

## VALLEY CLEAN ENERGY ALLIANCE

### Staff Report – Item 11

**TO:** Board of Directors

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

**SUBJECT:** Authorize Executive Officer to Approve Lockbox Agreement with River City Bank and The Energy Authority

**DATE:** July 11, 2024

#### **RECOMMENDATION**

Authorize Executive Officer to Approve Lockbox Agreement with River City Bank and The Energy Authority.

#### **BACKGROUND & ANALYSIS**

In December 2022, the VCE Board approved an agreement with The Energy Authority as VCE’s new Wholesale Energy Services (WES) provider. Wholesale Energy Services represent the core activities of VCE (and any other CCA): procuring electricity for its customers. An experienced and reliable service provider for the range of WES activities required by VCE is critical to the organization’s continued success. TEA provides Credit Support needed to facilitate transactions associated with VCE’s power supply, excluding the long-term PPAs executed in VCE’s name as outlined below.

A lockbox is a secure, business-specific account for receiving payments. It’s managed by a financial institution for payment processing. Lockboxes are tailored for businesses to streamline customer payment processing.

#### **VCE/TEA Services Agreement: Section A.5 Credit Support**

Under the VCE/TEA services agreement, TEA provides credit support services to VCE by acting as principal (as described in Section A.1.1) on all wholesale market and bilateral transactions going out 24 months. This service is contingent on VCE meeting TEA creditworthiness and credit assurance standards, as determined via a review of two years of audited financials and/or an assigned investment-grade credit rating. Credit assurance standards may include a requirement of cash or letter of credit posting by VCE for transactions undertaken by TEA as principal above a set credit support limit.

Upon both Parties’ written agreement, TEA acts as agent (as described in Section A.1.2) for transactions beyond 24 months in term.

As noted in the 2024 budget Adoption and recent financial update, forward power costs have experienced significant price increases due to increases in cost for resource adequacy (RA) and renewable portfolio standard (RPS) eligible resources. This has a corresponding increase in the credit support and associated risks for TEA. Given these increasing costs VCE staff and TEA have determined that a deposit control agreement (“Lockbox”) is an appropriate mechanism to manage TEA’s increased exposure while maintaining VCE’s liquidity. The deposit control agreement serves to limit the impact to VCE liquidity by allowing for the use of letters of credit or cash collateral as outlined in the attached draft deposit account control agreement.

### **CONCLUSION**

The wholesale energy services scope is an extremely important function for VCE. The partnership VCE has with TEA has been instrumental in VCE’s success to date. Wholesale energy purchases represent over 80% of VCE’s annual budget so it is important to maintain the partnership and manage associated risks while reducing the impact to VCE’s liquidity where possible.

### **ATTACHMENTS**

1. Deposit Account Control Agreement (DRAFT)
2. Resolution 2024-XXX

## DEPOSIT ACCOUNT CONTROL AGREEMENT

Date:

Debtor: Valley Clean Energy Alliance ("VCE")

Secured Party: The Energy Authority ("TEA")

Notice Addresses are for both VCE and TEA are as stated in Section 18, of the agreement for portfolio management, scheduling coordinator, load forecasting, and credit support services between VCE and TEA.

Depository Institution: River City Bank  
Address: Attn: Cash management  
2485 Natomas Park Drive, Ste. 400  
Sacramento, CA 95833  
E-Mail: cashmgmt@rivercitybank.com  
Facsimile: 916-567-2779

1. **Definitions.** In this Agreement
  - (a) "Article 9" means Article 9 of the Uniform Commercial Code as enacted in California.
  - (b) "Control" means control of a deposit account, as defined in Article 9.
  - (c) "Debtor" means each and all of the persons or entities shown above as Debtor. All agreements of the Debtor in this Agreement are joint, several, and joint and several.
  - (d) "Depository Institution" means the Depository Institution shown above
  - (e) "Secured Party" means the Secured Party shown above.
  - (f) "Security" is defined in Article 8 of the Uniform Commercial Code.
2. **Agreement of the Parties.** VCE, TEA and the Depository Institution agree to all of the provisions in this Agreement.
3. **Security Interest.** VCE has given TEA a second priority security interest in, and has pledged and assigned to TEA, the following property (the "Collateral"):
  - (i) VCE's existing account with the Depository Institution identified below in (ii), and all amendments, extensions, renewals and replacements of that account (collectively, the "Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.
  - (ii) Account number XXX with the Depository Institution.

The security interest, pledge and assignment are called the "Security Interest." VCE and TEA hereby notify the Depository Institution of the Security Interest, and the Depository Institution agrees that it has been notified of the Security Interest. VCE and TEA agree and acknowledge that VCE maintains accounts other than the

Account with the Depository Institution (including without limitation, an operating account and a debt service reserve account) and that this Agreement applies only to the Account. TEA expressly disclaims any security interest in such other accounts. TEA also agrees and acknowledges that the Depository Institution has a right of setoff in one or more of those other accounts and that nothing in this Agreement has any effect on such setoff right.

- 4. Control.** If the Collateral is one or more deposit accounts under Article 9, by signing this Agreement VCE, TEA, and the Depository Institution are giving TEA Control over the Collateral (subject to Section 5 below) and are perfecting the Security Interest in the Collateral by Control. Whether or not the Collateral is a deposit account under Article 9, the Depository Institution will comply with all instructions and other directions originated by TEA. This means that the Depository Institution will comply with all orders, notices, requests and other instructions of TEA relating to the Collateral, including but not limited to orders, notices, requests and other instructions to withdraw or transfer any Collateral, and to pay or transfer any Collateral to TEA in the manner provided herein. The Depository Institution will promptly mark its records to register TEA's Security Interest in the Collateral. TEA and VCE agree that the Collateral will be dispersed as follows: 1) TEA will retain all monies due and payable to TEA, 2) TEA will fund the Reserve Account, 3) TEA will retain \$275,000, which will be applied as a credit toward the current month's services and 4) the remaining Collateral will be transferred back to VCE's operating account, in which TEA has no Security Interest and in which the Depository Institution has a right of setoff.
- 5. Rights of VCE and Others.** Until the Depository Institution receives TEA's notice that VCE's rights in the Account are suspended (the "Shifting Control Notice"), the Depository Institution will comply with all notices, requests and other instructions from VCE for disposition of funds in the Account. This includes but is not limited to orders, notices, requests or instructions to withdraw or transfer any of the Collateral, and to pay or transfer any of the Collateral to VCE or any other person or entity, but not to redeem or terminate the Account. TEA acknowledges and agrees that until the Depository Institution receives the Shifting Control Notice, VCE may transfer funds from the Account, including to other VCE accounts at the Depository Institution in which the Depository Institution has a right of setoff. After the delivery by TEA of the Shifting Control Notice to the Depository Institution, unless TEA agrees in writing: (a) the Depository Institution will not permit VCE or any other person or entity except TEA to withdraw or transfer any of the Collateral, (b) the Depository Institution will not comply with any order, notice, request or other instruction from VCE or any other person or entity except TEA relating to any of the Collateral, and (c) the Depository Institution will not pay or transfer any of the Collateral to VCE or any other person or entity except TEA, or to any other account except the Account. At all times after the Depository Institution receives the Shifting Control Notice, unless TEA agrees or unless TEA withdraws the Shifting Control Notice, the Depository Institution will not honor any check or other item drawn by VCE on the Account or any other withdrawal or transfer by VCE from the Account, except to TEA. The form of Shifting Control Notice is attached hereto as Schedule A. The Depository Institution has no duty or liability to TEA unless and until the Depository Institution receives the Shifting Control Notice.

**6. Representations and Agreements.** VCE and the Depository Institution represent to TEA, and agree that:

(a) Upon the Depository Institution's receipt of the Shifting Control Notice in accordance with this Agreement, no person or entity except TEA will have Control over any of the Collateral. As of the date of this Agreement, neither VCE nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except TEA (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral, other than the security interest in favor of the Depository Institution pursuant to the Credit Agreement and related documents between the Depository Institution and VCE. Neither VCE nor, upon receipt of the Shifting Control Notice, the Depository Institution will permit any person or entity except TEA to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither VCE nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except TEA (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless TEA otherwise requests or agrees in writing, VCE is and will remain the sole account holder of the Account.

(b) As of the date of this Agreement, no person or entity (except VCE, TEA, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. VCE and the Depository Institution will immediately notify TEA if any person or entity (other than VCE, the Secured Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.

(c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and will not give, any Security for any of the Collateral to VCE or any other person or entity.

(d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. TEA is not personally liable to the Depository Institution for any fees, return checks, or other return items.

(e) The Depository Institution is a bank, as defined in Article 9. The State of California is the Depository Institution's jurisdiction for purposes of Article 9.

(f) VCE hereby instructs the Depository Institution, and the Depository Institution

hereby agrees, to furnish to TEA statements of the Account to enable TEA to monitor activity in the Account, all as customarily provided to customers of the Depository Institution at the times such statements are normally provided to customers of the Depository Institution, through the normal method of transmission, at VCE's expense. Additionally, VCE hereby instructs the Depository Institution, and the Depository Institution agrees, to make available to TEA and VCE copies of all daily debit and credit advices of the Account and any other item reasonably requested by TEA. If the Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to VCE, the Depository Institution shall make a reasonable effort to give notice to TEA and VCE of such legal process.

**7. Rights of Depository Institution.** The Depository Institution does not have to pay uncollected funds. The Depository Institution does not have to make funds available before it is required to do so under federal law. The Depository Institution is entitled to comply with all applicable laws, regulations, rules, court orders, and other legal process.

**8. Tax Reporting.** Until TEA notifies the Depository Institution to use a different name and number, the Depository Institution will make all reports relating to the Collateral to all federal, state and local tax authorities under the name and tax identification number of VCE.

**9. Indemnity.** Debtor agrees to defend (with counsel reasonably acceptable by depository institution), indemnify and hold Depository Institution harmless from and against any and all claims, causes of action, loss, liabilities, costs, damages and expenses, including, without limitation, reasonable legal and accounting fees and attorneys' fees (Collectively "claims") arising out of or in any way related to this Agreement, except to the extent that the claims are finally adjudicated by a court of competent jurisdiction to be directly caused by Depository Institution's gross negligence or willful misconduct. After a reasonable, but unsuccessful effort by Depository Institution to be indemnified by the Debtor, Secured Party agrees to defend (with counsel reasonably accepted by the Depository Institution), indemnify and hold the Depository Institution harmless from and against any and all claims arising out or related to Depository Institution's compliance with any instruction given by Secured Party. Secured Party's obligations to Depository Institution hereunder shall in no way operate to release Debtor from its obligations to Depository Institution and shall not affect any rights or remedies of Secured Party to collect any such amounts From Debtor.

**10. Waiver, Changes, and Cancellation.** Nothing in this Agreement can be waived, changed, or cancelled, except by a writing executed by VCE, TEA, and the Depository Institution, and except that this Agreement may be cancelled by a writing signed by TEA and sent to the Depository Institution in which TEA releases the Depository Institution from any further obligation to comply with instructions and other directions originated by TEA with respect to all of the collateral. Except under the previous sentence, nothing in this agreement will be affected by any act or omission by any person or entity.

**11. Termination:** This agreement shall continue in full force and effect until terminated (a) by Depository Institution upon not less than 90 days written notice to each of the other parties, (b) by secured party by written notice to debtor and Depository Institution or (c) by debtor with written consent of secured party.

**12. Collateral.** Except under the previous sentence, nothing in this Agreement will be affected by any act or omission by any person or entity.

**13. Notices.** All notices, orders, requests, and other instructions and communications to any party under this Agreement will be delivered, mailed, emailed or faxed to such party's address, email address or fax number stated above, or to the other address or fax number that such party may designate in a written notice that complies with this sentence.

**14. Successors.** This Agreement binds and benefits the parties and each of heirs, representatives, successors and assigns.

**15. Specific Performance.** This Agreement may be enforced in an action for specific performance.

**16. Governing Law.** This Agreement is governed by the laws of the state specified in Section 6(e) above.

**17. Counterparts.** This Agreement may be signed in counterparts, and all counterparts together are the same Agreement. Executed as of the date first above written.

*[Signature Pages to Follow]*

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by in their representative names by their duly authorized representatives.

Valley Clean Energy Authority

Signature:

By:

Title:

The Energy Authority

Signature:

By:

Title:

Depository Institution River City Bank

Signature:

By:

Title:

DRAFT



**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2024-\_\_\_**

**RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE (VCE)  
AUTHORIZING THE EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO APPROVE  
DEPOSIT ACCOUNT CONTROL AGREEMENT**

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

**WHEREAS**, VCE entered into an agreement with The Energy Authority, Inc. beginning in December 2022 to provide portfolio management, scheduling coordinator, load forecasting, and credit support services related to power costs; and

**WHEREAS**, the agreement specifies in Section A.5 that Credit Support is contingent on VCE meeting TEA creditworthiness and credit assurance standards, as determined via a review of two years of audited financials and/or an assigned investment-grade credit rating; and

**WHEREAS**, beginning in 2020, VCE faced financial constraints associated with power market and regulatory volatility driven by forces outside VCE's direct control; and

**WHEREAS**, to address increased power costs driven by forces outside of VCE’s direct control there is a need for VCE to provide additional credit assurance by entering a deposit control account agreement; and

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

1. The Executive Officer, in consultation with legal counsel, is authorized to take actions necessary to execute the Approved Deposit Control Agreement and associated agreements..

**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