

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 10**

TO: Board of Directors

FROM: Gordon Samuel, Chief Operating Officer

SUBJECT: Approval of the Third Amendment to the Willow Springs Solar 3 LLC Power Purchase Agreement

DATE: June 13, 2024

RECOMMENDATION

Staff recommends the Board adopt a resolution that:

1. Authorizes the Executive Officer to execute the Third Amendment to the power purchase agreement (PPA), in consultation with General Counsel, to make minor changes including schedule to the PPA so long as the term and price are not changed.

ANALYSIS

VCE entered into a PPA with Willow Springs Solar 3 LLC on October 15, 2021. The project has been under construction and is nearly complete. The Willy 9 Chap 2 project (formerly Willow Springs 3 solar project) consists of a 72 MW photovoltaic (PV) field combined with a 36 MW (144 MWhs) lithium-ion battery energy storage system (BESS). The PV portion of the project has been on-line and producing energy in 2023. VCE has been receiving the output from the PV portion of the facility since January 1, 2024. The BESS is onsite but is awaiting final approvals from the Kern County Fire Department. With the uncertainties of the timing of this approval from the fire department, the parties have been working on modifying dates in the PPA to address the impacts of the BESS delay. To date, the delay of the BESS has not caused any financial harm to VCE.

CONCLUSION

Staff is recommending the Board authorize the Executive Officer to finalize and execute the amendment to the PPA to accommodate the BESS delay.

Attachments

1. Draft Third Amendment to PPA
2. Resolution 2024-XXX

THIRD AMENDMENT TO RENEWABLE POWER PURCHASE AGREEMENT

THIS THIRD AMENDMENT TO RENEWABLE POWER PURCHASE AGREEMENT, dated as of June __, 2024 (the “Third Amendment”), is by and between Chaparral Springs, LLC, a Delaware limited liability company, successor by merger of Willow Springs Solar 3, LLC (the “Seller”) and Valley Clean Energy Alliance, a California joint powers authority (the “Buyer”). Capitalized terms used but not defined herein have the meanings assigned to them in the PPA (as defined below).

A. The parties hereto entered into that certain Renewable Power Purchase Agreement, dated as of October 15, 2021, as amended by that certain First Amendment to Renewable Power Purchase Agreement, dated as of December 15, 2022, as amended by that certain Second Amendment to Renewable Power Purchase Agreement, dated as of December 27, 2023, as further amended, modified or supplemented from time to time (the “PPA”).

B. The parties desire to amend the PPA as more fully described herein.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and subject to the conditions set forth herein, the parties hereto agree as follows:

SECTION 1. Amendment.

a. The Expected Date for Completion of the Guaranteed Commercial Operation Date Milestone listed on the Cover Sheet is hereby changed to [REDACTED]

b. The definition of “Delay Damages” in Article 1 is hereby amended and restated in its entirety as follows:

““**Delay Damages**” means Daily Delay Damages, Total Nose Period Arbitrage Damages, Commercial Operation Delay Damages, and the Second Extension Damage Payment.”

c. The definition of “Nose Period Delivery Term” in Article 1 is hereby amended and restated in its entirety as follows:

““**Nose Period Delivery Term**” means the time period from the beginning of the Nose Period Delivery Term Phase 1 to the end of the Nose Period Delivery Term Phase 2.”

d. The definition of “Monthly BESS RA Amount” in Article 1 is hereby amended and restated in its entirety as follows:

““**Monthly BESS RA Amount (Nose Period)**” means, with respect to each month of the Nose Period Delivery Term Phase 1, thirty-six (36) MW of resource adequacy benefits equivalent to those Resource Adequacy Benefits that would have been associated with the Storage Facility with respect to such month if the Storage Facility had been operational.”

e. The following new definitions are hereby added to Article 1 in the appropriate alphabetical position(s):

“**Nose Period Delivery Term Phase 1**” means the period from [REDACTED], to (and including) [REDACTED].”

“**Nose Period Delivery Term Phase 2**” means the period from (and including) [REDACTED], to the earlier of: (a) the commencement of the Delivery Term, or (b) the Guaranteed Commercial Operation Date.”

“**Nose Period Replacement RA Costs**” has the meaning set forth in Section 20.2.”

“**Second Extension Damage Payment**” has the meaning set forth in Section 20.6.”

“**Third Amendment**” means that certain Third Amendment to the Agreement, dated as of June ____, 2024.”

f. Section 11.3(a)(i) is hereby amended and restated in its entirety as follows:

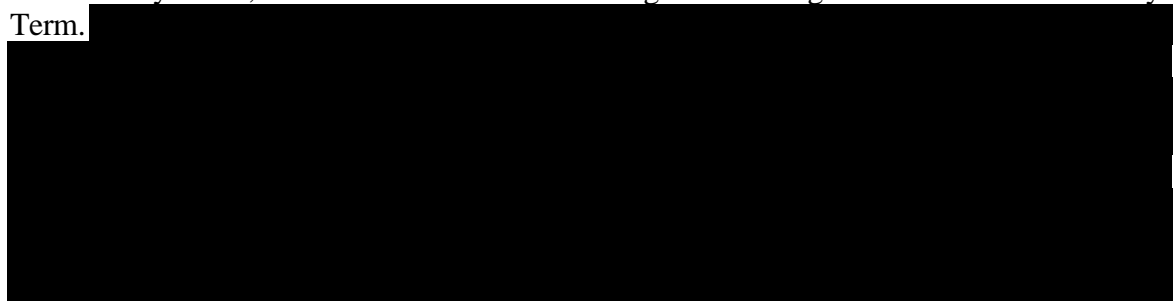
“(i) [REDACTED]”

g. Section 11.9 is hereby amended and restated in its entirety as follows:

“[REDACTED]”

h. Section 20.2 is hereby amended and restated in its entirety as follows:

“20.2 **Nose Period BESS RA**. For each month during the Nose Period Delivery Term Phase 1, Seller shall sell and Buyer shall purchase the Monthly BESS RA Amount (Nose Period) at the Nose Period BESS RA Rate, provided that such Monthly BESS RA Amount (Nose Period) must be communicated by Seller to Buyer in a Notice substantially in the form of Exhibit U at least forty-five (45) days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month. Except as set forth in this Article 20, the terms and conditions of the Agreement generally applicable to the delivery of, receipt of, and payment for Replacement RA shall apply to the delivery of, receipt of, and payment for the Nose Period BESS RA during the Nose Period Delivery Term, as reasonably conformed to account for the Nose Period terms, provided that if there is any conflict between the terms of Article 20 and the rest of the Agreement during the Delivery Term, the terms of Article 20 shall govern during the Nose Period Delivery Term.



(Nose Period) (such amount, the “**Nose Period Replacement RA Costs**”).”

i. Section 20.3 is hereby amended and restated in its entirety as follows:

“20.3 **Storage Facility Arbitrage Damages**.



j. Section 20.5 is hereby amended and restated in its entirety as follows:

“20.5 **Sole Remedy**. Seller’s provision of Nose Period PV Products, Nose Period BESS RA (and associated Nose Period Replacement RA Costs), Daily Nose Period Arbitrage Damages, and the Second Extension Damage Payment shall together be the only

consideration and sole remedy for the delayed start to the Delivery Term as agreed to pursuant to the Second Amendment and the Third Amendment.”

k. A new Section 20.6 is hereby added to the Agreement as follows:

“20.6 **Nose Period Delivery Term Phase 2 Payment.** [REDACTED]

”).”

l. A new Section 2.c. of Exhibit B is hereby added to the PPA as follows:

“c. [REDACTED]

m. Appendix 1, and Appendix 2 attached hereto shall be added as an amended “Exhibit V”, and “Exhibit W” to the Agreement.

SECTION 2. PPA. Except as expressly set forth herein, the Third Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the parties under, the PPA.

SECTION 3. Governing Law. This Third Amendment has been delivered in the State of California and shall be in all respects governed by and construed in accordance with the laws of the State of California, including all matters of construction, validity, and performance without giving effect to the conflicts of law provisions thereof.

SECTION 4. Counterparts. This Third Amendment may be executed by one or more of the parties hereto on any number of separate counterparts, by facsimile or electronic mail, and all of said counterparts taken together shall be deemed to constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. A facsimile or portable document format (“.pdf”) signature page shall constitute an original for all purposes hereof.

SECTION 5. Headings. The Section headings used herein are for convenience of reference only, are not part of this Third Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Third Amendment.

SECTION 6. Severability. Any provision of this Third Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of unenforceability without invalidating the remaining provisions hereof, and any such prohibition of unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed and delivered as of the date first written above.

CHAPARRAL SPRINGS, LLC,
A Delaware limited liability company

By: RBCS Holding, LLC, its sole member
By: RCS Member, LLC, its managing member

By: _____
Name: _____
Title: _____

VALLEY CLEAN ENERGY ALLIANCE,
A California joint powers authority

By: _____
Name: _____
Title: _____

Appendix 1

EXHIBIT V

DAILY NOSE PERIOD ARBITRAGE DAMAGES RATE

Month				
January				
February				
March				
April				
May				
June				

Appendix 2

EXHIBIT W

EXPECTED ENERGY (NOSE PERIOD)

Month	Expected Energy (MWh/month)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2024-___

**RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE (VCE)
APPROVING THE THIRD AMENDMENT TO THE POWER PURCHASE AGREEMENT (PPA) WITH
WILLOW SPRINGS SOLAR 3, LLC AND AUTHORIZING THE EXECUTIVE OFFICER IN
CONSULTATION WITH LEGAL COUNSEL TO FINALIZE AND EXECUTE THE AMENDMENT**

WHEREAS, VCE staff engaged reputable renewable developers in a bilateral process to address near-term compliance obligations and long-term cost challenges; and

WHEREAS, VCE determined the project(s) that were best suited for VCE's needs and with power available on a time line that also met VCE's power needs; and

WHEREAS, Leeward Renewable Energy proposed to construct a 72-MW AC solar photovoltaic facility coupled with a 36-MW/144MWh (4-hour) lithium-ion battery energy storage system, near the city of Rosamond in Kern County, California; and

WHEREAS, a PPA had been negotiated with Leeward Renewable Energy for VCE to procure output from the Willow Springs Solar 3 project (note: project has since been renamed to Willy 9 Chap 2) for 15 years; and

WHEREAS, Willow Springs Solar 3, LLC is an indirect subsidiary of Leeward Renewable Energy (LRE), LLC; and

WHEREAS, on October 14, 2021 the Board approved Resolution 2021-020 which authorized VCE to enter into a PPA with Willow Springs Solar 3, LLC; and,

WHEREAS, LRE has constructed a 72-MW AC solar photovoltaic (PV) facility coupled with a 36-MW/144MWh (4-hour) lithium-ion battery energy storage system (BESS), near the city of Rosamond in Kern County, California; and

WHEREAS, in December 2023, output from the PV facility was expected to be delivered on schedule but the output from the BESS was delayed due to final approvals from the Kern County Fire Department; and,

WHEREAS, on December 14, 2023 the Board approved Resolution 2023-018 authorizing the Executive Officer, in consultation with legal counsel, to approve minor changes including schedule so long as the term and price are not changed; and,

WHEREAS, output from the PV facility is delivering on schedule and, again, output from the BESS is further delayed due to final approvals from the Kern County Fire Department causing a delay in the dates outlined in the PPA; and

WHEREAS, the parties are amending the PPA to address the delay.

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

1. The Executive Officer is authorized to execute the Third Amendment to the Willow Springs Solar 3 PPA and associated agreements, and, in consultation with legal counsel, is authorized to approve minor changes including schedule so long as the term and price are not changed.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Lucas Frerichs, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment: Draft Third Amendment