

File No. 201344

Committee Item No. 4

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date January 27, 2021

Board of Supervisors Meeting

Date _____

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Completed by: Linda Wong Date January 19, 2021

Completed by: Linda Wong Date _____

1 [Authorizing Membership in Community Choice Aggregation Joint Powers Authority for
2 CleanPowerSF]

3 **Ordinance authorizing the Public Utilities Commission to become a member of a Joint**
4 **Powers Authority consisting of Community Choice Aggregators for the purpose of joint**
5 **purchases of electricity and related products and services; and authorizing deviations**
6 **from certain otherwise applicable contract requirements in the Administrative Code**
7 **and the Environment Code for purchases that do not otherwise require Board approval.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. General Background.

17 (a) State law allows cities and counties to develop Community Choice Aggregation
18 (“CCA”) programs, through which local governments supply electricity to serve the needs of
19 participating customers within their jurisdictions while the existing utility continues to provide
20 services such as customer billing, transmission, and distribution.

21 (b) The City implemented a CCA program to provide San Francisco residents and
22 businesses the option to receive cleaner, more sustainable electricity at rates comparable to
23 PG&E’s rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12, and 78-14; and
24 Resolution Nos. 348-12, 331-13, and 75-15.

25 (c) In May 2016, the San Francisco Public Utilities Commission (“PUC”) launched
CleanPowerSF with initial service to almost 8,000 accounts. In July 2019, the PUC completed

1 the final phase of customer enrollment, and CleanPowerSF now serves over 400,000
2 accounts.

3 (d) The goals of CleanPowerSF are to provide affordable and reliable electricity
4 services, invest in cleaner energy alternatives that advance the City’s Greenhouse Gas
5 reduction goals, and ensure long-term rate and financial stability.

6 (e) There are currently 23 operational CCAs in California which collectively serve
7 more than 10,000,000 customers in more than 200 towns, cities, and counties. Over the last
8 10 years, CCAs have entered into long-term contracts for more than 3,600 megawatts of new,
9 clean generation resources and over 240 megawatts of energy storage capacity.

10

11 Section 2. CCA Joint Powers Authority.

12 (a) Pursuant to Chapter 5 of Division 7 of Title 1 of the California Government Code
13 commencing with Section 6500 (“JPA Law”) the City, upon authorization of the Board of
14 Supervisors, may enter into a joint exercise of powers agreement (“JPA”) with one or more
15 other public agencies through which the contracting parties may jointly exercise any power
16 common to them.

17 (b) Nine CCAs – CleanPowerSF, Central Coast Community Power, the East Bay
18 Community Energy Authority, the Marin Clean Energy Authority, the Redwood Coast Energy
19 Authority, San Jose Clean Energy, the Silicon Valley Clean Energy Authority, and the Sonoma
20 Clean Power Authority (collectively, “Participating CCAs”) – have determined that engaging in
21 joint efforts for energy-related procurement and projects will be beneficial to the Participating
22 CCAs by leveraging economies of scale to achieve lower costs and more favorable terms and
23 conditions for products and services. Collectively, the Participating CCAs provide electricity
24 and related services such as self-generation and energy efficiency programs to customers in
25 Northern California.

1 (c) The Participating CCAs have agreed, subject to the approval of their governing
2 bodies, to form a JPA called California Community Power (“CC Power”) for the purpose of,
3 among other things, (1) the construction, financing, or acquisition of wholesale power
4 supplies, transmission facilities, resource adequacy, renewable and environmental attributes,
5 and other services and goods needed to optimize the value of such resources, (2) the bulk
6 purchasing and/or financing of decarbonization products, including, but not limited to, heat
7 pump water heaters, space heater heat pumps, and electric vehicle charging services, and (3)
8 contracting for energy risk management, grid integration, and scheduling products and
9 services.

10 (d) The Participating CCAs have jointly prepared an agreement creating CC Power
11 (“Agreement”) which is on file with the Clerk of the Board of Supervisors in File No. 201344
12 and is incorporated by reference as if fully set forth herein. Under the JPA Law and the
13 Agreement, CC Power is a public entity separate and apart from the parties to the Agreement
14 and the debts, liabilities, and obligations of the JPA will not be the debts, liabilities, or
15 obligations of the City or the other Participating CCAs. A Participating CCA may withdraw from
16 CC Power at any time subject to the terms of the Agreement.

17 (e) As a public agency, CC Power will be subject to the state laws that apply to local
18 government agencies, including but not limited to open meetings, public records,
19 environmental review, conflict of interest, and competitive bidding.

20 (f) The Agreement requires the City to pay a proportional share of the start-up and
21 on-going administrative costs of operating CC Power, which the PUC estimates will not
22 exceed \$50,000 per year.

23 (g) PUC anticipates that CC Power will be the contracting entity with the suppliers of
24 products and services. Each Participating CCA will decide whether to participate in any CC
25 Power project and will enter into separate project agreements with CC Power and the other

1 Participating CCAs that elect to participate in the project. Except as stated in Section 4 of this
2 ordinance, any individual project agreement entered into by the PUC will be subject to
3 applicable contracting rules under the Charter and the Municipal Code, including approval by
4 the Board of Supervisors under Charter Section 9.118 for contracts over 10 years in duration
5 or \$10 million in amount and amendments over \$500,000 for such contracts.

6 (h) The PUC Commission authorized the General Manager to join CC Power on
7 _____ in Resolution No. _____, which is on file with the Clerk of the Board of
8 Supervisors in File No. _____.

9
10 Section 3. Grant of Authority to Join CC Power.

11 (a) The Board of Supervisors approves the Agreement and authorizes the General
12 Manager of the PUC to execute the Agreement in substantially the same form, with necessary
13 changes that do not materially affect the liabilities of or benefits to the City as a member of CC
14 Power. The Board of Supervisors further authorizes the General Manager to take steps
15 necessary to implement the Agreement.

16 (b) The Board of Supervisors approves PUC's payment of its share of the start-up
17 and on-going administrative costs of CC Power in an amount not to exceed \$50,000 for
18 calendar years 2021, 2022, and 2023 and further authorizes PUC to seek approval from the
19 Board of Supervisors for amendments to the not-to-exceed amount and reauthorization for the
20 costs of participation in CC Power by resolution.

21
22 Section 4. Waiver of Certain Contract-Related Requirements in the Administrative
23 Code and the Environment Code.

24 (a) As public agencies, the members of CC Power have their own contracting
25 provisions and imposition of each member's rules would be infeasible in operating CC Power.

1 In addition, CC Power is subject to state laws prohibiting discrimination in hiring (Ca. Govt.
2 Code Section 12940) and consideration of criminal history in hiring (Ca. Govt. Code Section
3 12952).

4 (b) The Board of Supervisors hereby grants waivers of the following standard
5 contract provisions for contracts for goods and services entered into with CC Power and other
6 CCAs that do not otherwise require Board of Supervisors approval, and finds such waivers to
7 be reasonable and in the public interest:

8 (1) Nondiscrimination in contracts (Administrative Code Chapter 12B);

9 (2) Implementing the MacBride Principles (Administrative Code Chapter
10 12F);

11 (3) Consideration of criminal history in hiring (Administrative Code Section
12 12T);

13 (4) Increased participation by small and micro local businesses in City
14 contracts (Administrative Code Chapter 14B);

15 (5) The competitive bidding requirement (Administrative Code Section 21.1);
16 and

17 (6) The tropical hardwood and virgin redwood ban (Environment Code
18 Chapter 8).

19
20 Section 5. Effective Date.

21 This ordinance shall become effective 30 days after enactment. Enactment occurs
22 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
23 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
24 Mayor's veto of the ordinance.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: /S/
THERESA CHO
Deputy City Attorney

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LEGISLATIVE DIGEST

[Authorizing Membership in Community Choice Aggregation Joint Powers Authority for CleanPowerSF]

Ordinance authorizing the Public Utilities Commission to become a member of a Joint Powers Authority consisting of Community Choice Aggregators for the purpose of joint purchases of electricity and related products and services; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code for contracts that do not otherwise require Board approval.

Existing Law

State law allows the City, upon authorization of the Board of Supervisors, to enter into a joint exercise of powers agreement with one or more other public agencies through which the contracting parties may jointly exercise any power common to them. See Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California commencing with Section 6500.

The San Francisco municipal codes contain many contracting requirements for the procurement of goods and services. In certain instances, the Board of Supervisors may exempt contracts from these requirements via ordinance.

Amendments to Current Law

The ordinance does not amend current law.

Authority Granted

The ordinance would approve a joint powers authority agreement (JPA Agreement) that creates a joint powers authority (JPA) for community choice aggregators called the California Community Joint Powers Authority (CC JPA), including CleanPowerSF. The ordinance would authorize the General Manager of the Public Utilities Commission (PUC) to execute and implement the JPA Agreement.

The ordinance would waive certain City contracting requirements for contracts entered into by the PUC with the CC JPA for electricity-related goods and services if those contracts do not otherwise require Board approval under Charter Section 9.118 for contracts over 10 years or \$10,000,000 and amendments to contracts of more than \$500,000.

Background Information

The City, acting through the PUC, implemented a community choice aggregation program called CleanPowerSF. Through CleanPowerSF, the City provides clean, affordable electricity supply to approximately 400,000 residents and businesses in the City at rates that are competitive with the rates of the incumbent investor-owned utility, Pacific Gas and Electric Company. The goals of CleanPowerSF are to provide affordable and reliable electricity services, invest in cleaner energy alternatives that advance the City's Greenhouse Gas reduction goals, and ensure long-term rate and financial stability.

CleanPowerSF and eight other community choice aggregators (CCAs) located primarily in Northern California (Participating CCAs) propose to participate in the joint procurement of electricity and electricity-related products and services through the creation of the CC JPA. The activities of the CC JPA could include (i) the construction, financing, or acquisition of wholesale power supplies, transmission facilities, resource adequacy, renewable and environmental attributes, and other services and goods needed to optimize the value of such resources, (ii) the bulk purchasing and/or financing of decarbonization products, including, but not limited to, heat pump water heaters, space heater heat pumps and electric vehicle charging services, and (iii) contracting for energy risk management, grid integration, and scheduling products and services.

The CC JPA is an independent public agency that is subject to the laws applicable to local government entities and the debts, liabilities, and obligations of the CC JPA are not the debts, liabilities, and obligations of any of the Participating JPAs.

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Item 4 File 20-1344	Department: Public Utilities Commission (PUC)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed ordinance would (1) authorize the SFPUC General Manager to enter into a Joint Powers Authority (JPA) called “California Community Power” (CC Power) made up of nine Community Choice Aggregators (CCAs) and approve the JPA Agreement; (2) authorize the SFPUC to pay its share of the JPA operating costs for calendar years 2021, 2022 and 2023, up to \$50,000 per year; and, (3) waive certain provisions of the Administrative and Environment Code for contracts that do not require Board of Supervisors approval,¹ including requirements for competitive bidding, local small business participation, non-discrimination in contracting, and others. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • CleanPowerSF is seeking to join a Joint Powers Authority (JPA) with eight other CCAs in Northern and Central California to jointly procure electrical power-producing and storage projects and services. JPAs can allow utilities to secure lower unit costs from economies of scale given the large investments needed for such projects. They are governed by state law. • The purpose of the JPA is to develop, procure and operate energy-related projects and services on behalf of the participating members. While the JPA Board will approve any such projects, each member CCA has the right to participate in a “pro-rata share” of the project but is not required to do so. These projects will be governed by separate Project Agreements which will set out how costs and benefits are distributed, liabilities and procurement process. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed ordinance would authorize the SFPUC to pay its share of the startup and ongoing administrative costs related to the JPA’s operations for calendar years 2021, 2022 and 2023, up to \$50,000 per year. • The more significant costs associated with the development and procurement of joint electricity projects and related services will be captured in Project Agreements. The costs associated with these projects is currently unknown, however, if they meet SFPUC and City Charter contract thresholds, they will require approval by the SFPUC Commission and/or the Board of Supervisors. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed ordinance. 	

¹ Excluded contracts would generally include non-construction contracts under 10 years in length or with less than \$10 million in expenditure and/or amendments of such contracts that are less than \$500,000, pursuant to San Francisco Charter Section 9.118.

MANDATE STATEMENT

California Government Code Section 6502 requires approval by the legislative body of any public agency seeking to enter a Joint Powers Agreement to exercise any power common to the contracting parties.

BACKGROUND

Community Choice Aggregator

CleanPowerSF is the Community Choice Aggregation (CCA) program of the City and County of San Francisco operated by the San Francisco Public Utilities Commission's (SFPUC) Power Enterprise that provides electricity supply to commercial and residential customers in San Francisco. CleanPowerSF began serving customers in May 2016 following Board approval in May 2004.² CleanPowerSF currently serves around 60% of San Francisco's total electricity demand, or around 376,000 accounts.³

CCAs are state-authorized programs which allow local governments to provide electricity to participant customers using the existing Investor Owned Utility's billing, transmission, and distribution infrastructure.⁴ CCAs generally offer participant customers greater choice in the share of renewable energy sources used to generate electricity. Customers can opt of CCA services and return to any other utilities serving the area if they choose.

Joint Power Authority

Under state law, public agencies can join together in a Joint Power Authority (JPA), a standalone public entity, to jointly exercise any powers they have in common.⁵

CleanPowerSF is seeking to join a Joint Powers Authority (JPA) with eight other CCAs⁶ in Northern and Central California to jointly procure electrical power-producing and storage projects and related services. The formation of the JPA would allow the members to jointly procure energy-related projects and services at lower costs by leveraging economies of scale.

The proposed JPA members are:

- 1) CleanPowerSF,
- 2) Central Coast Community Power (serving parts of Monterey, San Benito, Santa Cruz, San Luis Obispo and Santa Barbara counties),
- 3) East Bay Community Energy Authority (Alameda County),

² See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12, and 78-14; and Resolution Nos. 348-12, 331-13, and 75-15.

³ Information from SFPUC staff and on SFPUC's [website](#).

⁴ CCAs are authorized by the California Public Utilities Code Section 331.1(c) and 366.2.

⁵ California Government Code Sections 6500 – 6599.3.

⁶ The proposed legislation only lists seven CCAs as it does not identify Peninsula Clean Energy as one of the proposed members. SFPUC has indicated they intend to amend the legislation.

- 4) Marin Clean Energy Authority (serving Contra Costa, Marin, Napa and Solano counties as well as towns and cities within those counties),
- 5) Redwood Coast Energy Authority (Humboldt County),
- 6) Peninsula Clean Energy (San Mateo County and incorporated cities),
- 7) San Jose Clean Energy (City of San Jose),
- 8) Silicon Valley Clean Energy Authority (parts of Santa Clara County), and
- 9) Sonoma Clean Power Authority (Sonoma and Mendocino Counties).

The SFPUC Commission is expected to review the JPA at its January 26th meeting. As of January 8, 2021, five CCAs have approved membership in the JPA and the other three are expected to bring the JPA before their legislative bodies by the end of January.⁷

DETAILS OF PROPOSED LEGISLATION

The proposed legislation would:

- 1) approve the Joint Powers Agreement between the SFPUC and the other signatories to form a Joint Powers Authority called “California Community Power” (CC Power);
- 2) authorize the SFPUC General Manager to enter into a Joint Powers Authority (JPA) called “California Community Power” (CC Power) expected to be made up of nine Community Choice Aggregators (CCAs) covering parts of the Bay Area, Humboldt and Mendocino Counties and parts of Monterey, San Luis Obispo and Santa Barbara;
- 3) authorize the SFPUC to pay its share of the JPA operating costs for calendar years 2021, 2022 and 2023, up to \$50,000 per year (discussed in the Fiscal Impact section below); and,
- 4) waive certain provisions of the Administrative and Environment Code for contracts that do not require Board of Supervisors approval,⁸ including requirements for competitive bidding, local small- and micro-business participation, non-discrimination in contracting, and others. Some of these will be covered by other state and local requirements.

Joint Powers Authority Agreement

The primary purpose of the California Community Power JPA is to develop, procure and operate joint energy-related projects and services on behalf of the participating members.

Specifically, the JPA Agreement states the members seek to jointly engage in:

⁷ CCAs who have approved the JPA include: Silicon Valley Clean Energy (SVCE), Redwood Coast Energy Authority (RCEA), Marin Clean Energy (MCE), San Jose Clean Energy (SJCE), and Sonoma Clean Power (SCP). Central Coast Community Energy (formerly Monterey Bay Community Power) will be presenting to their legislative board on the week of January 11 and Peninsula Clean Energy and East Bay Community Energy will be seeking approval at their respective Board meetings later in January.

⁸ Excluded contracts would generally include non-construction contracts under 10 years in length or with less than \$10 million in expenditure and/or amendments of such contracts that are less than \$500,000, pursuant to San Francisco Charter Section 9.118.

- (i) the acquisition and operation of wholesale power supplies, resource adequacy and renewable attributes,
- (ii) the provision of joint consulting and contracting services via master agreements and bulk purchasing and financing of decarbonization products,
- (iii) the offering of energy risk management and California Independent System Operator (“CAISO”) scheduling services; and
- (iv) other energy services or programs which may be of benefit to members.

Role and Powers of the JPA

According to the proposed JPA Agreement, the JPA would have the following powers:

- **Develop, manage, and operate energy-related projects:** Acquire, purchase, finance, offer, arrange, construct, maintain, utilize and/or operate projects;
- **Hire and employ staff;**
- **Enter into contracts:** Make and enter into contracts and service agreements;
- **Manage real property:** Acquire, contract, manage, maintain, lease, sell real and personal property;
- **Receive and collect moneys and public grants/ loans;** and,
- **Incur and Issue Debt:** incur, debts, liabilities and obligations and Issue revenue bonds and other forms of debt. However, the JPA Agreement specifies that any bonds issued will not automatically create an obligation on members unless authorized by the member’s governing body.

The JPA is also limited in engaging in policy advocacy where a conflict could exist with member organizations and must abide by applicable local zoning and building laws and the California Environmental Quality Act (CEQA).

Obligations and Liabilities of JPA Members

As a public agency, the JPA is also subject to state transparency and procurement requirements imposed on other public agencies, including Brown Act requirements and the state public procurement code (discussed further in the “Waiver of San Francisco Administrative Code Provisions” below).

Share of Operating Costs

JPA members are also liable for an equal share of the JPA’s general administrative costs. These costs include daily operating costs and other administrative costs (i.e. accounting, audits, and other staff needed to meet Brown Act and Public Records Act requirements). This is discussed further in the Fiscal Impact section below. The JPA Agreement also includes a specific provision stating that CleanPowerSF’s financial obligations are special limited obligations to be paid solely from CleanPowerSF revenues and are not a charge against the PUC or the City’s general fund and

any payment obligation may not exceed the amount of expenditure authorized by the Controller through relevant budget or supplemental appropriations.⁹

JPA Governance and Operating Structure

The JPA will be governed by a Board of Directors made up of one representative from each member CCA.¹⁰ The Board will elect a Chair and Vice-Chair and appoint a Secretary and Treasury/Controller. The Board is generally responsible for approving budgets, projects, and any amendments to the JPA Agreement. Amendments to the JPA Agreement relating to cost allocations, the JPA's powers, membership, termination of the JPA, and member liabilities require approval by two-thirds of the JPA Board and by the respective members' governing bodies. The JPA is required to have a part or full time General Manager, may appoint other staff as deemed necessary, and must carry out annual financial audits. New CCAs may join the JPA with a two-thirds vote of the JPA Board and existing members may withdraw from the JPA based on specified procedures.

Project Agreements

While the JPA Board will approve any such projects, each member has the option to participate in a pro-rata share of the project, but is not required to do so. These projects will be governed by separate Project Agreements among the participating members which will set out how costs and benefits are distributed, liabilities and procurement process.

Agreements for power purchases, generation, and storage will each be subject to approval from the participating JPA members' governing boards that wish to participate in each project. If these agreements exceed ten years or are greater than \$10 million, they will require approval by the Board of Supervisors.

Waiver of San Francisco Administrative Code Provisions

Appendix A summarizes the contract- and procurement-related requirements in the Administrative Code and Environment Code that would be waived by the proposed legislation. These requirements would only be waived for contracts that are not subject to Board of Supervisors approval (i.e. non-construction contracts under 10 years in length and/or requiring less than \$10 million in expenditure). According to SFPUC, imposition of each member's procurement and contracting rules would be infeasible in operating CC Power.

Of most significance is the waiver of Administrative Code Section 21.1 which generally requires competitive bidding for commodities and professional services in excess of \$129,000 and general services in excess of \$706,000. Under the proposed JPA Agreement, by default, the procurement rules of a designated member (Silicon Valley Clean Energy, and ultimately the City of Cupertino) would apply until the JPA agrees its own procurement rules. The City of Cupertino appears to have less stringent competitive bidding and procurement rules than San Francisco with respect to commodities and professional services but more stringent rules for general services. In particular, the Cupertino Municipal Code exempts professional services from any competitive bidding and lowest bid award requirements. According to the CleanPowerSF Director and the City

⁹ JPA Agreement, section 8.02(b)

¹⁰ Representatives must be the General Manager/ Chief Executive Officer or their designee.

Attorney's Office, local procurement rules in Cupertino may require Purchasing Officer and City Manager approval to enter into contracts without bidding.

Two other requirements relating to nondiscrimination in contracts and the consideration of criminal history in hiring are generally covered by state requirements that apply to all employers with five or more employees.¹¹ Other waived provisions include encouragement of the use of local business participation in contracts, implementation of the MacBride principles by contractors doing business in Northern Ireland and prohibition of the use of tropical hardwood and virgin redwood by City contractors.

FISCAL IMPACT

JPA General Administrative Costs

The proposed ordinance would authorize the SFPUC to pay its share of the startup and ongoing administrative costs related to the JPA's operations for calendar years 2021, 2022 and 2023, up to \$50,000 per year. Any increase in costs beyond the authorized amount would require further Board of Supervisors approval. Costs will be paid from CleanPowerSF revenues.

According to the JPA Agreement, the JPA's general administrative costs will be equally divided among all the participating members. At a minimum, the JPA must be staffed by a part or full time General Manager, must appoint a Treasurer and Controller, and carry out an annual financial audit. Exhibit 2 provides estimates for these costs produced by the CleanPowerSF Director.

Exhibit 2: Estimated Annual Joint Powers Authority Administrative Costs

Cost Item	Estimated Annual Cost
General Manager	\$36,000
General Counsel	\$66,000
Staff/ Support	\$60,000
Annual Financial Audit	\$5,000
Total	\$167,000
<i>CleanPowerSF Share (1/9th of total)</i>	<i>\$18,555</i>

Source: SFPUC estimates

As shown above, the SFPUC's share of the JPA's operating expenses are expected to total \$18,555 per year, which is below the proposed ordinance's annual spending authorization of \$50,000 per year. An additional contingency in the spending authority relative to these estimated costs is reasonable given the uncertainty around JPA staffing needs and the relatively low expenditure amount requested.

Any costs associated with the development, procurement or operation of joint projects undertaken by the JPA would be covered by specific Project Agreements and Project Participation Agreements between participating CCA members.

¹¹ See California Government Codes 12940 and 12952, respectively.

RECOMMENDATION

Approve the proposed ordinance.

Appendix A: Summary of San Francisco Administrative and Environment Code Provisions Waived by the Proposed Legislation

Code Sec.	Title/ Description	Key Code Section Requirements	Reason for Waiving
AC Ch. 12B	Nondiscrimination in contracts	Prohibits employment discrimination by City contractors and sub-contractors.	Covered by CA Govt Code Sec. 12940
AC Ch. 12F	MacBride Principles (Northern Ireland)	Requires City contracts to contain a statement urging companies doing business in Northern Ireland to abide by the MacBride Principles.	Impractical to impose on other CCAs according to SFPUC
AC Sec. 12T	Consideration of criminal history in hiring	Prohibits City contractors and sub-contractors to consider criminal history in employment decisions.	Covered by CA Govt Code Sec 12952
AC Ch. 14B	Increased participation by small and micro local businesses in City Contracts	Requires good faith effort to award City contracts to local business enterprises.	Impractical to impose on other CCAs according to SFPUC
AC Sec. 21.1	Competitive Bidding Requirement	Requires competitive bidding and lowest-bid selection for commodities and professional services in excess of \$129,000 and general services in excess of \$706,000 (SF AC Sec. 21.02).	CC Power is subject to state-mandated competitive bidding for public agencies through the JPA Agreement (specifically, the JPA is subject to Cupertino Municipal Code Procurement Laws). ¹ Cupertino Municipal Code requires competitive bidding for goods and services above \$200,000 but exempts professional services from any competitive bidding requirements. ²
EC Ch. 8	Tropical hardwood and virgin redwood ban	Generally prohibits the use of tropical hardwood and virgin redwood by City contractors or sub-contractors.	Impractical to impose on other CCAs according to SFPUC

Source: Legislation text, Section 4

Notes: AC: Administrative Code; EC: Environment Code.

¹ California Government Section 6509 and JPA Agreement Section 2.03.

² Cupertino Municipal Code Section 3.22

CALIFORNIA COMMUNITY POWER AGENCY JOINT POWERS AGREEMENT

This Joint Powers Agreement ("Agreement") is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement, for the purpose of operating a separate joint powers agency, which is named "California Community Power" or "CC Power."

WITNESSETH

WHEREAS, it is to the mutual benefit of the Members and in the public interest that the Members join together to engage in the exercise of powers they have in common including, but not limited to, (i) the acquisition and operation of wholesale power supplies, resource adequacy and renewable attributes, (ii) the provision of joint consulting and contracting services via master agreements and bulk purchasing and financing of decarbonization products, (iii) the offering of energy risk management and California Independent System Operator ("CAISO") scheduling services; and (iv) other energy services or programs which may be of benefit to Members (collectively, hereinafter "energy related programs");

WHEREAS, CC Power's primary objective is to provide for joint procurement of electrical power and storage and other energy projects for its Members, as set forth in this Agreement;

WHEREAS, the Members intend that CC Power shall better position the Members to administer community choice energy programs, and achieve their local agency goals, including but not limited to meeting or exceeding California's greenhouse gas emission reduction targets through procurement of renewable resources.

WHEREAS, each of the public community choice aggregation agencies which is a Member to this Agreement has the power to establish, manage, operate and maintain Community Choice Aggregation ("CCA") programs, electric service enterprises available to cities and counties pursuant to California Public Utilities Code Section 331.1(c) and 366.2 and to study, promote, develop, conduct, operate and manage energy related programs; and

WHEREAS, Title I, Division 7, Chapter 5, Article 1 of the California Government Code (the "Joint Powers Act" or "Act") authorizes the joint exercise by two or more public agencies of any power which is common to each of them.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

Article I. DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

Section 1.01 "Board" means the Board of Directors of CC Power as established by this Agreement.

Section 1.02 "CC Power" means the Joint Powers Authority established by this Agreement.

Section 1.03 "Member" means a Public CCA Agency, or other public agency the Board determines to be eligible pursuant to Section 3.02, that is a signatory to this Agreement and has met the requirements of

Article III; the term “Member” shall, however, exclude any Public CCA Agency or other eligible public agency which shall have withdrawn or been excluded from CC Power pursuant to Section 3.04 below.

Section 1.04 “Project” means any and all of the following matters, which are approved by the Board pursuant to Article VI: (i) the construction, financing or acquisition of a wholesale power resource, resource adequacy and/or renewable and environmental attributes for use by the Members, and such other transactions, services, and goods that may be necessary or convenient to construct, finance, acquire or optimize the value of such resources, (ii) the bulk purchasing and/or financing of decarbonization products, including, but not limited to, heat pump water heaters, space heater heat pumps and electric vehicle charging services, (iii) energy risk management and CAISO scheduling products and services, (iv) acquisition, construction and financing of facilities for the generation or transmission of electrical energy and any related transactions, services, and goods that may be necessary or convenient to acquire, construct, and finance these facilities, (v) grid integration services, (vi) acquisition of capacity rights in any facility for the generation or transmission of electric energy, and (vii) any other energy related programs.

Section 1.05 “Project Agreement” means a contract between and among CC Power and Project Participants.

Section 1.06 “Project Participants” means any Member or group of Members who participate in a Project pursuant to Article VI below.

Section 1.07 “Public CCA Agency” means any public agency, or such joint powers agencies/authorities consisting of one or more public agencies, that has implemented a CCA program pursuant to California Public Utilities Code Sections 331.1 and 366.2.

Article II. FORMATION OF AUTHORITY

Section 2.01 Creation of CC Power. Pursuant to the Joint Powers Act, there is hereby created a public entity, to be known as “CC Power,” which shall be a public entity separate and apart from its Members.

Section 2.02 Purpose. The purpose of this Agreement is for CC Power to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members. CC Power is not intended to be a policy-maker or advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

Section 2.03 Powers. CC Power is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement as referred to in Section 2.02 above, and engage in the exercise of powers the Members have in common including, but not limited to, each of the following:

- (a) Acquire, purchase, finance, offer, arrange, construct, maintain, utilize and/or operate one or more Projects;
- (b) Establish, operate, maintain and/or fund energy related programs;
- (c) Make and enter into contracts;
- (d) Employ agents and employees;
- (e) Acquire, contract, manage, maintain, sell or otherwise dispose of real and personal property and operate any buildings, infrastructure, works, or improvements;
- (f) Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- (g) Lease real or personal property as lessee and as lessor;
- (h) Sue and be sued in its own name;

- (i) Incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;
- (j) Receive, collect, invest and disburse moneys;
- (k) Issue revenue bonds and other forms of indebtedness, as provided by law;
- (l) Apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- (m) Make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy related programs;
- (n) Adopt from time to time such policies, procedures, bylaws, rules or regulations for the conduct of its affairs as deemed necessary by the Board;
- (o) Exercise all other powers necessary and proper to carry out this Agreement; and
- (p) Defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions.

Such powers shall be exercised in the manner provided in Section 6509 of the Government Code of the State of California, as amended, subject only to such restrictions upon the manner of exercising such powers as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers. Should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy.

Section 2.04 Compliance with Local Zoning and Building Laws and CEQA. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by CC Power within the territory of CC Power shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act.

Article III. MEMBERSHIP

Section 3.01 Member Agencies. Any Public CCA Agency, or other public agency determined by the Board to be eligible pursuant to Section 3.02, may become a Member upon meeting the following conditions:

- (a) The Public CCA Agency or other eligible public agency shall file with the Board a certified copy of a resolution of its governing body whereby it (i) agrees to the provisions of this Agreement, and (ii) requests to become a Member; and
- (b) No such Public CCA Agency or other eligible public agency shall become a Member until (i) its admission is approved at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and (ii) it deposits or agrees to pay CC Power a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any.

Upon completion of the foregoing, the Public CCA Agency or other eligible public agency shall become a Member for all purposes of this Agreement.

Section 3.02 Eligible Public Agency Members. The Board may adopt policies to determine whether public agencies that are not Public CCA Agencies may be eligible to become a Member of CC Power.

Section 3.03 Cost Allocations.

- (a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one member one share for general and administrative costs as determined by the Board associated with all operations of CC Power. General and administrative costs do not include any costs that relate solely to any specific Project Agreement.

- (b) Project Agreements and other program agreements between and among any Member and/or CC Power will determine cost allocation and may consider, among other relevant factors, credit strength of the Members and may differ in price and collateral requirements as determined solely for such Project Agreement or other program agreements.

Section 3.04 Withdrawal or Exclusion of Member.

- (a) Any Member may withdraw from CC Power upon the following conditions:
 - (i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. Once a Member files a resolution to withdraw with the Board Secretary, that Member no longer has any voting rights on the Board;
 - (ii) Members participating in Projects, programs or services pursuant to Project Agreements or other program agreements approved by the Board are subject to the participation and withdrawal terms and conditions described in the applicable agreement; and
 - (iii) Prior to accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of all debts, liabilities, and obligations of CC Power specifically assumed by the Member. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations secured or otherwise committed pursuant to Project Agreements or other program agreements between and among any Member and/or CC Power. The debts, liabilities and obligations of the Members to such Project Agreements or other program agreements shall be determined by their terms. Any obligations under this Agreement are subject to the limitations set forth in Article VIII.
- (b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Project Agreement or other program agreement.
- (c) Any Member which has (i) defaulted under this Agreement, a Project Agreement, or other program agreement, (ii) failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01 and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CC Power by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member). Prior to any vote to terminate participation of any Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Project Agreement or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Project Agreement or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion.

- (d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.03 below.

Article IV. POWERS OF BOARD & MANAGEMENT OF CC POWER

Section 4.01 Board. CC Power shall be administered by a Board which shall consist of one Director representing each Member. Such Board shall be the governing body of this CC Power, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CC Power.

Section 4.02 Appointment and Vacancies. Each Director shall be the Chief Executive Officer, General Manager, or designee of the Chief Executive Officer or General Manager of each Member and shall be appointed by and serve at the pleasure of the Member that the Director represents, and may be removed as Director by such Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

Section 4.03 Notices. The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State, the State Controller, the applicable county clerk and local agency formation commissions, including, but not limited to:

- (a) Causing a notice of the Agreement or any amendment to the Agreement to be prepared and filed with the office of the Secretary of State within 30 days of the effective date of the Agreement or amendment, and
- (b) Filing a statement of facts with the Secretary of State within 70 days after the date of commencement of CC Power's legal existence. Upon any change in the statement of facts presented to the Secretary of State, an amended statement of facts shall be filed with the Secretary of State within 10 days of the change.

Section 4.04 Committees. The Board may create committees to provide advice to the Board or conduct the business of CC Power subject to delegation of authority from the Board.

Section 4.05 Director Compensation. Compensation for work performed by Directors, including alternates, on behalf of CC Power shall be borne by the Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

Section 4.06 Board Officers. At its first meeting in each calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary and a Treasurer/Controller each of whom may, but need not, be selected from among the Directors.

- (a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.
- (b) **Treasurer and Controller.** The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Controller, neither of whom needs to be a Director. If the Board so designates, and in accordance with the provisions of applicable law,

a qualified person may hold both the office of Treasurer and the office of Controller of CC Power. The Treasurer shall be the depository of CC Power to have custody of all the money of CC Power, from whatever source. The Controller shall draw warrants to pay demands against CC Power when the demands have been approved by the Chair or Vice Chair of CC Power. The Treasurer and Controller shall have the other powers, duties and responsibilities of such officers as specified in Section 6505 of the Government Code of the State of California, as amended, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed, as is provided for and authorized in Section 6550 of the Government Code of the State of California, as amended, pursuant to any resolution, indenture or other instrument providing for the issuance of bonds or notes of CC Power pursuant to this Agreement. The Board may require the Treasurer and/or Controller to file with CC Power an official bond in an amount to be fixed by the Board, and if so requested CC Power shall pay the cost of premiums associated with the bond. The Treasurer and Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code.

- (c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CC Power, and responding to public records requests of the JPA.

Section 4.07 Management of CC Power. The Board shall appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. The General Manager shall be responsible for the day-to-day operation and management of CC Power. The General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

Section 4.08 Other Officers and Employees. The Board shall have the power to appoint such other officers and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Members may contract with CC Power to provide staff to perform services for CC Power, but such employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Member only.

Section 4.09 Budget. The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CC Power shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

Article V. MEETINGS OF THE BOARD

Section 5.01 Regular Meetings. The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

Section 5.02 Special Meetings. Special and emergency meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5, as amended.

Section 5.03 Brown Act Compliance. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.), and as

augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, only to the extent permitted by law.

Section 5.04 Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 5.05 Quorum. A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

Section 5.06 Voting. Except to the extent set forth in a Project Agreement or as otherwise specified in this Agreement, each Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

(a) **Special Voting Requirements as specified in this Agreement:**

- (i) Action of the Board to amend Section 3.03 related to cost allocations shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.
- (ii) Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.
- (iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Member's governing body.
- (iv) Action of the Board to amend this Agreement shall be subject to the voting requirements set forth in Section 11.02 below.

Article VI. PROJECTS

Section 6.01 Projects. The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to establish Projects within the purpose and power of CC Power and to adopt guidelines for their implementation.

Section 6.02 Right to Participate in Projects. The Board shall provide at least sixty (60) days prior written notice to all Members, unless such notice is otherwise waived, before any Project may be considered for adoption by a vote of the Board. Such notice shall be provided to the Director of each Member. Once a Project is approved by the Board as set forth in Section 6.01 above, all Members shall have the right, but not the obligation, to participate in a pro-rata share in the Project as determined by the Project Agreement. All Members who elect not to participate in the Project have no obligations under the Project.

Section 6.03 Project Agreement. All expenses, rights and obligations to any specific Projects will be handled through Project Agreements that will be separate and distinct from this Agreement.

Article VII. BONDS AND OTHER INDEBTEDNESS

CC Power shall also have the power to issue, sell and deliver bonds in accordance with the provisions of the Joint Powers Act for the purpose of acquiring, financing, performing or constructing one or more Projects and to enter into other indebtedness for the purpose of financing one or more studies or Projects and for the purpose of providing temporary financing of costs of development, construction or acquisition of one or more Projects. The terms and conditions of the issuance of any such bonds or indebtedness shall be set forth in such resolution, indenture or other instrument, as required by law and as approved by the Board. Bonds issued under this article and contracts or obligations entered into to carry out the purposes for which bonds are issued, payable in whole or in part from the proceeds of said bonds, shall not constitute a debt, liability or

obligation of any of the Members unless the governing body of the Member by resolution expressly agrees that the Member will be obligated under the bond or other indebtedness or the Member takes on obligations pursuant to a Project Agreement.

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

Section 8.01 Pursuant to Section 6508.1 of the Government Code of the State of California, no debt, liability or obligation of CC Power shall be a debt, liability or obligation of any Member unless such Member agrees in writing to assume any of the debts, liabilities, or obligations of CC Power pursuant to a Project Agreement. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Project Agreement such Member enters into pursuant to this Agreement.

Section 8.02 Individual Member Provisions.

- (a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement. Any obligations under this Agreement and any Project Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund (defined as the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et seq.*) (“Designated Fund”) and shall not be a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.
- (b) CleanPowerSF’s payment obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF’s payment obligations under this Agreement are not a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco. CleanPowerSF’s obligations hereunder shall not at any time exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse CC Power for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the San Francisco City Controller. The San Francisco City Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

Section 9.01 Term and Termination. This Agreement shall become effective when at least two Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; provided however, this Agreement cannot be terminated until such time as all principal of and interest on bonds and other forms of indebtedness issued by CC Power are paid in full. Thereafter, this Agreement may be terminated by a two-thirds (2/3) vote of the entire Board approved by resolution of each Member’s governing body; provided, however, that this Agreement and CC Power shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CC Power. In no event shall this

Agreement or the powers herein granted to CC Power be terminated until (a) all bonds and other indebtedness of CC Power and the interest thereon shall have been paid or adequate provision for such payment shall have been made in accordance with the instruments governing such bonds and indebtedness and (b) all other obligations and liabilities of CC Power shall have been met or adequately provided for.

Section 9.02 Liquidation; Distribution. Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CC Power as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CC Power, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CC Power for the purpose of concluding and dissolving the business affairs of CC Power.

ARTICLE X. ACCOUNTS AND REPORTS

Section 10.01 Establishment and Administration of Funds. CC Power is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. CC Power shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CC Power securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CC Power shall be open to inspection at all reasonable times to each Member and its representatives.

Section 10.02 Annual Audits and Audit Reports. The Treasurer/Controller shall cause an annual independent audit of the accounts and records of CC Power to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member. CC Power will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

ARTICLE XI. GENERAL PROVISIONS

Section 11.01 Successors and Assigns. No Member may assign any right or obligation under this Agreement without the consent of all other Members. This section shall not affect, in any respect, any right of assignment under any Project Agreement.

Section 11.02 Amendments. Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Members pursuant to that Members' applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least 60 days prior to the date upon which the Board votes on such amendments.

Section 11.03 Indemnification and Insurance. To the fullest extent permitted by law, CC Power shall defend, indemnify, and hold harmless the Members and each of their respective Directors, alternates, officers, employees and agents from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CC Power under this Agreement to the extent not otherwise provided under a Project Agreement. CC Power shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CC Power and the Members.

Section 11.04 Notices. The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service on behalf of the Board. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member and separately to the Member's Director to their respective addresses on file with CC Power.

Section 11.05 Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 11.06 Section Headings. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

Section 11.07 Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of California.

Section 11.08 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

Section 11.09 Dispute Resolution. The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal)

Attest:

Date:

CCA Name:

Address:

(Seal)

Attest:

Date:

CCA Name:

Address:

(Seal)

Attest:

Date:

CCA Name:

Address:

(Seal)

Attest:

Date:

CCA Name:

Address:



AGENDA ITEM

Public Utilities Commission

City and County of San Francisco



DEPARTMENT Power Enterprise AGENDA NO. 17
 MEETING DATE January 26, 2021

Approve and Authorize the California Community Power Joint Powers Agency Agreement: Regular Calendar

Project Manager: Michael Hyams, Deputy Manager, CleanPowerSF

Approve and Authorize the California Community Power Joint Powers Agency Agreement

Summary of Proposed Commission Action:	Approve a California Community Power (CC Power) Joint Powers Agency (JPA) agreement and authorize CleanPowerSF’s participation in the JPA with annual costs not-to-exceed \$50,000; and authorize the General Manager to seek approval from the Board of Supervisors to execute the agreement.
Background:	<p>California Public Utilities Code Section 366.2 allows public agencies to aggregate the electrical load of interested electricity consumers within their jurisdictional boundaries. Pursuant to this law, the City and County of San Francisco has established a community choice aggregation (CCA) program known as CleanPowerSF to provide electric power to the residents and businesses located within its jurisdiction. The San Francisco Board of Supervisors established the City’s CCA program in May 2004 (Ordinance 86-04). The Ordinance found that CCA would allow the City to increase the scale and cost-effectiveness of renewable energy, conservation and energy efficiency in San Francisco and to increase local control over electricity prices and resources.</p> <p>Guided by Commission-adopted program goals (affordable service, cleaner energy, local investment, and financial and rate stability) and Business Practice Policies (Resolution No. 15-0267, amended with Resolution No. 18-0028), CleanPowerSF initiated service to approximately 7,800 customers in May 2016. Following on the success of its initial phase of service, CleanPowerSF undertook multiple additional auto-enrollments, until citywide enrollment of all eligible customer accounts was completed in June 2020. Today, CleanPowerSF is successfully serving approximately 380,000 customer accounts with annual electricity sales of about 3,000 gigawatt-hours and an annual peak demand of 550 megawatts.</p>

APPROVAL: _____

Donna Hood

COMMISSION SECRETARY _____

Since the launch of the CleanPowerSF program, the SFPUC has successfully acquired an electricity supply under short- and long-term contracts that has delivered cleaner and more renewable electricity to its ratepayers at rates that are affordable and competitive. Recently, the SFPUC announced the execution of CleanPowerSF's first solar+energy storage contracts. The addition of energy storage capabilities to the solar power plants CleanPowerSF procures from will allow the solar energy produced in the middle of the day to be stored by the battery and then discharged when it is most needed by CleanPowerSF and the state's power grid.

With the planned retirement of existing natural gas-fueled power plants and Pacific Gas & Electric's (PG&E) Diablo Canyon Nuclear Power Plant, California has a large and growing need for new reliability resources like energy storage. There is historical precedent for state-ordered procurement when such needs arise. At times, this procurement has been ordered by the California Public Utilities Commission (CPUC) to be conducted by investor owned utilities (IOU) on behalf of IOU ratepayers, including the customers of CCA programs. The cost of this CPUC-ordered procurement has been allocated to all IOU ratepayers, including CCA customers, through "non-bypassable" charges on their electricity bills.

In forming a new JPA, CCAs are taking a leadership role to address local and statewide electric reliability by collaborating together on the procurement of long-duration energy storage, an emerging technology that will help meet the electric reliability needs of an electric grid that is increasingly supplied by renewable energy sources, like solar and wind.

The proposed JPA Agreement creates a new public agency called California Community Power or "CC Power" for short. CC Power will enable the CCAs to leverage their combined buying power to provide cost-effective joint services, programs, and procurement of energy resources and products, like long-duration energy storage.

By joining the CC Power JPA, CleanPowerSF will have the opportunity but not the obligation to participate in the procurement of energy or services that might not otherwise be available or cost-effective to CleanPowerSF as an individual CCA. CleanPowerSF's cost to participate in the JPA are expected to not exceed \$50,000 per year. The staffing of CC Power will be limited with most staffing and operating costs to be related to the procurement of energy from new projects. These costs will be allocated to and paid by the JPA members participating in these projects or procurements, pursuant to the specific project agreements.

CleanPowerSF will only incur significant long-term financial obligations if it decides to join in the procurement of energy from specific CC Power projects, like a long-duration energy storage project. CleanPowerSF's participation in specific contracts negotiated by the JPA will be brought to the Commission and the Board of Supervisors for approval, as required on a case-by-case basis.

In addition to CleanPowerSF, the initial members of the JPA are expected to be Silicon Valley Clean Energy, Central Coast Community Energy, Marin

	<p>Clean Energy, East Bay Community Energy, Peninsula Clean Energy, Sonoma Clean Power, San Jose Clean Energy and Redwood Coast Energy Authority. As of December 31, 2020, three of these CCAs’ authorizing boards have approved their participation in the JPA,. It is anticipated that all of the above identified CCAs will have received authorization to participate in the CC Power JPA by the middle of February 2021.</p>
<p>Description of Agreement:</p>	<p>The purpose of the proposed CC Power JPA is to acquire energy, capacity, storage or other energy products or related energy services and programs on a scale that the individual members most likely will not be able to achieve individually. The JPA agreement creates CC Power and sets forth the objectives of the JPA as well as the rights and responsibilities of member organizations.</p> <p>As described in the JPA agreement, CC Power will be a procurement and project-based public agency, rather than policy-making agency. The JPA agreement states that “CC Power is not intended to be a policy-maker or advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.”</p> <p>The JPA Agreement provides that CC Power will be governed by a Board of Directors with each member agency having one Director and one vote. CleanPowerSF’s Director would be the General Manager of the SFPUC (or his or her designee). In the preparation of the proposed JPA Agreement, the collaborating CCAs agreed that CC Power’s Board of Directors should be constituted by the professional staff of the member organizations due to the very technical nature of the JPA.</p> <p>Compensation for work performed by CC Power Directors, including alternates, on behalf of CC Power will be borne by the member that appointed the Director. The CC Power Board of Directors, however, may adopt by resolution a policy relating to the reimbursement of certain expenses incurred by Directors (e.g., travel expenses to participate in meetings of the Board of Directors).</p> <p>The CC Power budget will be set and approved by the Board of Directors. The Board of Directors may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. Under the agreement, all subsequent budgets of the JPA must be approved by the Board of Directors in accordance with its rules. All expenditures incurred by the JPA must be made in accordance with the Board of Directors’ adopted budget.</p> <p>The JPA agreement does not authorize the CC Power Board of Directors to commit members to any obligations other than the annual payment for administrative costs of the JPA. Under the JPA agreement, CleanPowerSF will not automatically be liable for the debts, liabilities, or obligations of CC Power. However, CleanPowerSF may have legal and financial obligations</p>

with respect to any specific project or contract it participates in. These specific project or program agreements will be negotiated separately by the members and will determine cost allocation for the associated project or program. The project or program agreements may consider, among other relevant factors, the credit strength of each member and may differ in price and collateral requirements for each member as determined solely for such project or program.

Projects or programs developed by CC Power that SFPUC staff recommend for CleanPowerSF participation will be brought to the Commission and the Board of Supervisors for approval as required. The Commission and the Board of Supervisors will have the opportunity to fully consider the benefits, obligations, and risks of the CC Power project or program that CleanPowerSF may participate in at that time.

The Board of Directors will hold at least one regular meeting per year, but the Board may conduct regular meetings at more frequent intervals. The date, hour and place of each regular meeting will be fixed by a resolution of the Board of Directors. The Board may also call special and emergency meetings in accordance with the provisions of California Government Code Sections 54956 and 54956.5, as amended. All meetings of the CC Power Board of Directors will be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.). Directors may participate in meetings telephonically or by other electronic means, with full voting rights, only to the extent permitted by law.

Under the agreement, CC Power will also have the power to issue and sell bonds in accordance with the provisions of the Joint Powers Act. CC Power may issue bonds for the purpose of acquiring, financing, performing or constructing one or more projects and to enter into other indebtedness to finance studies, projects or for the temporary financing of project development, construction or acquisition costs. The terms and conditions of the issuance of any such bonds or indebtedness will be set forth in a Board of Directors resolution, indenture or other instrument, as required by law. Bonds issued and contracts or obligations entered into will not constitute a debt, liability or obligation of any of the members unless the governing body of the member expressly agrees by resolution that the member will be obligated pursuant to a project agreement.

The JPA Agreement provides that the CC Power Board of Directors may adopt a policy establishing the criteria for other public agencies that are not CCAs to become members, with the approval of the Board of Directors.

The JPA Agreement also provides a process for member agencies to withdraw from CC Power. The withdrawing member agency must provide notice of withdrawal and satisfy any outstanding obligations to CC Power. As long as there are no outstanding obligations, the CC Power Board of Directors is required to approve the withdrawal. For CleanPowerSF, there would be no outstanding obligations to CC Power unless approved by the Commission and/or the Board of Supervisors. If the Commission and/or Board of

	Supervisors authorizes and CleanPowerSF enters into any project agreements with CC Power and/or other member agencies, CleanPowerSF will remain bound to the project agreement even if it withdraws from the CC Power JPA. The specific project agreement will define the manner and terms in which project participants may withdraw from the project.
Budget & Costs:	<p>It is anticipated that CleanPowerSF's share of the annual costs to operate CC Power will not exceed \$50,000. These costs include the cost of staffing CC Power with a General Manager, General Counsel and administrative support and developing and administering project/program solicitations.</p> <p>The formation of CC Power is estimated to cost \$120,000 to be shared by 9 entities, with CleanPowerSF's share being approximately \$13,133.</p> <p>Funding: CleanPowerSF's share of the start-up and annual operating costs for CC Power will be funded from CleanPowerSF revenues and included in CleanPowerSF's annual budget.</p>
Result of Inaction:	CleanPowerSF will be delayed in joining CC Power and may forego the opportunity to procure new energy resources as a member of the JPA, including emerging technologies like long-duration energy storage that may be difficult or not cost-effective for CleanPowerSF to procure on its own.
Schedule:	If the JPA agreement is approved by the Commission and subsequently the Board of Supervisors, staff anticipates that the General Manager will execute the agreement in late February/early March. The CC Power JPA is expected to hold its first meeting in February.
Recommendation:	SFPUC staff recommends that the Commission adopt the attached resolution.
Attachments:	California Community Power Joint Powers Agency Agreement

PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO.: _____

WHEREAS, The San Francisco Board of Supervisors established a Community Choice Aggregation (CCA) program in 2004 (Ordinance 86-04) and has implemented the program, called CleanPowerSF, through the work of the San Francisco Public Utilities Commission (SFPUC) in consultation with the San Francisco Local Agency Formation Commission (Ordinances 146-07, 147-07, and 232-09); and

WHEREAS, The SFPUC has adopted program goals for CleanPowerSF that guide CleanPowerSF's planning and operations, including leading with affordable and reliable service, providing cleaner electricity alternatives, and investing in local renewable projects and jobs while providing for long-term rate and financial stability; and

WHEREAS, CleanPowerSF and other interested CCAs wish to leverage their combined buying power to provide customers with cost effective services or programs and procure energy resources, products and related services by forming a new joint powers authority ("California Community Power Agency" or "CC Power"), comprised of the CCAs who choose to join; and

WHEREAS, a draft Agreement to form the California Community Power Agency has been prepared after extensive review by the staff of the SFPUC, the San Francisco City Attorney Office, and other interested CCAs; and

WHEREAS, CleanPowerSF desires to enter into the California Community Power Agency Joint Powers Agreement in order to acquire energy resources and promote energy resilience that would be difficult or not cost-effective for CleanPowerSF to achieve on its own; therefore be it

RESOLVED, That the Commission hereby approves the California Community Power Agency Joint Powers Agreement, attached hereto and authorizes the General Manager to execute the Agreement, with any minor, non-substantive modifications, and seek Board of Supervisors approval for the Agreement.

I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of January 26, 2021.

Secretary, Public Utilities Commission

CALIFORNIA COMMUNITY POWER AGENCY JOINT POWERS AGREEMENT

This Joint Powers Agreement ("Agreement") is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement, for the purpose of operating a separate joint powers agency, which is named "California Community Power" or "CC Power."

WITNESSETH

WHEREAS, it is to the mutual benefit of the Members and in the public interest that the Members join together to engage in the exercise of powers they have in common including, but not limited to, (i) the acquisition and operation of wholesale power supplies, resource adequacy and renewable attributes, (ii) the provision of joint consulting and contracting services via master agreements and bulk purchasing and financing of decarbonization products, (iii) the offering of energy risk management and California Independent System Operator ("CAISO") scheduling services; and (iv) other energy services or programs which may be of benefit to Members (collectively, hereinafter "energy related programs");

WHEREAS, CC Power's primary objective is to provide for joint procurement of electrical power and storage and other energy projects for its Members, as set forth in this Agreement;

WHEREAS, the Members intend that CC Power shall better position the Members to administer community choice energy programs, and achieve their local agency goals, including but not limited to meeting or exceeding California's greenhouse gas emission reduction targets through procurement of renewable resources.

WHEREAS, each of the public community choice aggregation agencies which is a Member to this Agreement has the power to establish, manage, operate and maintain Community Choice Aggregation ("CCA") programs, electric service enterprises available to cities and counties pursuant to California Public Utilities Code Section 331.1(c) and 366.2 and to study, promote, develop, conduct, operate and manage energy related programs; and

WHEREAS, Title I, Division 7, Chapter 5, Article 1 of the California Government Code (the "Joint Powers Act" or "Act") authorizes the joint exercise by two or more public agencies of any power which is common to each of them.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

Article I. DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

Section 1.01 "Board" means the Board of Directors of CC Power as established by this Agreement.

Section 1.02 "CC Power" means the Joint Powers Authority established by this Agreement.

Section 1.03 "Member" means a Public CCA Agency, or other public agency the Board determines to be eligible pursuant to Section 3.02, that is a signatory to this Agreement and has met the requirements of

Article III; the term “Member” shall, however, exclude any Public CCA Agency or other eligible public agency which shall have withdrawn or been excluded from CC Power pursuant to Section 3.04 below.

Section 1.04 “Project” means any and all of the following matters, which are approved by the Board pursuant to Article VI: (i) the construction, financing or acquisition of a wholesale power resource, resource adequacy and/or renewable and environmental attributes for use by the Members, and such other transactions, services, and goods that may be necessary or convenient to construct, finance, acquire or optimize the value of such resources, (ii) the bulk purchasing and/or financing of decarbonization products, including, but not limited to, heat pump water heaters, space heater heat pumps and electric vehicle charging services, (iii) energy risk management and CAISO scheduling products and services, (iv) acquisition, construction and financing of facilities for the generation or transmission of electrical energy and any related transactions, services, and goods that may be necessary or convenient to acquire, construct, and finance these facilities, (v) grid integration services, (vi) acquisition of capacity rights in any facility for the generation or transmission of electric energy, and (vii) any other energy related programs.

Section 1.05 “Project Agreement” means a contract between and among CC Power and Project Participants.

Section 1.06 “Project Participants” means any Member or group of Members who participate in a Project pursuant to Article VI below.

Section 1.07 “Public CCA Agency” means any public agency, or such joint powers agencies/authorities consisting of one or more public agencies, that has implemented a CCA program pursuant to California Public Utilities Code Sections 331.1 and 366.2.

Article II. FORMATION OF AUTHORITY

Section 2.01 Creation of CC Power. Pursuant to the Joint Powers Act, there is hereby created a public entity, to be known as “CC Power,” which shall be a public entity separate and apart from its Members.

Section 2.02 Purpose. The purpose of this Agreement is for CC Power to develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members. CC Power is not intended to be a policy-maker or advocate, though it may, from time to time, advance or support public policies in support of its purpose that do not conflict with interests or policies advanced by any Member.

Section 2.03 Powers. CC Power is authorized, in its own name, to do all acts necessary to fulfill the purposes of this Agreement as referred to in Section 2.02 above, and engage in the exercise of powers the Members have in common including, but not limited to, each of the following:

- (a) Acquire, purchase, finance, offer, arrange, construct, maintain, utilize and/or operate one or more Projects;
- (b) Establish, operate, maintain and/or fund energy related programs;
- (c) Make and enter into contracts;
- (d) Employ agents and employees;
- (e) Acquire, contract, manage, maintain, sell or otherwise dispose of real and personal property and operate any buildings, infrastructure, works, or improvements;
- (f) Receive contributions and donations of property, funds, services and other forms of assistance from any source;
- (g) Lease real or personal property as lessee and as lessor;
- (h) Sue and be sued in its own name;

- (i) Incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et seq. and authority under the Act;
- (j) Receive, collect, invest and disburse moneys;
- (k) Issue revenue bonds and other forms of indebtedness, as provided by law;
- (l) Apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- (m) Make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy related programs;
- (n) Adopt from time to time such policies, procedures, bylaws, rules or regulations for the conduct of its affairs as deemed necessary by the Board;
- (o) Exercise all other powers necessary and proper to carry out this Agreement; and
- (p) Defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions.

Such powers shall be exercised in the manner provided in Section 6509 of the Government Code of the State of California, as amended, subject only to such restrictions upon the manner of exercising such powers as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers. Should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy.

Section 2.04 Compliance with Local Zoning and Building Laws and CEQA. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by CC Power within the territory of CC Power shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act.

Article III. MEMBERSHIP

Section 3.01 Member Agencies. Any Public CCA Agency, or other public agency determined by the Board to be eligible pursuant to Section 3.02, may become a Member upon meeting the following conditions:

- (a) The Public CCA Agency or other eligible public agency shall file with the Board a certified copy of a resolution of its governing body whereby it (i) agrees to the provisions of this Agreement, and (ii) requests to become a Member; and
- (b) No such Public CCA Agency or other eligible public agency shall become a Member until (i) its admission is approved at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and (ii) it deposits or agrees to pay CC Power a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any.

Upon completion of the foregoing, the Public CCA Agency or other eligible public agency shall become a Member for all purposes of this Agreement.

Section 3.02 Eligible Public Agency Members. The Board may adopt policies to determine whether public agencies that are not Public CCA Agencies may be eligible to become a Member of CC Power.

Section 3.03 Cost Allocations.

- (a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one member one share for general and administrative costs as determined by the Board associated with all operations of CC Power. General and administrative costs do not include any costs that relate solely to any specific Project Agreement.

- (b) Project Agreements and other program agreements between and among any Member and/or CC Power will determine cost allocation and may consider, among other relevant factors, credit strength of the Members and may differ in price and collateral requirements as determined solely for such Project Agreement or other program agreements.

Section 3.04 Withdrawal or Exclusion of Member.

- (a) Any Member may withdraw from CC Power upon the following conditions:
 - (i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. Once a Member files a resolution to withdraw with the Board Secretary, that Member no longer has any voting rights on the Board;
 - (ii) Members participating in Projects, programs or services pursuant to Project Agreements or other program agreements approved by the Board are subject to the participation and withdrawal terms and conditions described in the applicable agreement; and
 - (iii) Prior to accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of all debts, liabilities, and obligations of CC Power specifically assumed by the Member. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations secured or otherwise committed pursuant to Project Agreements or other program agreements between and among any Member and/or CC Power. The debts, liabilities and obligations of the Members to such Project Agreements or other program agreements shall be determined by their terms. Any obligations under this Agreement are subject to the limitations set forth in Article VIII.
- (b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Project Agreement or other program agreement.
- (c) Any Member which has (i) defaulted under this Agreement, a Project Agreement, or other program agreement, (ii) failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01 and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CC Power by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member). Prior to any vote to terminate participation of any Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Project Agreement or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Project Agreement or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion.

- (d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.03 below.

Article IV. POWERS OF BOARD & MANAGEMENT OF CC POWER

Section 4.01 Board. CC Power shall be administered by a Board which shall consist of one Director representing each Member. Such Board shall be the governing body of this CC Power, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CC Power.

Section 4.02 Appointment and Vacancies. Each Director shall be the Chief Executive Officer, General Manager, or designee of the Chief Executive Officer or General Manager of each Member and shall be appointed by and serve at the pleasure of the Member that the Director represents, and may be removed as Director by such Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

Section 4.03 Notices. The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State, the State Controller, the applicable county clerk and local agency formation commissions, including, but not limited to:

- (a) Causing a notice of the Agreement or any amendment to the Agreement to be prepared and filed with the office of the Secretary of State within 30 days of the effective date of the Agreement or amendment, and
- (b) Filing a statement of facts with the Secretary of State within 70 days after the date of commencement of CC Power's legal existence. Upon any change in the statement of facts presented to the Secretary of State, an amended statement of facts shall be filed with the Secretary of State within 10 days of the change.

Section 4.04 Committees. The Board may create committees to provide advice to the Board or conduct the business of CC Power subject to delegation of authority from the Board.

Section 4.05 Director Compensation. Compensation for work performed by Directors, including alternates, on behalf of CC Power shall be borne by the Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

Section 4.06 Board Officers. At its first meeting in each calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary and a Treasurer/Controller each of whom may, but need not, be selected from among the Directors.

- (a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.
- (b) **Treasurer and Controller.** The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Controller, neither of whom needs to be a Director. If the Board so designates, and in accordance with the provisions of applicable law,

a qualified person may hold both the office of Treasurer and the office of Controller of CC Power. The Treasurer shall be the depository of CC Power to have custody of all the money of CC Power, from whatever source. The Controller shall draw warrants to pay demands against CC Power when the demands have been approved by the Chair or Vice Chair of CC Power. The Treasurer and Controller shall have the other powers, duties and responsibilities of such officers as specified in Section 6505 of the Government Code of the State of California, as amended, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed, as is provided for and authorized in Section 6550 of the Government Code of the State of California, as amended, pursuant to any resolution, indenture or other instrument providing for the issuance of bonds or notes of CC Power pursuant to this Agreement. The Board may require the Treasurer and/or Controller to file with CC Power an official bond in an amount to be fixed by the Board, and if so requested CC Power shall pay the cost of premiums associated with the bond. The Treasurer and Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code.

- (c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CC Power, and responding to public records requests of the JPA.

Section 4.07 Management of CC Power. The Board shall appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. The General Manager shall be responsible for the day-to-day operation and management of CC Power. The General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

Section 4.08 Other Officers and Employees. The Board shall have the power to appoint such other officers and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Members may contract with CC Power to provide staff to perform services for CC Power, but such employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Member only.

Section 4.09 Budget. The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CC Power shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

Article V. MEETINGS OF THE BOARD

Section 5.01 Regular Meetings. The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

Section 5.02 Special Meetings. Special and emergency meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5, as amended.

Section 5.03 Brown Act Compliance. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.), and as

augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, only to the extent permitted by law.

Section 5.04 Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 5.05 Quorum. A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

Section 5.06 Voting. Except to the extent set forth in a Project Agreement or as otherwise specified in this Agreement, each Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be sufficient to constitute action, provided a quorum is established and maintained.

(a) **Special Voting Requirements as specified in this Agreement:**

- (i) Action of the Board to amend Section 3.03 related to cost allocations shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.
- (ii) Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.
- (iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Member's governing body.
- (iv) Action of the Board to amend this Agreement shall be subject to the voting requirements set forth in Section 11.02 below.

Article VI. PROJECTS

Section 6.01 Projects. The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to establish Projects within the purpose and power of CC Power and to adopt guidelines for their implementation.

Section 6.02 Right to Participate in Projects. The Board shall provide at least sixty (60) days prior written notice to all Members, unless such notice is otherwise waived, before any Project may be considered for adoption by a vote of the Board. Such notice shall be provided to the Director of each Member. Once a Project is approved by the Board as set forth in Section 6.01 above, all Members shall have the right, but not the obligation, to participate in a pro-rata share in the Project as determined by the Project Agreement. All Members who elect not to participate in the Project have no obligations under the Project.

Section 6.03 Project Agreement. All expenses, rights and obligations to any specific Projects will be handled through Project Agreements that will be separate and distinct from this Agreement.

Article VII. BONDS AND OTHER INDEBTEDNESS

CC Power shall also have the power to issue, sell and deliver bonds in accordance with the provisions of the Joint Powers Act for the purpose of acquiring, financing, performing or constructing one or more Projects and to enter into other indebtedness for the purpose of financing one or more studies or Projects and for the purpose of providing temporary financing of costs of development, construction or acquisition of one or more Projects. The terms and conditions of the issuance of any such bonds or indebtedness shall be set forth in such resolution, indenture or other instrument, as required by law and as approved by the Board. Bonds issued under this article and contracts or obligations entered into to carry out the purposes for which bonds are issued, payable in whole or in part from the proceeds of said bonds, shall not constitute a debt, liability or

obligation of any of the Members unless the governing body of the Member by resolution expressly agrees that the Member will be obligated under the bond or other indebtedness or the Member takes on obligations pursuant to a Project Agreement.

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

Section 8.01 Pursuant to Section 6508.1 of the Government Code of the State of California, no debt, liability or obligation of CC Power shall be a debt, liability or obligation of any Member unless such Member agrees in writing to assume any of the debts, liabilities, or obligations of CC Power pursuant to a Project Agreement. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Project Agreement such Member enters into pursuant to this Agreement.

Section 8.02 Individual Member Provisions.

- (a) The City of San José is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement. Any obligations under this Agreement and any Project Agreement are special limited obligations of San José Clean Energy payable solely from the Designated Fund (defined as the San Jose Energy Operating Fund established pursuant to City of San Jose Municipal Code, Title 4, Part 63, Section 4.80.4050 *et seq.*) (“Designated Fund”) and shall not be a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.
- (b) CleanPowerSF’s payment obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. CleanPowerSF’s payment obligations under this Agreement are not a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco. CleanPowerSF’s obligations hereunder shall not at any time exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of CleanPowerSF are not authorized to request, and CleanPowerSF is not required to reimburse CC Power for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of CleanPowerSF are not authorized to offer or promise, nor is CleanPowerSF required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the San Francisco City Controller. The San Francisco City Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

Section 9.01 Term and Termination. This Agreement shall become effective when at least two Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; provided however, this Agreement cannot be terminated until such time as all principal of and interest on bonds and other forms of indebtedness issued by CC Power are paid in full. Thereafter, this Agreement may be terminated by a two-thirds (2/3) vote of the entire Board approved by resolution of each Member’s governing body; provided, however, that this Agreement and CC Power shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CC Power. In no event shall this

Agreement or the powers herein granted to CC Power be terminated until (a) all bonds and other indebtedness of CC Power and the interest thereon shall have been paid or adequate provision for such payment shall have been made in accordance with the instruments governing such bonds and indebtedness and (b) all other obligations and liabilities of CC Power shall have been met or adequately provided for.

Section 9.02 Liquidation; Distribution. Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CC Power as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CC Power, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CC Power for the purpose of concluding and dissolving the business affairs of CC Power.

ARTICLE X. ACCOUNTS AND REPORTS

Section 10.01 Establishment and Administration of Funds. CC Power is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the California Government Code. CC Power shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CC Power securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CC Power shall be open to inspection at all reasonable times to each Member and its representatives.

Section 10.02 Annual Audits and Audit Reports. The Treasurer/Controller shall cause an annual independent audit of the accounts and records of CC Power to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member. CC Power will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

ARTICLE XI. GENERAL PROVISIONS

Section 11.01 Successors and Assigns. No Member may assign any right or obligation under this Agreement without the consent of all other Members. This section shall not affect, in any respect, any right of assignment under any Project Agreement.

Section 11.02 Amendments. Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Members pursuant to that Members' applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least 60 days prior to the date upon which the Board votes on such amendments.

Section 11.03 Indemnification and Insurance. To the fullest extent permitted by law, CC Power shall defend, indemnify, and hold harmless the Members and each of their respective Directors, alternates, officers, employees and agents from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CC Power under this Agreement to the extent not otherwise provided under a Project Agreement. CC Power shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CC Power and the Members.

Section 11.04 Notices. The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service on behalf of the Board. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member and separately to the Member's Director to their respective addresses on file with CC Power.

Section 11.05 Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 11.06 Section Headings. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

Section 11.07 Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of California.

Section 11.08 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

Section 11.09 Dispute Resolution. The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Members hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal) Date: _____
Attest: CCA Name: _____
_____ Address: _____

(Seal)

Attest:

Date:

CCA Name:

Address:

(Seal)

Attest:

Date:

CCA Name:

Address:

(Seal)

Attest:

Date:

CCA Name:

Address:

(Seal)

Attest:

Date:

CCA Name:

Address:

TO: Angela Calvillo, Clerk of the Board

FROM: Megan Imperial, Policy and Government Affairs

DATE: December 7, 2020

**SUBJECT: Authorizing Membership in Community Choice Aggregation
Joint Powers Authority for CleanPowerSF - Public Utilities
Commission**

Attached please find a proposed Ordinance authorizing the Public Utilities Commission to become a member of a Joint Powers Authority consisting of Community Choice Aggregators for the purpose of joint purchases of electricity and related products and services; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code for purchases that do not otherwise require Board approval.

The following is a list of accompanying documents:

1. Board of Supervisors Ordinance
2. Legislative Digest
3. Final CC Power JPA

Please contact Megan Imperial at (415) 654-1654 if you need any additional information on these items.

London N. Breed
Mayor

Sophie Maxwell
President

Anson Moran
Vice President

Tim Paulson
Commissioner

Ed Harrington
Commissioner

Michael Carlin
Acting
General Manager



From: [Imperial, Megan M](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Scarpulla, John \(PUC\)](#)
Subject: SFPUC - [Authorizing Membership in Community Choice Aggregation Joint Powers Authority for CleanPowerSF - Public Utilities Commission]
Date: Monday, December 7, 2020 11:07:10 AM
Attachments: [1. BOS Ordinance.docx](#)
[2. Legislative Digest.docx](#)
[3. Final CC Power JPA.pdf](#)
[4. Cover Letter.doc](#)
[PUC - Ordinance Approving JPA Agreement.msg](#)

Hi BOS Legislative Team,

Attached is the proposed legislation concerning “Ordinance authorizing the Public Utilities Commission to become a member of a Joint Powers Authority consisting of Community Choice Aggregators for the purpose of joint purchases of electricity and related products and services; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code for purchases that do not otherwise require Board approval.”

The electronic attachments are listed below:

1. Board of Supervisors Ordinance
2. Legislative Digest
3. Final CC Power JPA
4. Cover Letter

Staff Contact: [Megan Imperial, Policy & Government Affairs Analyst] [415-654-1654]

Thanks in advance

Megan

Megan M. Imperial 竜芽願
Policy & Government Affairs, Local Analyst
San Francisco Public Utilities Commission
mimperial@sfwater.org
Mobile: 415-654-1654
Pronouns: She, Her, Hers, Ella

“Radical simply means "grasping things at the root.” - Angela Davis