCE Board, Staff and consultants, and engage with VCE member jurisdictions and others, as directed by the Board or initiated by the CAC.

The CAC was directed to periodically review this charge and make recommendations for changes to the Board of Directors in order to reflect new issues, opportunities and challenges impacting VCE.

The CAC held their first meeting in August 2017 and have continued to hold monthly meetings providing valuable input, evaluation and recommendations to the VCE Board.

August 29, 2018 Summary: The CAC discussed a number of items, including developing a progress report, second year goals, terms of Members, the CAC “charge” and long-range calendar. Further discussion among the Members will continue at later CAC meetings; thereafter, it is anticipated that further recommendations will be presented to the Board. Included in their discussion, they reviewed the Committee’s organizational structure and have made the recommendations set forth below.

Terms of Service on Advisory Committee:

- Officer positions (Chair, Vice Chair and Secretary) are selected once a year.
- Each CAC Member would serve a three-year term, with the option to be reappointed for additional terms.
- Create three “graduation classes” of three CAC members – one from each member jurisdiction to keep consistency of knowledge on the Advisory Committee; therefore, Class 1 would be a two-year term, Class 2 would be a three-year term, and Class 3 would be a four-year term all expiring in June to coincide with VCE’s fiscal year end.

CLASS 1 – term expiring June 2019

Davis rep
Woodland rep
Yolo County rep

CLASS 2 – term expiring June 2020

Davis rep
Woodland rep
Yolo County rep

CLASS 3 – term expiring June 2021

Davis rep
Woodland rep
Yolo County rep

Solicitation of New Members/Appointment by Board:

Currently the Board appoints new members to the Advisory Committee based on equal representation from the participating jurisdictions. CAC Members are encouraged to use their networks to identify potential Committee applicants and to forward those suggestions to Board members. The CAC suggested that vacancies be “advertised” through various channels including the VCE website, other social media and word of mouth to identify potential applicants. The CAC asked that VCE Staff review current commission/committee recruitment policies of the member agencies and recommend a formalized process for selection of future Advisory Committee members.

At the August 29, 2018 CAC meeting, Member Tom Flynn announced his resignation from the Advisory Committee, which leaves two vacancies: City of Woodland and Yolo County.

Recording of Board Meetings:

The CAC suggests that the Board meetings be audio recorded and/or videotaped.

Similar to the Woodland-Davis Clean Water Agency (WDCWA) which holds meetings both in Davis and Woodland, VCE Board meetings could be recorded, the file uploaded by City Staff then made available to VCE Staff to post on the VCE website.

At the Woodland Council Chambers, VCE would contract with Woodland TV to video record the meetings using their own equipment. The cost is approximately \$400 for a 2-hour meeting and a ½ hour for set up and break down. The recordings are provided to the City of Woodland Information Technology (IT) Department who converts and uploads the recording to a Google drive, thereafter, VCE Staff would post to the VCE website. Woodland’s IT Department has offered to convert and upload free of charge as long as the video is recorded to the City’s system.

At the City of Davis, VCE would be charged per hour (approximately \$50-75/hour) for set up, clean up and meeting time. Davis televises meeting live, both cable TV and internet, then would upload the file to our website. Davis Staff would also provide a DVD of the meeting for our records.

For reference, Staff looked at other JPAs and programs as to whether or not they videotaped their Board meetings. Of the nineteen (19) reviewed (11 CCAs and 8 JPA’s/programs), eight (8) recorded their meetings of which five (5) are CCAs.

Attachment

1. CAC Report

Valley Clean Energy Alliance
Community Advisory Committee Report to the Board
Summary of July 30th CAC Meeting

Background: Following a Chair/Vice-Chair discussion in March 2018 with Mitch Sears, Gerry Braun, Christine Shewmaker, Lucas Frerichs and Tom Stallard, it was suggested that instead of a CAC report at the end of the Board meeting, that a brief written summary be included in the Board agenda materials. Included would be short explanations of votes, particularly when they were not unanimous.

- Long Term Renewables Procurement Solicitation Criteria/Policy Recommendation
 - Reviewed presentation and discussed criteria.
 - i. Extensive discussion of prime ag, non-prime ag and Williamson Act land
 - ii. Discussion of possibility of sites on ag land having combined energy and ag uses
 - Discussed Staff and Task Group recommendations.
 - Received Defenders of Wildlife recommendation to add qualification criterion, i.e. that project permit application must be complete.
 - Motion: to support Staff's recommendation except with respect to energy storage. Change "with a limitation of" to "with a preference for" battery storage systems integrated with a renewable project. Motion passed: 5-0-0.

- Legislative/Regulatory Summary and Recommendations
 - Leg/Reg Task Group summarized six bills and presented recommendations.
 - Discussed Task Group, Staff and CalCCA recommendations.
 - Motion: to accept Task Group's recommendation to recommend to the VCEA Board to: 1) Watch SB 1088 (Dodd) Safety, reliability and resiliency planning, 2) Oppose AB 893 (Garcia) Renewable Portfolio Standard. Geothermal, 3) Oppose unless amended SB 1347 (Stern) Energy storage systems: procurement, 4) Oppose AB 2208 (Aguiar-Curry) Electrical Utilities. Biomass. Geothermal, 5) Watch AB 2726 (Levine) California Global Warming Solutions Act of 2006, 6) Oppose SB 237 (Hertzberg) Direct Access. Motion passed: 5-0-0.
 - As the relevant Appropriations Committees will meet prior to the August 9th Board meeting, the possibility of discussing our positions on SB 237 and AB 893 with the Board subcommittee prior to August 9th was discussed. The outcome of that discussion could be the subcommittee taking action before the Appropriations Committees meet.

- Net Energy Metering (NEM) Policy
 - Updates from Staff on workshops and enrollment policy changes.
 - Discussed other NEM related issues raised by Energy Task Group which will be considered by the Committee in the future: Definitions of Terms, Other CCA policies (Payout to NEM customers, Focus on disadvantaged communities), Integrated local resource development plan, Services to help customers lower consumption/save money.

- CAC Administration and Announcements
 - Will work with Staff to suggest tenure for committee members and procedures for selecting new members in the future. Once CAC agrees upon plan, it would be taken to the Board for approval.
 - CAC launch phase review and second year work plan – CAC Chair/Staff to schedule meeting for CAC to discuss draft summarizing CAC contributions to date and proposed forward work plan, e.g. support of local resource related action steps.

Valley Clean Energy Alliance
Community Advisory Committee Report to the Board
Summary of August 29th CAC Meeting

Background: Following a Chair/Vice-Chair discussion in March 2018 with Mitch Sears, Gerry Braun, Christine Shewmaker, Lucas Frerichs and Tom Stallard, it was suggested that instead of a CAC report at the end of the Board meeting, that a brief written summary be included in the Board agenda materials. Included would be short explanations of votes, particularly when they were not unanimous.

- Amended Net Energy Metering (NEM) Policy
 - Updates from Staff on workshops and policy amendment recommendations.
 - Motion: recommend to the Board that the amended NEM policy be adopted with the following revisions: remove #13, change date on #14 and #15 to June 2018, add statement that if customers stay below \$500 for 2 years can ask to return to annual billing.
 - Motion passed: 7-0-0.

- CAC Administration
 - Reviewed outline and process for developing CAC Progress Report and Second Year Workplan
 - Discussed process for revising CAC's charge to reflect possible differences between CAC's launch phase role and its potential future operations phase role.
 - Discussed the need to develop a recruitment process for new CAC members. Staff to review processes for jurisdictions and come back with a proposal.
 - Reviewed costs, benefits and practices of comparable organizations regarding recording of Board meetings. Most committee members indicated support for VCE's Board meetings being recorded, but no formal vote was taken.
 - Reviewed Staff findings on other CCA's practices with respect to terms for subcommittees and advisory committees. Discussed Staff suggestions regarding terms of CAC members and election of officers.
 - Motion: recommend to the Board to adopt the staff recommendation regarding terms for CAC members with two changes: 1) current terms end 2019, 2020 and 2021, and 2) remove Vice Chair moves up to be Chair.
 - Motion passed: 7-0-0.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Agenda Item 15

TO: VCE Board of Directors

FROM: Mitch Sears, Interim General Manager
Jim Parks, Director of Customer Care and Marketing

SUBJECT: Net Energy Metering Policy Amendment

DATE: September 13, 2018

BACKGROUND

VCE staff learned of potential issues with the existing NEM policy and worked with the CAC, VCE Board and the public to develop recommendations to revise the policy and improve benefits to existing NEM customers. As a result, at the July 12 Board meeting, the Board approved postponing NEM enrollment to 2019 and requested staff to hold public workshops to gather public input regarding possible changes to VCE's NEM policy. In response, staff hosted two public workshops—one in Davis and one in Woodland.

UPDATE AND RECOMMENDATION

The NEM recommendations were presented at both workshops, followed by additional staff analysis and revision. The proposed NEM policy was presented to the CAC at their August 29th meeting. The CAC reviewed the proposed NEM policy and unanimously agreed to forward the proposed policy to the VCE Board with a recommendation to approve.

The new policy takes two directions: 1) Existing or legacy NEM customers that will be allowed to retain their existing annual billing cycles and true-up dates and 2) New NEM customers that will be placed on a monthly billing cycle with a February true-up date. Below is a listing of the existing NEM policy and the proposed amended policy.

EXISTING NEM POLICY

1. Initial enrollment of NEM customers shall be on a monthly basis, based on PG&E true-up date;
2. Annual true-up for all NEM customers shall be held annually in April;
3. Cash-out only for NEM customers with \$100 or more in credits. NEM customers with less than \$100 in credits will have credit balance roll over to the next billing cycle (no loss of credits);

4. Credit NEM customers monthly for excess generation at retail plus \$0.005/kWh, without additional compensation for participation in renewable programs;
5. Settle NEM customers annually at the wholesale value of net surplus generation plus a \$0.005/kWh adder.

PROPOSED NEM POLICY

1. Residential NEM customers with solar systems installed prior to June 2018 may retain their existing PG&E annual billing cycle unless their annual balance exceeds \$500.
2. Residential NEM customers with solar systems installed prior to June 2018 with annual balances exceeding \$500 will be transitioned to monthly billing with a February true-up date.
3. Residential customers with solar systems installed prior to June 2018 that have been placed on a monthly billing cycle can request to move back to an annual billing cycle if their annual bill is less than \$500 per year for a consecutive two-year period.
4. Non-residential NEM customers with solar systems installed prior to June 2018 may retain their existing PG&E annual billing cycle, unless their annual balance exceeds \$5,000.
5. Non-residential NEM customers with annual balances exceeding \$5,000 may be transitioned to monthly billing with a February true-up.
6. NEM customers may choose a monthly billing cycle with February true-up in lieu of an annual billing and true-up cycle.
7. NEM customers with solar systems installed prior to June 2018 that are on annual billing cycles will retain their current true-up month.
8. The transition from PG&E to VCE will occur on the customer's true-up date in 2019.
9. NEM customers with less than \$100 in credits will have the credit balance roll over to the next billing cycle (with no loss of credits). NEM customers with a credit balance exceeding \$100 on their annual true-up date will be cashed-out, unless they choose to roll over the balance or donate the funds.
10. NEM customers that generate excess energy on a monthly basis will receive the retail value plus a \$0.01/kWh credit for the excess generation, without additional compensation for participation in renewable programs.
11. Customers on time-of-use (TOU) rate schedules will receive a \$0.01/kWh credit for excess generation during any TOU period on a monthly basis.

12. NEM customers that generate excess energy on an annual basis will receive the wholesale value of net surplus generation, plus a \$0.01/kWh adder.
13. NEM customers may opt-out of VCE's NEM program and return to PG&E at their discretion.
14. Residential customers adding solar systems beginning June 1, 2018 will be placed on monthly billing with an annual true-up date in February.
15. Non-residential customers adding solar systems beginning June 1, 2018 may be placed on monthly billing with an annual true-up in February.

Requested Action

- Review and discuss revised NEM policy
- Approve the new NEM policy

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 16

To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Joint Powers Authority New Member Application Policy

Date: September 13, 2018

RECOMMENDATION:

- 1) Invite the City of Winters and the City of West Sacramento to join VCEA in 2018 for potential customer enrollment in 2020 or in 2019 for customer enrollment in 2021;
- 2) Authorize staff to respond to inquiries and/or commence discussions with other Central Valley communities that may be interested in joining VCEA in 2019 and beyond; and,
- 3) Adopt attached resolution regarding new member terms and conditions and authorize VCEA General Manager to determine cost of entry based on actual cost not to exceed \$50,000.

BACKGROUND & DISCUSSION:

With the successful launch of Valley Clean Energy in June 2018 and the completion of its customer enrollment process, VCE is now able to consider service expansion to the remaining cities in Yolo County - the Cities of Winters and West Sacramento - and other Central Valley communities that have expressed interest in our program.

Over the past few months, staff and consultants have researched new member terms among existing CCAs and conducted informal discussions with a few adjacent cities and counties, including the Cities of West Sacramento and Winters as new member priorities. In general, for a community to become a new member of an existing CCA, it requires adoption of a JPA resolution and CCA ordinance by the proposed new member agency as well as an affirmative vote of the JPA Board of Directors. This is consistent with the provisions outlined in Section 2.4 of VCEA's JPA Agreement. Cost of entry to join existing CCA programs ranges from zero (e.g. Marin Clean Energy and Sonoma Clean Power) to \$50,000 + enrollment costs as is the case with a few Southern California CCA programs. See section B below for VCEA's recommendation in this regard.

A) Timing & Process Requirements:

CPUC Resolution E-4907, adopted earlier this year, now requires a one-year waiting period between adoption of a new or amended Implementation Plan and commencement of electric service under a new or existing CCA. Thus, cities and counties that wish to commence service

with VCE in 2020 must join in 2018 with an amended Implementation Plan submitted to the CPUC by December 31, 2018. Communities joining in 2019 must submit an Implementation Plan by December 31, 2019 and would commence service in 2021, and so on.

VCE's Joint Power's Agreement, Section 2.4 "Membership in VCEA," stipulates that new member communities may join upon the adoption of a resolution by the City Council or Board of Supervisors of the proposed new member agency followed by an affirmative vote of VCEA's Board of Directors. This section requires a minimum 45 day notice to the JPA member jurisdictions following formal notification by the prospective new member. It further indicates the Board may establish conditions, including financial, under which a city or county may become a member. This is discussed further in section B below.

Based on the requirements of the CPUC and VCE's adopted JPA, new members would need to notify and VCE would need to complete its membership process by December 31, 2018 for a new member to start service on January 1, 2020. With all steps accounted for (i.e. collection of PG&E data, VCE analysis of financial and energy impacts, 45 day notice to current JPA members, and amendment of VCE Implementation Plan), staff estimates that new members would need to provide formal notice to VCE by early October. If this timeline is missed, the next opportunity to begin service would be January 1, 2021.

B) New Member Terms & Proposed Fees:

Valley Clean Energy recognizes that offering electric service to additional cities and counties has a number of benefits including environmental (i.e. further reductions in greenhouse gas emissions) and financial (i.e. greater program revenue and ability to spread fixed costs over a larger customer base). That said, there are a number of up-front costs and administrative steps required to on-board a new community prior to the start of service. These include: 1) conducting an updated load analysis and preparing an amended Implementation Plan, 2) administrative tasks required for organizational integration, 3) power procurement, and 4) customer notification and enrollment. Depending on the size of the new community, these pre-revenue costs could range anywhere between \$500,000 - \$1,000,000 or more, including the cost of power. However, the long-term financial advantages would off-set these costs and could be absorbed by new program revenues within the first 1-2 years.

VCEA staff, in consultation with SMUD, is recommending that new communities provide direct and indirect support under the following terms:

- 1) Direct Costs: New member agencies shall pay for the cost of PG&E load data, load analysis and Implementation Plan amendments that will range between \$25,000 - \$50,000 depending on population and load size and complexity, such that smaller communities (e.g. under 30,000 in population) would pay less and larger communities would pay more, with a not-to-exceed cap of \$50,000. Final cost to be determined by VCEA General Manager in consultation with SMUD and executive staff of the proposed new member agency.
- 2) Indirect Support: New member agencies are asked to provide staff assistance with local community outreach which could include informational workshops, tabling at community events, and notifications in city bulletins and website. New members are also asked to appoint a community representative(s) to VCEA's Community Advisory

Committee and assist with other light administrative tasks as needed through the program integration process.

- 3) **Reimbursement of Direct Costs:** The initial cost as described in B)1 above shall be reimbursed to the new member agency within one year of new customer revenues. If, after completing the initial tasks described above the new member decides *not* to proceed, the fee will be forfeited. Additional terms and fees associated with program withdrawal as described in Article 6 of the VCEA JPA Agreement shall apply.

C) Governance:

Section 3.1 of the JPA Agreement, “Board of Directors” stipulates that a new member agency shall have two seats on the Board of Directors until VCEA membership reaches five jurisdictions, at which time the number of Board seats per member shall drop to one. Thus, if both the City of Winters and the City of West Sacramento join VCEA, they will each appoint one Director and the three existing member agencies – Unincorporated Yolo County, City of Davis and City of Winters - will reduce their Board representation to a single seat per member. If only one new member joins the existing three, each member shall have two seats on the Board.

New member agencies will also have an opportunity to appoint 3 non-elected representatives to participate on VCEA’s Community Advisory Committee.

D) Regulatory and Market Impacts:

As the Board is aware, the CPUC has issued both a Proposed and Alternate Decision on the hotly contested Power Charge Indifference Adjustment (PCIA), the outcome of which will influence VCEA’s near-term economics in light of limited program reserves. It was hoped that the final decision would be out by September 13, but the PUC extended that date to September 27th. In addition, VCEA and SMUD will keep a close eye on power pricing and PG&E utility rates, not only for existing operations but for their impact on the timing of on-boarding new communities as well. Our hope and expectation is that a new community joining VCEA in 2018 would be able to commence service in early 2020; however, that will be monitored and determined by the SMUD and VCEA teams to ensure “best case” timing in terms of program impacts and revenues. In other words, VCEA will not procure power or commence customer enrollment for new member communities until rate discount, revenue and reserve targets can be met.

Attachment: Resolution VCEA New Member Application Policy

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2018 - ____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE AUTHORIZING JOINT POWERS AGENCY NEW MEMBER APPLICATION POLICY

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

WHEREAS, the VCEA Joint Powers Agreement Section 2.4 “Membership in VCEA” contemplates new member agencies and articulates the legal steps and administrative requirements to join the Agency post launch. Section 2.4 also contemplates that the Board of Directors may establish conditions of membership including but not limited to financial.

WHEREAS, California Public Utilities Code (CPUC) Resolution E-4907 requires a one-year waiting period between adoption of a new or amended Implementation Plan and commencement of electric service under a new or existing Community Choice Aggregation (CCA). Thus, cities and counties that wish to commence service with VCEA in 2020 must join the Agency in 2018 with an amended Implementation Plan submitted to the CPUC by December 31, 2018. Communities joining in 2019 would commence service in 2021, and so on.

WHEREAS, VCEA recognizes that offering electric service to additional cities and counties has several benefits including environmental, furthering the use of renewable resources and reductions in greenhouse gas emissions, as well as financial as a result of greater program revenue and the ability to spread fixed Agency costs over a larger customer base.

WHEREAS, VCEA also acknowledges the significant costs associated with membership expansion, and has established modest direct and indirect support requirements for new member agencies including:

- (a) **Direct Costs:** New member agencies shall pay for the cost of PG&E load data, load analysis and Implementation Plan amendments that will range between \$25,000 - \$50,000 depending on population and load size and complexity, such that smaller communities (e.g. under 30,000 in population) would pay less and larger communities would pay more, with a not-to-exceed cap of \$50,000.
- (b) **Indirect Support:** New member agencies will be asked to provide staff assistance with local community outreach which could include informational workshops, tabling at community events, and notifications in city bulletins and the city website. New members will also be asked to appoint community representative(s) to VCEA’s Community Advisory Committee and assist with other light administrative tasks as needed through the program integration process.

WHEREAS, upon receipt of one year of new customer revenues, VCEA will reimburse initial direct costs described in (a) above to the new member agency. If, however, the new member decides *not* to proceed, the direct cost will be forfeited. Additional terms associated with JPA membership and program withdrawal, described in Article 6 of the VCEA JPA Agreement, shall apply.

WHEREAS, CPUC requirements notwithstanding, VCEA shall have discretion over the precise timing of new member customer enrollments subject to market and regulatory conditions in order to ensure “best case timing” for program impacts and revenues.

NOW, THEREFORE, BE IT RESOLVED, that the VCEA Board of Directors invites interested cities and counties within Yolo County, adjacent counties, and the Central Valley region of PG&E’s service territory to consider membership in Valley Clean Energy Alliance.

ADOPTED, this ____ day of _____ 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lucas Frerichs, VCEA Board Chair

Alisa M. Lembke, VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Agenda Item 17

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager
Gary Lawson, Sacramento Municipal Utility District (SMUD)

SUBJECT: Review of Key Criteria for Long Term Renewable Solicitation

DATE: September 13, 2018

RECOMMENDATION

Staff will review its recommendations associated with seven (7) of the criteria deemed to be key criteria that are included in the Long Term Renewable Solicitation (Solicitation) issued on August 13. This report summarizes and presents the considerations that were made to establish the criteria recommendations.

BACKGROUND

General

On August 13, staff released a request for offers for VCE to procure renewable energy through long-term¹ power purchase agreements that will be executed in VCE's name.

This Solicitation is identified in the Action Plan included as a requirement in VCE's Integrated Resource Plan filed with the CPUC on August 1, 2018. The number one item in the Action Plan is conducting the Long Term Renewable Procurement. The Action Plan states specifically:

"VCE will be conducting a long-term solicitation in 2018 in which it will be seeking renewable power from RPS-qualifying renewable energy projects, with an expectation that power purchase agreements will be executed in early 2019. In support of the initial solicitation, VCE will:

- Develop criteria/information requests to evaluate new renewables for projects implementing responsible siting practices (both environmental and land use). Develop associated evaluation criteria.
- Develop criteria for acceptable and preferred renewable technologies and locations (e.g. local vs. remote).
- Develop position on procuring out-of-state resources. Develop criteria defining limits on which states VCE will procure long term renewables from.
- Develop a position on the definition of "local" for renewable resource procurement.

¹ For the purposes of the renewable portfolio standard, "long-term" is defined in California Public Utilities Code Section 399.13 as 10 years or longer.

- Determine whether to include battery or other storage options in solicitation.
- Develop criteria for assessing the portfolio content of local versus non-local for short-list selection.
- Do a literature review on the economic impacts/value of locally sited renewable resources.

This staff report addresses the first 5 of the bulleted sub tasks. The remaining 2 bulleted sub tasks will be accomplished during the evaluation phase of the solicitation, expected to occur later this year.

Other Considerations

Staff developed its recommendations for these specific Solicitation criteria from information gained through various interactions with the Board, the Community Advisory Committee, and other stakeholders attending Board and Advisory committee meetings. Additionally, staff reviewed the specific recommendations with the Community Advisory Committee (CAC) Energy Subcommittee on July 23, 2018, and by the full Community Advisory Committee at its July 30, 2018 monthly meeting.

To put this solicitation in context with VCE's immediate needs, as well as to set expectations for outcomes resulting from this solicitation, here are some facts to keep in mind:

Key Outcome Needed from Solicitation. The primary result needed from this first long-term renewable solicitation is for VCE to begin building its long-term renewable portfolio with low cost renewable resources. VCE currently has no long-term energy supply commitments.

Legal Requirement for Long Term Renewables. VCE needs to have at least 65% of its minimum RPS requirements under long term contract by 2021. 2021 RPS minimum requirements are 34.8% of retail load. Minimum RPS requirements continue to increase each year, so this solicitation should probably target renewables needed to meet the minimum contracting requirements out through 2025, which are at 41.7%. That's 27.11% of retail load, or 206,761 MWh/yr for 2021. So, for a minimum long-term contracted amount, this minimum amount equates to the annual energy output of a 91 MW solar PV plant.

VCE is Likely to Receive Some Attractive, Low-Priced Solar Proposals. Staff expects that some PPA pricing will be more attractive than the cost of purchasing renewables on the short-term market. If this is the case, it may be feasible from the offers received in this solicitation to procure up to VCE's full 42% renewable content. For 2021 this would be a renewable supply of 320,383 MWh, the equivalent energy output of a 141 MW solar PV plant.

Offers for Output from Operating Projects. VCE may receive proposals for projects that are existing and already in commercial operation.

Additional Future Procurements. This initial solicitation will not be VCE's only solicitation for renewable power. Once the base portfolio is procured, VCE can consider future efforts to

encourage local renewables development. Various procurement approaches can be used to accomplish this, including a feed-in-tariff, VCE-coordinated efforts to locate developable parcels in each member’s community and enlist participating project developers, issuing more targeted solicitations, etc.

Evaluation Methodology. The solicitation requires bidders to submit a lot of information concerning their proposed projects. The solicitation document will not however, provide bidders a defined rating methodology. There will be additional work after the solicitation is issued to build the evaluation methodology with staff.

Criteria for The LT Solicitation

The set of criteria that Staff is reviewing with the Board is a subset of many criteria in the solicitation. The criteria selected for specific review generally are those that set the tone and direction for the types of renewable resources that VCE intends to procure, given its desires for a local emphasis and encouraging sustainable development practices. The balance of the Solicitation criteria have been developed over time to increase the likelihood that selected projects can successfully achieve commercial operation. The criteria staff has selected for review with the Board are:

1. Definition of Local Resources
2. Siting Criteria
3. Development Status Criteria
4. Acceptable Technologies
5. Energy Storage
 - Include in Solicitation (or Not)
 - Which Technologies
6. Out-of-State Resources
7. Interconnection Status

Staff does not believe that policy decisions are required at this time for the any of the selected criteria. Once VCE has been through a solicitation cycle, staff will return to the Board with policy recommendations on the definition of Local Resources and siting criteria.

ANALYSIS

The paper included as Attachment 2, Long Term Renewable Solicitation Criteria Discussion, presents discussion on each of the criteria, which won’t be repeated for this staff report, only highlighted, along with the staff recommendations.

1. Definition of Local Resources

Discussion

If the definition of Local is limited to located within Yolo County, resource opportunities won’t be as readily plentiful than if Local were defined as a broader geographical area. Regardless, in the long run to encourage the development of resources within Yolo County additional efforts

subsequent to this Solicitation will be required. Those efforts may include Yolo County-only solicitations, direct coordination between land owners and developers, feed-in-tariffs, etc.

Reserving the distinction of “Local” for resources located Yolo County located makes sense, particularly if consideration is given to establishing a “Regional” definition, which encompasses resources nearby, but not located within Yolo County.

Recommendation

Staff recommended defining the following resource criteria for location, which were included in the Solicitation.

“Local” is defined as any resource located within Yolo County, or nearby Yolo County if having a nexus back to Yolo County (the Indian Valley Hydro Project owned by Yolo County Flood Control and Water Conservation District is an example of a nearby project having a nexus back to Yolo County).

“Regional” is defined as any resource located within the six adjacent counties and including the Geysers Geothermal Resource Area in Sonoma County.

These definitions will be used as evaluation criteria where resources located within Yolo County (Local) will be given a higher location rank than those located in the area defined as Regional. Similarly, resources located in the area defined as Regional, will be given a higher location rank than those located in areas not either Local or Regional.

2. Siting Criteria

Discussion

Defining restrictions on the types of lands associated with energy projects that VCE wants to procure is important so that VCE does not procure power from projects that may be proposed for areas:

- a. Having important land uses to protect, such as prime farm lands;
- b. That increases the likelihood of there being conflicts with sensitive wildlife species, cultural sensitivities, or other environmental issues.

The Renewable Energy Transmission Initiative (“RETI”) was a statewide effort of the CEC, CPUC, utilities, and various stakeholders to identify locations where additional renewable development would be likely to occur, with the specific purpose of identifying the need for new transmission lines to support renewable development in those areas. During the RETI development, two categories of lands were identified where renewable resource development was not be encouraged by the addition of new transmission system extensions into those areas:

RETI Category 1: Lands where development is prohibited by law or policy;

RETI Category 2: Lands which include environmentally sensitive areas where development would be difficult and controversial.

Recommendation

Given the amount of land use in Yolo County classified as agricultural and given the loss of farmlands elsewhere in the state, staff recommended inclusion of a screening criteria in the Solicitation that prevents the consideration of any new renewable projects on farmlands classified as prime.

Additionally, staff recommended including in the Solicitation that projects will not pass initial screening if they are proposed for either: RETI Category 1 (development prohibited) lands; or, RETI Category 2 (potential resource conflicts) lands.

3. Development Status Criteria

Discussion

Projects that are farther into their development cycle are much more likely to achieve commercial operation than projects that are just beginning their development, and will be able to better meet the needed commercial operation date for VCE's portfolio (power needs to be delivered s in 2021).

As such, establishing minimum criteria for development progress will be important.

Recommendation

Staff recommended and included the following criteria in the Solicitation as minimum criteria to pass initial screening.

Project proposers must provide:

- Acknowledgment by the relevant land use authority that a permit application has been received.
- Evidence of site control.

4. Acceptable Technologies

Discussion

There is no reason to limit acceptable technologies for this solicitation, other than to require that any equipment proposed be a mature listed technology, and that the bidder provide documentation supporting the bankability of the equipment.

Recommendation

Staff recommended and included the following acceptable technology criteria in the Solicitation.

Proposers can submit project proposals for any renewable technology and project equipment that is a mature listed technology. Additionally, the proposer must submit supporting bankability documentation.

5. Energy Storage***Discussion***

State law and CPUC rulings require CCAs to procure energy storage in a minimum amount equal to 1% of a CCA's forecast 2020 peak load (VCEs 2020 peak load forecast is 230 MW, making the requirement 2.3 MW). Furthermore, each CCA must have this minimum storage capacity online by 2024.

Therefore, inclusion of storage in this renewable solicitation will be important to facilitate VCE's compliance with the legal requirements. Additionally, the most cost-effective storage installations currently are those installations integrated with renewable power projects. Integrated storages systems are eligible for the 30% investment tax credits available for renewable energy projects. Battery systems are the common storage technology used for integration with renewable energy projects.

Recommendation

Staff recommended and the Solicitation included storage, with a preference for battery storage systems integrated with a renewable project (wind and/or solar).

6. Out-of-State Resources***Discussion***

Given that there are ample locations in the state for development of renewable resources, and given that this won't be VCE's only renewable solicitation, there will be opportunity for future consideration of the possible benefits of procuring power from out-of-state projects. There is no reason to seek out-of-state resources for this Solicitation.

Recommendation

Staff recommended and included in the Solicitation that offers be limited only to resources located in-state.

7. Interconnection

Discussion

It will be important, for reasons of achieving timely project commercial operation, to require that any project submitted into the Solicitation to have already been enrolled in a generator interconnection process, and that the bidder has requested that the interconnection support deliverability of the full project capacity (called full capacity deliverability status).

Recommendation

Staff recommended and included in the Solicitation minimum criteria requiring that any submitted project already be in an interconnection queue, and that the project have requested full capacity deliverability status for its interconnection.

COMMUNITY ADVISORY COMMITTEE REVIEW

At its July 30, 2018 meeting, the CAC unanimously approved a motion to accept staff's recommendations as presented with one modification, related to the types of energy storage technologies accepted. This modification was incorporated in the Solicitation and is reflected in the staff recommendation presented herein.

Attachment 1 – Summary Criteria Matrix

Criteria	Recommendation
1. Definition of Local Resources	<p>The following locational definitions were incorporated in the Solicitation for the purpose of evaluating proposed project on the basis of location:</p> <p>“Local” is defined as any resource located within Yolo County, or nearby Yolo County if having a nexus back to Yolo County (the Indian Valley Hydro Project owned by Yolo County Flood Control and Water Conservation District is an example of a nearby project having a nexus back to Yolo County).</p> <p>“Regional” is defined as any resource located within the six adjacent counties and including the Geysers Geothermal Resource Area in Sonoma County.</p>
2. Siting Criteria	<p>Inclusion in the Solicitation if a screening criteria that prevents the consideration of any of new renewable projects located on farmlands classified as prime.</p> <p>Inclusion in the Solicitation of additional siting criteria that will exclude projects proposed for development on either: RETI Category 1 (development prohibited) lands; or, RETI Category 2 (potential resource conflicts) lands.</p>
3. Development Status Criteria	<p>Inclusion of the following in the Solicitation as minimum criteria to pass initial screening.</p> <p>Project proposers must provide:</p> <ul style="list-style-type: none"> Acknowledgment by the relevant land use authority that a permit application has been received. Evidence of site control.

Criteria	Recommendation
<p>4. Acceptable Technologies</p>	<p>The following acceptable technology criteria be placed in the solicitation document.</p> <p>Proposers can submit project proposals for any renewable technology and project equipment that is a mature listed technology. Additionally, the proposer must submit supporting bankability documentation.</p>
<p>5. Energy Storage</p>	<p>The Solicitation includes storage, with a preference for battery storage systems integrated with a renewable project (wind and/or solar).</p>
<p>6. Out-of-State Resources</p>	<p>The Solicitation be limited only to proposals from resources located in-state.</p>
<p>7. Interconnection</p>	<p>Inclusion of a minimum Solicitation criteria requiring that any submitted project already be in an interconnection queue, and that the project has requested full capacity deliverability status for its interconnection.</p>

Attachment 2 - Long Term Solicitation Criteria Discussion

Long Term Renewable Solicitation Criteria Discussion

Definition of Local Resources

It will be necessary to define what “Local” means for resource procurement. If Local resources will be favored, resource providers/developers will want to know the geographic boundaries of the Local area.

Previously we’ve discussed the following three options.

1. Yolo County. Local is limited to within the boundaries of Yolo County.
2. Yolo County Nexus. Local is within Yolo County and outside of the county if there is a nexus back to the county. The Indian Valley Hydro Project is a good example of a project that is Local by nexus. It is owned by Yolo County Flood Control and Water Conservation District, which is another public agency serving Yolo County.
3. Local is within a broader geographic boundary than Yolo County, but still nearby. We’ve discussed possibly including all 6 adjacent counties as Local, which would include Colusa, Sutter, Sacramento, Solano, Napa, and Lake counties, in addition to the Geysers Geothermal Resource Area that spans Lake and Sonoma counties.

Figure 1 shows Yolo County and the adjacent 6 counties. Included are data on existing power plants, provided by the CEC. The Montezuma Hills Wind Resource Area (identified by the light blue wind generator icons) is in Solano County. The Geysers Geothermal Resource Area spans across southwestern Lake County and northeastern Sonoma County.

Limiting “Local” to Options 1 or 2

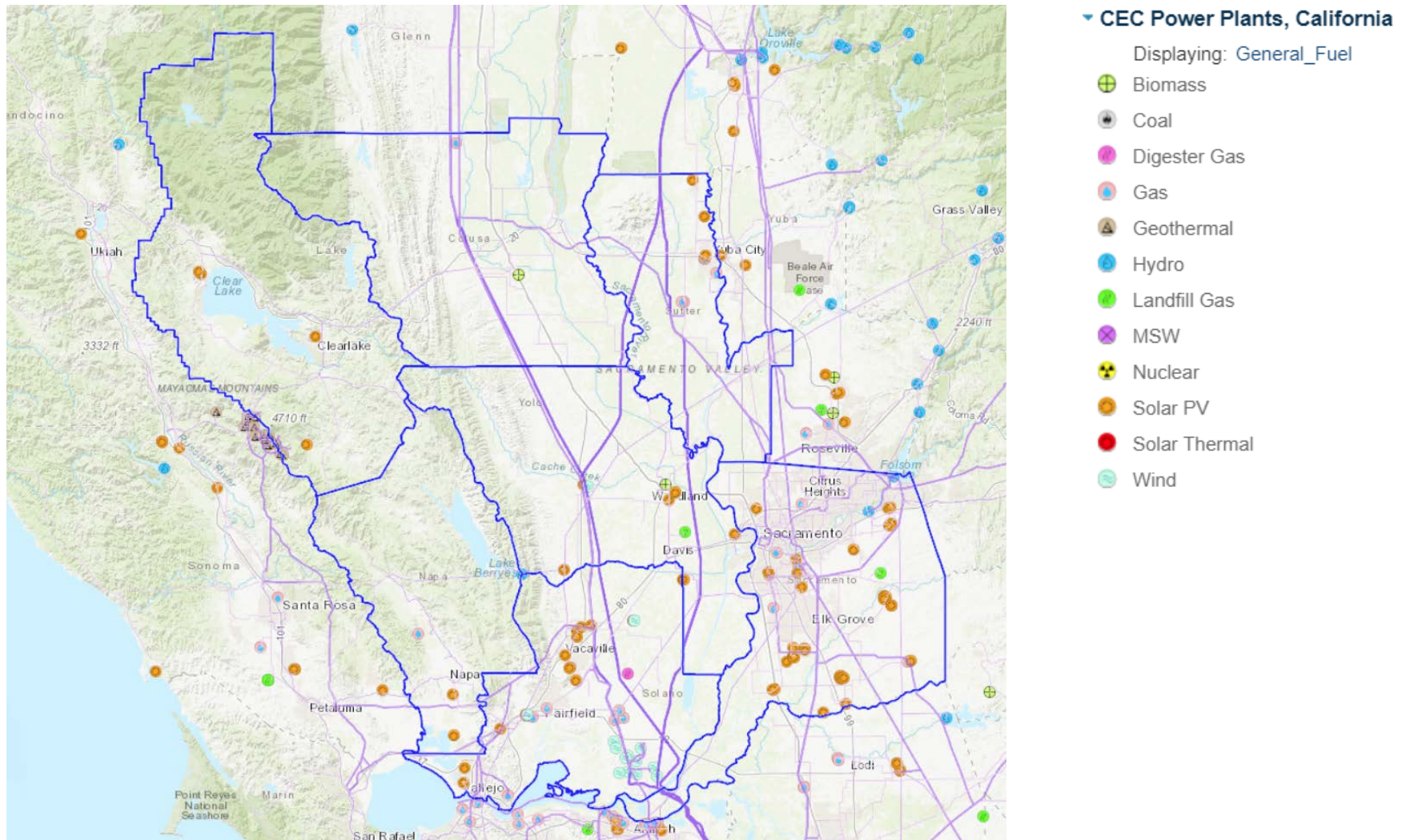
The challenges with defining Local using options 1 or 2, have to do with the land use restrictions that exist in Yolo County.

Figures 2 through 4 show incremental land use restrictions for the following factors:

- Prime Farmland
- Conservation Easements
- Williamson Act

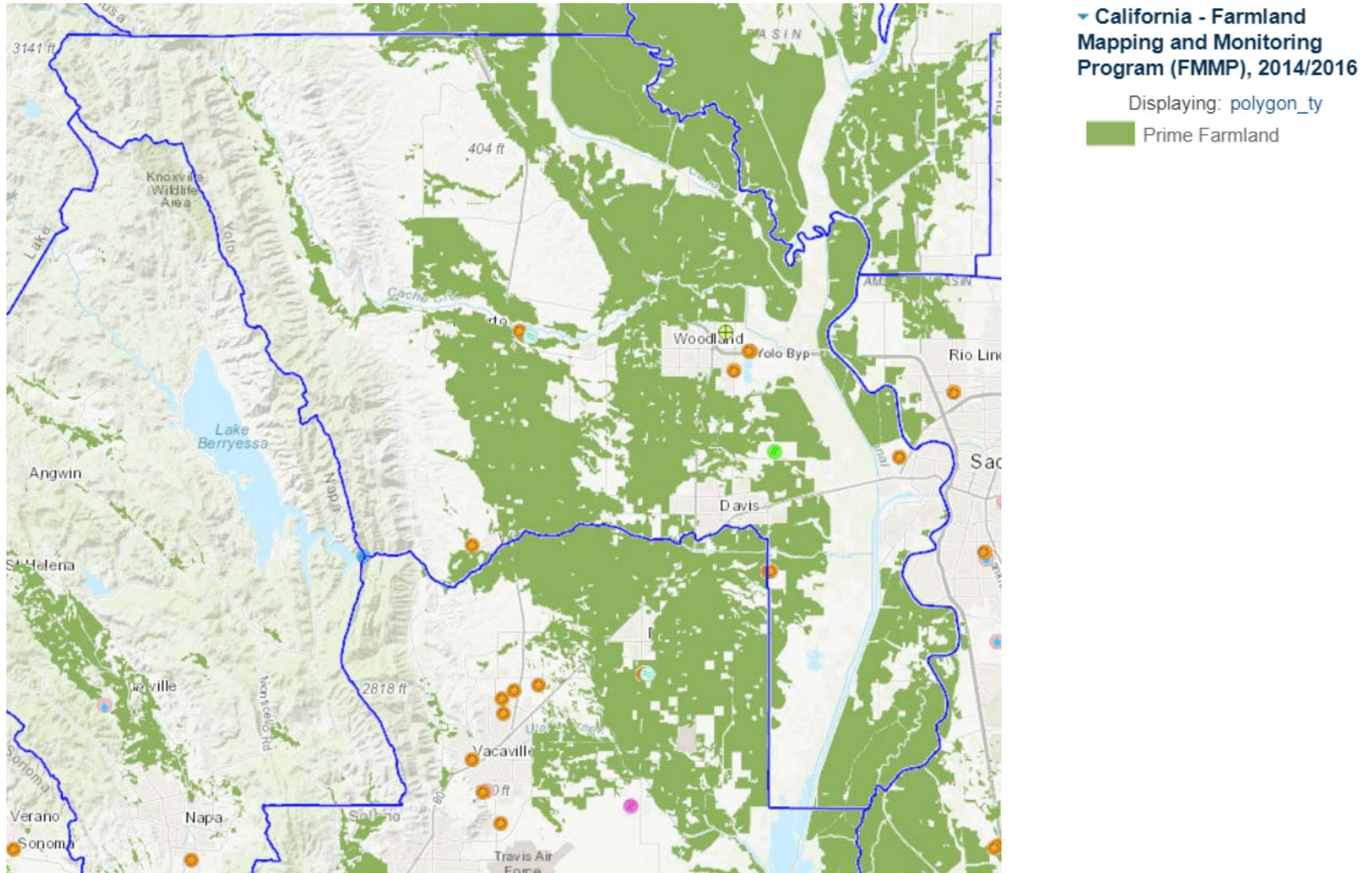
Long Term Renewable Solicitation Criteria Discussion

Figure 1. Yolo and Adjacent Counties with Existing Power Plants



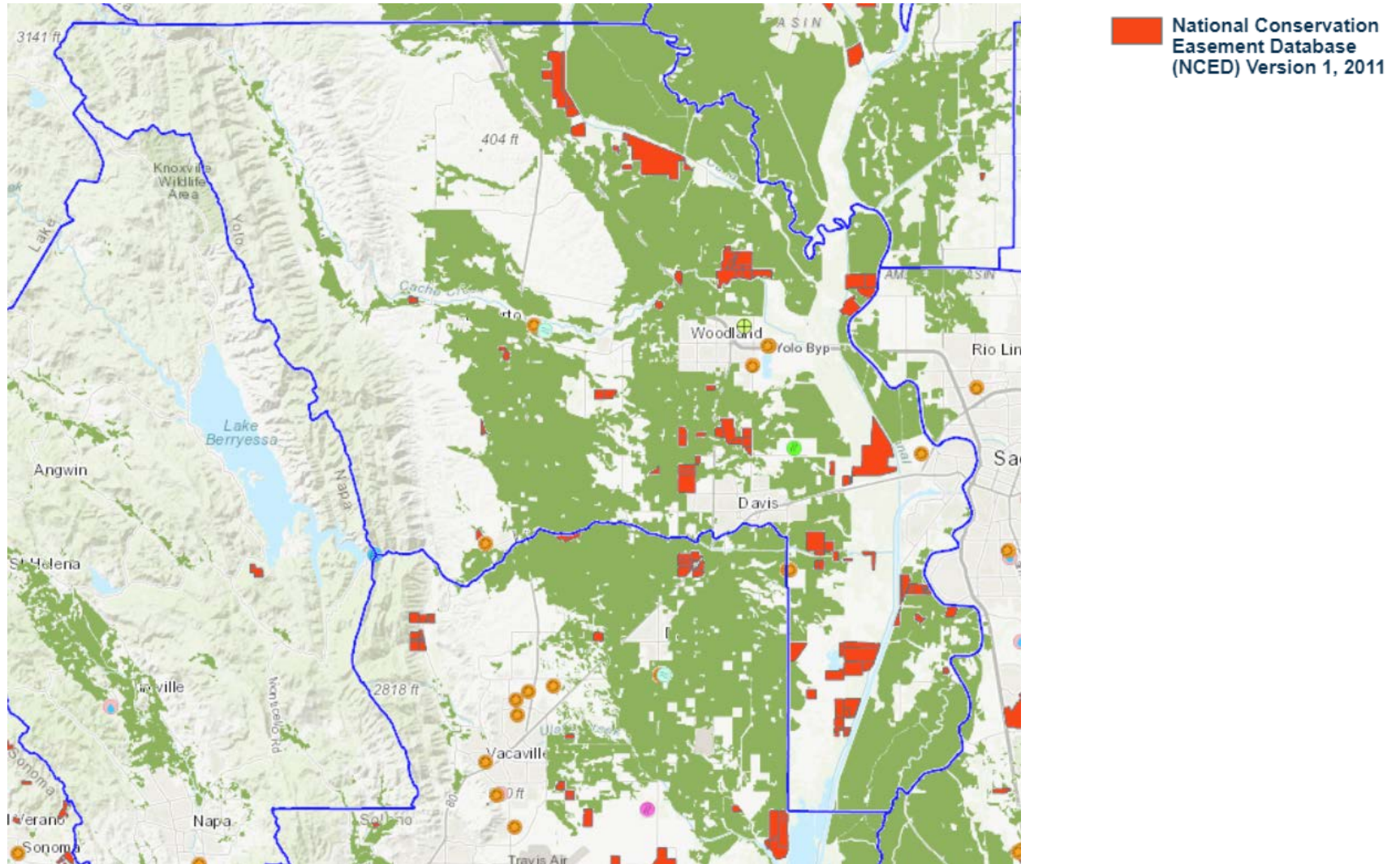
Long Term Renewable Solicitation Criteria Discussion

Figure 2. Yolo County Farmlands Designations



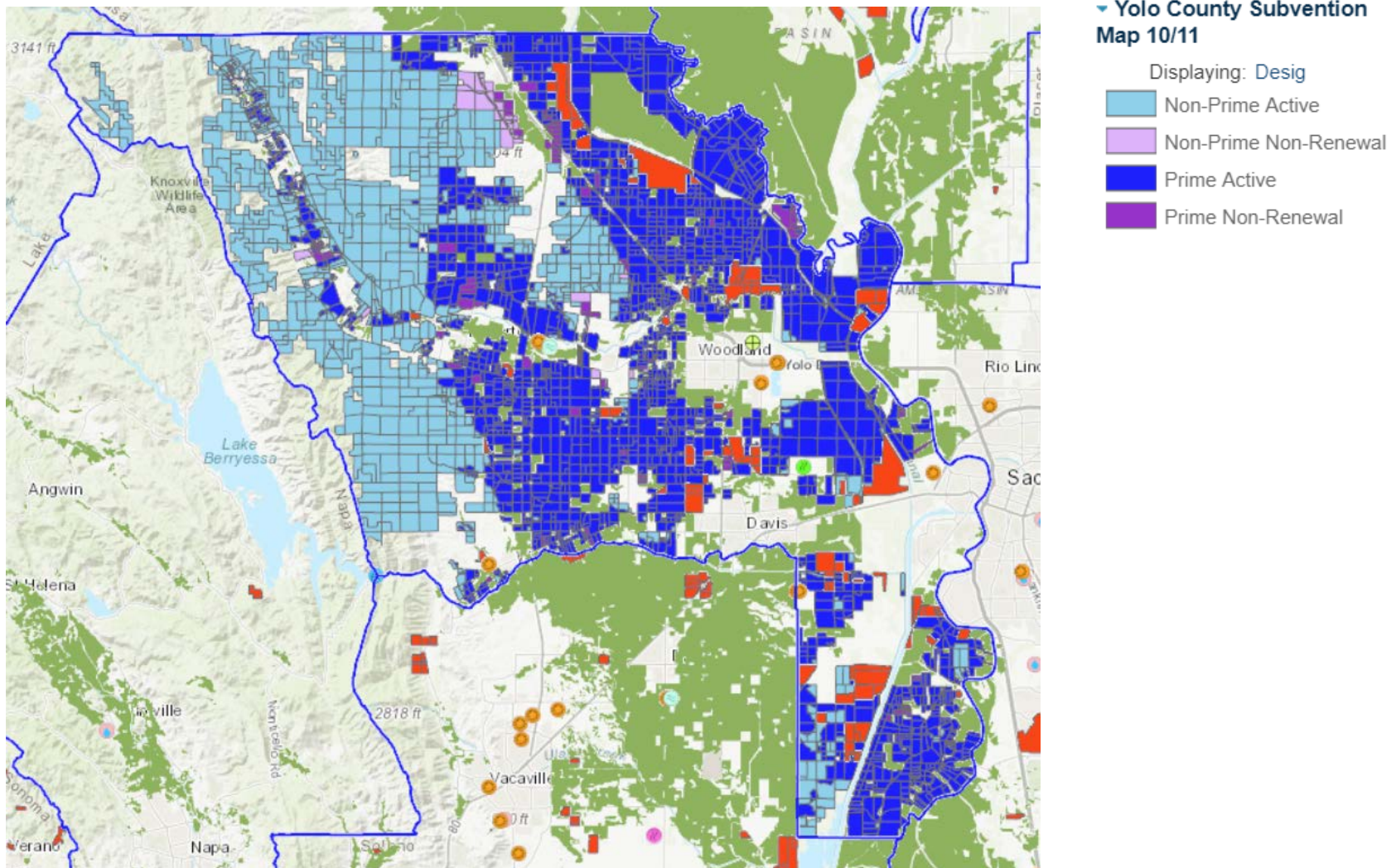
Long Term Renewable Solicitation Criteria Discussion

Figure 3. Yolo County Farmlands and Conservation Easements



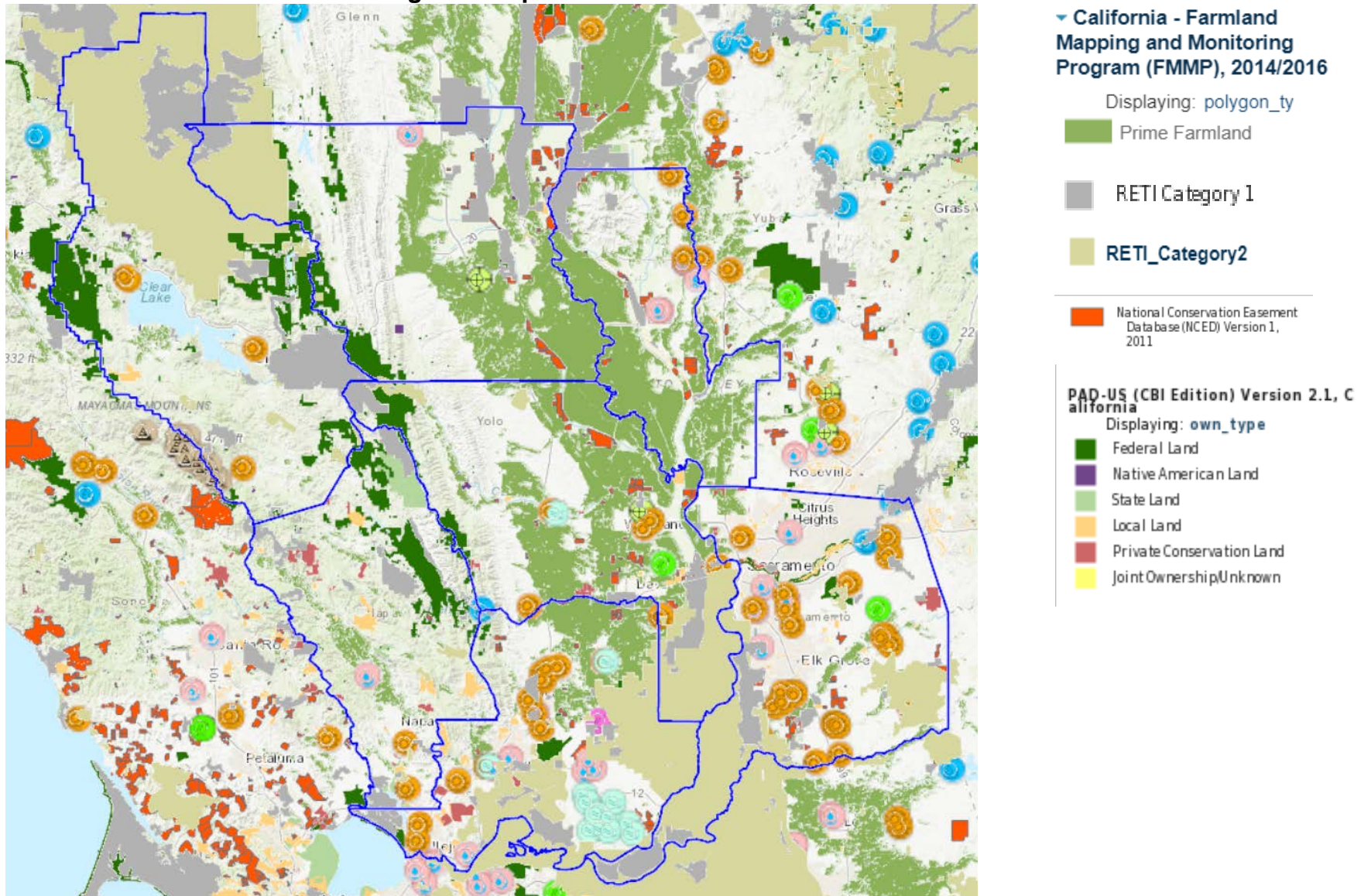
Long Term Renewable Solicitation Criteria Discussion

Figure 4. Yolo County Farmlands, Conservation Easements, and Williamson Act Lands



Long Term Renewable Solicitation Criteria Discussion

Figure 5. Option 3 For Local Definition



Long Term Renewable Solicitation Criteria Discussion

Discussion of Options

Options 1 or 2 - Yolo County Only, or Yolo County w/Nexus back to County (i.e. Indian Valley Hydro Project)

Value

The primary value of limiting “Local” to Yolo County only, or Yolo County with a nexus back to Yolo County, is that any benefits of resource development are focused within the immediate VCEA service area.

Constraints

The big constraint is that there are limited areas within Yolo County for renewable resource development. If Options 1 or 2 are selected for the definition of Local, then the amount of Local resources will necessarily be smaller, and development of those resources will likely be stretched over a longer period of time than if Local had a broader definition. Local wind would not be likely. Local renewable resource options would be solar, the existing Woodland biomass project, and local landfill biogas.

Option 3 - Yolo County, Adjacent Counties and the Geothermal Resource area in Sonoma County

The primary value of expanding Local to Yolo County, adjacent counties and the parts of the Geysers Geothermal Resource Area in Sonoma County is that the pool, and diversity renewable resources available for the Local portfolio is greatly expanded. VCE would be able to incorporate Local wind and geothermal resources in its portfolio.

Figure 5 shows the expanded Yolo County plus 6 adjacent counties of Colusa, Sutter, Sacramento, Solano, Napa, and Lake. Included in the restricted lands are prime farmland, conservation easements, restricted federal lands, RETI (Renewable Energy Transmission Initiative) Category 1 lands and RETI Category 2 lands. RETI Category 1 lands are lands where development is prohibited, and RETI Category 2 lands are lands that are problematic.

Distinguishing Local from Regional and from Elsewhere in the State

During discussion with the Energy Subcommittee of the Community Advisory Committee, a proposal was made to consider adding a geographic area of “Regional” to VCE’s resource preference areas. “Local” would be limited to projects located in Yolo County (Option 1 or 2). Regional would be the geographical area defined generally by the surrounding 6 counties, including the Geysers Geothermal Resource Area.

Resources within Yolo County would be deemed Local, and would get the highest ranking in order of preference. Resources within the area defined as Regional, would get a higher ranking than resources located elsewhere within state. Resources located elsewhere in the state would receive the lowest rank for the location criteria. Adding

Long Term Renewable Solicitation Criteria Discussion

“Regional” then allows VCE to capture the large neighboring resource pool in a preferred category.

Long Term Renewable Solicitation Criteria Discussion

Siting Criteria

Discussion

Siting criteria is important to define so that VCE does not procure from projects that may be under development in areas:

1. VCE determines have important land uses to protect, such as prime farm lands;
2. That increases the likelihood of there being conflicts with sensitive wildlife species, cultural sensitivities, or other environmental issues.

The Renewable Energy Transmission Initiative (RETI) has been a statewide effort of the CEC, CPUC, utilities, and various stakeholders, to identify locations where additional renewable development would be likely to occur. This effort was specifically for the purpose of determining the need for additional transmission investment to make interconnection of renewable energy project to the grid possible.

As part of the exercise of determining transmission needs, the RETI effort identified Category 1 and Category 2 lands which are areas RETI targeted to avoid planned transmission expansions.

RETI Category 1 is defined as: Lands where development is prohibited by law or policy;

RETI Category 2 is defined as: Lands which include environmentally sensitive areas and other sensitive areas where development would be difficult and controversial.

Additional factors will impact developability due to land use restrictions, such as lands under conservation easements and encumbered by Williamson act commitments.

Defenders of Wildlife has developed a set of criteria it recommends for the procurement of renewables that promotes “Smart Green Energy.” Their recommendations are attached.

Conflicts of projects with lands categorized as either prime, RETI 1, or RETI 2 will be screened by determining whether their location is proposed for any of the conflict locations shown in:

<https://databasin.org/datasets/b83ea1952fea44ac9fc62c60dd57fe48;>

<https://databasin.org/maps/new#datasets=5df0a3e83a984b8293728cb690442f81>; and,

<https://databasin.org/maps/new#datasets=92e523f8598f40e99abebf3901f5bd46>

Long Term Renewable Solicitation Criteria Discussion

Development Status Criteria

Discussion

The status of a project's development is important for VCE, in that a project that is much farther into its development cycle will generally have lower risk to VCE that the resource never achieves commercial operation.

Defenders of Wildlife has developed a set of criteria it recommends for the procurement of renewables that promotes "Smart Green Energy."

DOW recommends that a project not pass screening if they have not received a status of "Application deemed complete" by the appropriate land use authority.

A concern is that not all land use authorities may issue status notifications such as that.

An alternative is to have minimum pass/fail screening for the following development aspects:

- Acknowledgment by the relevant land use authority that a permit application has been received.

- Evidence of site control (meaning the developer has secured commercial terms from the land owner for the land use).

Ranking criteria can be established for the following (this language would not be in the solicitation, but will be used during the evaluation phase).

- Permit status (Permit obtained would be best, application deemed complete would rank lower, and application submitted would rank lowest).

Long Term Renewable Solicitation Criteria Discussion

Acceptable Technologies

While different renewable technologies do have differing environmental impacts, in the long run, VCE will likely need a mix of technologies with differing production shapes to create an overall renewable portfolio that attempts to follow VCE's loads as closely as possible.

As an observation, renewable technologies such as biomass and geothermal will generally be more expensive than wind or solar, just taken on a cost per MWh. In the short run, to meet long term renewable contracting requirements, it's most likely that a lower cost renewable portfolio will be more favorable to VCE's financial needs to maintain a least cost generation mix, meaning wind and solar will be the likely least-cost resources, and not likely biomass or geothermal. Over the long-run, more expensive renewable technologies can be brought later into the mix to provide additional support in better matching VCE's load shape.

The only restrictions that should be considered on technologies for this solicitation is that VCE does not want projects proposed with equipment or technologies that are not commercially produced at scale and that are not "bankable." Thus, no technologies or equipment that is/are in a research and development phase will be accepted.

Long Term Renewable Solicitation Criteria Discussion

Energy Storage

Storage - Include in Solicitation (or Not)

Assembly Bill 2514, (Skinner, 2010) tasks the CPUC with developing storage procurement requirements for the load serving entities under its jurisdiction.

AB 2514 states specifically:

“This bill would require the CPUC, by March 1, 2012, to open a proceeding to determine appropriate targets, if any, for each load-serving entity to procure viable and cost-effective energy storage systems and, by October 1, 2013, to adopt an energy storage system procurement target, if determined to be appropriate, to be achieved by each load-serving entity by December 31, 2015, and a 2nd target to be achieved by December 31, 2020.”

To implement AB 2514, the CPUC set hearings, and ultimately issued a ruling, Rulemaking 10-12-007 (10/17/13 hearing date). In R.10-12-007, the CPUC includes procurement requirements for CCAs and other load serving entities. Specifically:

“IT IS ORDERED that:

...

5. Community Choice Aggregators and Electric Service Providers shall file a Tier 2 Advice Letter starting January 1, 2016 and every two years thereafter until 2024 to report their progress in procuring 1% of their 2020 annual peak load from energy storage projects under contract by 2020 and describe its methodology for measuring cost-effective projects. Projects are required to be installed and delivering by no later than the end of 2024.”

For VCE, 1% of 2020 peak load is 2.3 MW (forecast peak is 230 MW). This storage capacity must be under contract by 2020, and operating by 2024. It makes sense therefore to include requests for storage in this long-term renewable solicitation.

Storage - Which Technologies

With regard to the intent of AB 2514 regarding storage technologies, while not promoting specific storage technologies, the legislative intent clearly indicates storage technologies directly producing electricity:

“The Legislature finds and declares all of the following:

(a) Expanding the use of energy storage systems can assist electrical corporations, electric service providers, community choice aggregators, and local publicly owned electric utilities in integrating increased amounts of renewable energy resources into the electrical transmission and distribution grid in a manner that minimizes emissions of greenhouse gases.

Long Term Renewable Solicitation Criteria Discussion

(b) Additional energy storage systems can optimize the use of the significant additional amounts of variable, intermittent, and off-peak electrical generation from wind and solar energy that will be entering the California power mix on an accelerated basis.

(c) Expanded use of energy storage systems can reduce costs to ratepayers by avoiding or deferring the need for new fossil fuel-powered peaking powerplants and avoiding or deferring distribution and transmission system upgrades and expansion of the grid.

(d) Expanded use of energy storage systems will reduce the use of electricity generated from fossil fuels to meet peak load requirements on days with high electricity demand and can avoid or reduce the use of electricity generated by high carbon-emitting electrical generating facilities during those high electricity demand periods. This will have substantial cobenefits from reduced emissions of criteria pollutants.

(e) Use of energy storage systems to provide the ancillary services otherwise provided by fossil-fueled generating facilities will reduce emissions of carbon dioxide and criteria pollutants.”

The CPUC in R.10-12-007 gives CCAs the flexibility to determine where to locate the storage installations.

Currently, battery storage integrated into renewable energy projects is becoming more common, and supports the goal of “integrating increased amounts of renewable energy resources into the electrical transmission and distribution grid.”

Additionally, battery storage integrated with a renewable project is fully eligible for the enhanced investment tax credit (currently at 30%). The only restriction is that for the first 5 years of the project, the battery system can only be charged by the renewable resource (not from the grid).

Consideration for other types of storage can be made later in subsequent solicitations.

Long Term Renewable Solicitation Criteria Discussion

Out-of-State Resources

Discussion

There are pros and cons on accepting (or not) renewable resources located out-of-state.

Reasons for Not Accepting Proposals for Out-of-State Resources

Here are two primary reasons influencing a decision to not accept out-of-state resources in this solicitation:

1. The politics around CCA formation. Labor influences in the state have been trying to minimize the value of out-of-state renewable resources. SB 350 established deliverability criteria for out-of-state resources, that restricted how much out-of-state renewables could be relied upon by California load serving entities. CCAs have been targeted for relying too heavily on out-of-state resources.
2. Resource development in California in general has more rigorous siting and environmental requirements than other states. Limiting proposals to in-state resources eliminates some uncertainty on the siting methodologies enforced by other states.

Reasons for Accepting Proposals for Out-of-State Resources

Wind generation from regions more central to the United States has higher capacity factors, and may have production shapes that better fit VCE's loads than in-state wind resources.

Solar from the desert southwest has higher annual average production than solar in California and the cost of delivered solar to California may be substantially lower than solar located within California, although without integrated storage, desert southwest solar production timing may not best fit VCE's load shape.

Other

This initial solicitation effort will not be VCE's last. As such, limiting proposals to in-state resources now won't overly restrict VCE in the future. It can request out-of-state resources in a later solicitation if it's shown that out-of-state wind and solar have other production characteristics that are attractive and better fit renewable production to VCE load.

Long Term Renewable Solicitation Criteria Discussion

Interconnection Criteria

Discussion

As previously mentioned it will be important for VCE to entertain projects that are further along in their development cycle. This is driven by the need for VCE to begin receiving substantial amounts of long-term procured renewable power in 2021.

One aspect of insuring that a project is further along in its development, is to require as a minimum criteria for consideration that the bidder have the project already in a transmission interconnection queue. This insures that the project is already engaged in the process for determining what will be required to interconnect the project to the electrical system and what the costs will be for that interconnection.

Additionally, to maximize the value of the renewable resource, it will be important for the project bidder to have requested system interconnection that allows for a full capacity deliverability status designation for the project (as opposed to a partial capacity deliverability status or an energy only status).

Information will be collected from each bidder on the progress their proposed projects have with the interconnection process, and this progress will be included as an evaluation criteria during the evaluation phase.