

**Memorandum of Understanding Between
The San Francisco Public Utilities Commission and
The San Francisco Local Agency Formation Commission
Regarding the Community Choice Aggregation Program**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is dated for convenience as of April 17, 2009, by and between the SAN FRANCISCO PUBLIC UTILITIES COMMISSION ("SFPUC") and the SAN FRANCISCO LOCAL AGENCY FORMATION COMMISSION ("SF LAFCo").

1. Purpose. The purpose of this MOU is to memorialize the agreement reached between SFPUC and SF LAFCo, as set forth in LAFCo Resolution No. 2007-03, for reimbursements to SF LAFCo for Community Choice Aggregation Implementation Plan ("The Implementation Plan") duties as set forth in San Francisco Board of Supervisors ("Board of Supervisors") Ordinance No. 147-07. (File No. 07-0777.) The agreement set forth in LAFCo Resolution No. 2007-03 accepted \$700,000 per year in SFPUC funds for reimbursement for SF LAFCo duties from fiscal year 2008-09 through 2010-11, up to \$2,100,000 total. Consistent with that agreement, the SFPUC has sought and obtained an appropriation of \$700,000 of SFPUC Power Enterprise Funds in fiscal year 2008-09 for SF LAFCo duties. The SFPUC budgeted the balance of the \$2,100,000 in the fiscal year 2008-2009, but the funds in excess of \$700,000 were placed on reserve by the Board of Supervisor's, and subsequent releases are subject to Budget and Finance Committee action. As needed, the SFPUC can request release of funds from the Board of Supervisors Finance Committee, but the decision to release the funds is within the Board Committee's sole discretion.

2. Term and Reimbursement.
 - a. The Term of this Memorandum of Understanding is for Fiscal Year 2008-2009 through 2010 -2011, which term may be extended by mutual agreement of the parties. SF LAFCo may to seek up to \$700,000 in reimbursement for each fiscal year, beginning in Fiscal Year 2008-2009 through fiscal year 2010-11. If any of the \$700,000 allotted for a fiscal year is not used, the SFPUC shall recommend to the Mayor that those funds shall carry over to the subsequent fiscal year, and if approved by the Board of Supervisors and Mayor in the subsequent budget process pursuant to the San Francisco Charter, then the maximum amount that can be reimbursed for the subsequent fiscal year shall be increased accordingly, pending any further necessary authorization from the Board of Supervisors to remove required funds from reserve. Any monies received by SF LAFCo pursuant to state or federal grants are in addition to, and supplement, the SFPUC Power Enterprise Funds pursuant to this MOU.
3. Background.
 - a. The Charter of the City of San Francisco stipulates that the SFPUC holds sole authority over energy services. SF LAFCo's role is to monitor and advise. SF

LAFCo may undertake tasks that assist in the implementation of CCA subject to the SFPUC's delegation.

- b. Neither SF LAFCo nor SFPUC has the authority to appropriate funds and funds may not be removed from reserve without the action of the Board of Supervisors at a noticed and public hearing.
- c. In May 2004, the Board of Supervisors adopted Ordinance No. 86-04 approving the development of an Implementation Plan to create a San Francisco Community Choice Aggregation Program ("CCA Program"). (File No. 04-0236.)
- d. The Board of Supervisors adopted Ordinance No. 146-07 which provides that "[m]anagement and control of the Community Choice Aggregation (CCA) Program will be undertaken by the San Francisco Public Utilities Commission (SFPUC)." (File No. 07-0777.)
- e. Pursuant to Board of Supervisors' Ordinance No. 146-07, SF LAFCo's CCA Program assignment is "to monitor the implementation process and advise the SFPUC and the Board of Supervisors regarding the progress of CCA development and implementation. To the extent the LAFCo agrees, the LAFCo will assist with the startup of the CCA Program and advise the Board of Supervisors, SFPUC and other agencies regarding all aspects of development, implementation, operation and management of the CCA Program, as established by Ordinance 86-04, this Ordinance and any subsequent ordinances." (File No. 07-0777.) SF LAFCo accepted this assignment by adopting Resolution No. 2007-01.
- f. Additionally, in certain instances, SF LAFCo may make recommendations to the Board of Supervisors regarding how to proceed with certain implementation steps, should SFPUC fail to do so in a timely manner. (Board of Supervisors, Section 1(a)(8), Ord. No. 147-07; File No. 07-0501.)
- g. The Board of Supervisors enacted an ordinance which adopts and incorporates by reference a CCA Program Description and Revenue Bond Action Plan and Draft Implementation Plan. (Board of Supervisors, Ord. No. 147-07; File No. 07-0501.)

4. Individual Responsibilities of SF LAFCo and SFPUC Regarding CCA Program Development and Implementation. Ordinance Nos. 146-07 and 147-07 set forth the role of SF LAFCo regarding CCA Program development and implementation. (File Nos. 07-0501.)

5. **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. Procedures**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. The SF LAFCo assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

10. Staffing Levels. Staffing levels for CCA Program responsibilities will be determined by each individual agency, SF LAFCo and SFPUC, respectively. SF LAFCo and SFPUC shall consult with each other in determining the appropriate CCA Program staffing levels at each agency, however, the final decision rests with the agency hiring the staff. The hiring of SF LAFCo or SFPUC CCA Program staff is not dependent on the hiring status of the other agency.

11. Staff Management. SF LAFCo will monitor and manage its CCA Program staff. SFPUC will monitor and manage its CCA Program staff. SF LAFCo and SFPUC, recognizing the need for timely, efficient progress, will work cooperatively to avoid duplication of services and staff assignments, develop a timeline and tasks to be performed, and ensure that the program is implemented in a timely manner.

12. Consultants. SF LAFCo and SFPUC have already issued a joint Request for Qualifications and have established a joint working relationship for the selection of consultants for the CCA Program. SF LAFCo and SFPUC will continue to work cooperatively to ensure that the necessary consultants are retained to perform tasks as necessary to the CCA Program by SFPUC and SF LAFCo.

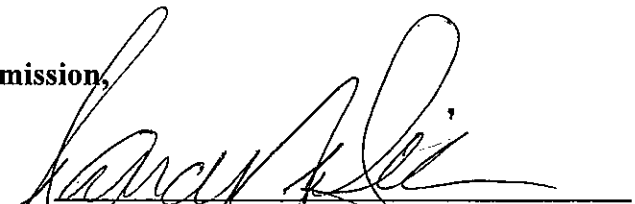
13. Amendments. No alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto. Should SF LAFCo's CCA Program responsibilities and obligations not be completed by the end of Fiscal Year 2010-11, SF LAFCo and SFPUC will work cooperatively to extend the terms of this MOU as necessary.

14. Counterparts. This MOU may be executed in multiple counterparts.

San Francisco Local Agency Formation Commission,

Date:

6/5/09




Nancy Miller, Interim Executive Director,
San Francisco LAFCo

San Francisco Public Utilities Commission,

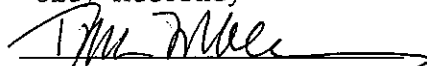
Date:

6/5/09



Ed Harrington
General Manager, the San Francisco
Public Utilities Commission

Approved as to Form
Dennis J. Herrera
City Attorney



Deputy City Attorney

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

6. Invoicing Procedures

- a. An invoicing procedure for reimbursements of SF LAFCo by SFPUC has already been established through the Clerks' Office of the Board of Supervisors. This procedure was established by SF LAFCo, pursuant to LAFCo Resolution No. 2007-03, which provides that the invoicing reimbursement shall be accomplished through the City and County of San Francisco procurement process.
- b. Under the current procedure, which shall continue until a streamlined mechanism is put in place, an approved invoice for work performed is sent from the Clerk's Office of the Board of Supervisors to the SFPUC for reimbursement or payment. Based upon their mutual understanding, and past practices, SFPUC and SF LAFCo intend to continue using this invoicing procedure for all future payments until a streamlined mechanism is put in place, pursuant to this MOU.
- c. SF LAFCo will continue to submit detailed invoices for contracts where CCA Program duties are performed for a fixed "not to exceed" amount. SFPUC shall promptly pay such invoices.
- d. Should a question arise regarding an invoice, SFPUC and SF LAFCo agree to work cooperatively to resolve the matter.
- e. If SF LAFCo and SFPUC later determine that a different invoicing procedure will be more efficient and save costs, they commit to work cooperatively to implement the better invoicing procedure to replace the invoicing procedure described in (a)-(b), above.

7. Cooperation. SF LAFCo and SFPUC issued a joint Request for Qualifications in November 2007, and have worked cooperatively to establish a pool of qualified consultants for CCA Program activities. SF LAFCo and SFPUC agree to continue to work cooperatively in the preparation of scopes of services and budgets for CCA Program activities, so as to avoid any duplication of work or services, and to ensure funds are used prudently.

8. SF LAFCo Hiring. SF LAFCo will hire staff as directed by SF LAFCo and will work cooperatively with SFPUC to avoid duplication of staff efforts. SF LAFCo staff will be located within the Clerk's Office of the Board of Supervisors and will be available for SFPUC CCA Program assignments, from time-to-time, and as mutually agreed upon. SF LAFCo staff shall be managed and supervised by SF LAFCo. SFPUC staff will be hired as directed by the SFPUC.

9. Limited Term Employment. Any SF LAFCo staff hired for the CCA Program will be for a limited term. The employment will continue until the earliest of:

- f. Funding for the position is exhausted and no additional funds are received; or
- g. SF LAFCo's CCA Program responsibilities and obligations are completed.