

File No. 201344

Committee Item No. 6

Board Item No. 11

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date February 24, 2021

Board of Supervisors Meeting

Date March 2, 2021

### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Resolution                                   |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Ordinance                                    |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
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### OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>SFPUC Resolution No. 21-0023</u>           |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <u>SFPUC Presentation - February 24, 2021</u> |
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Completed by: Linda Wong Date February 19, 2021

Completed by: Linda Wong Date February 25, 2021

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, Peninsula Clean  
20 Energy, and the Sonoma Clean Power Authority (collectively, “Participating CCAs”) – have  
21 determined that engaging in joint efforts for energy-related procurement and projects will be  
22 beneficial to the Participating CCAs by leveraging economies of scale to achieve lower costs  
23 and more favorable terms and conditions for products and services. Collectively, the  
24 Participating CCAs provide electricity and related services such as self-generation and energy  
25 efficiency programs to customers in 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  
16 from 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 February 9, 2021, in Resolution No. 21-0023, which is on file with the Clerk of the Board of  
8 Supervisors in File No. 201344.

9 (i) In its Resolution, the PUC Commission directed staff to work with other CC  
10 Power members as appropriate to develop policies and guidelines for procuring products and  
11 services in a manner that promotes the City's and SFPUC's environmental goals and efforts  
12 to foster an inclusive and sustainable workforce through support for measures such as fair  
13 and equitable compensation, local hiring, and support of local businesses, while maintaining  
14 affordable and stable rates for San Franciscans; including:

- 15 • Engaging in outreach efforts in local and diverse communities, including  
16 disadvantaged and low-income communities, to create a diverse pool of  
17 candidates for open positions, while providing fair compensation that aligns with  
18 regional market indicators for compensation;
- 19 • Conducting marketing and outreach in an inclusive manner in CC Power  
20 member communities, including attending important multi-cultural community  
21 events with multi-lingual materials and speakers as appropriate, using local,  
22 diverse media outlets, and other opportunities to increase awareness of  
23 CleanPowerSF services and programs pursued in partnership with CC Power;
- 24 • Sharing information and collateral with CC Power members about SFPUC's  
25 Racial Equity initiatives that are promoting inclusion, access, and diverse

1           engagement in a manner consistent with the adopted SFPUC Racial Equity  
2           Resolution (Resolution 20-0149);

- 3           • Relying on a combination of local labor, union labor and apprenticeship  
4           programs, and following fair compensation practices, including proper  
5           assignment of work to crafts that traditionally perform the work, when  
6           constructing CC Power projects; and
- 7           • Promoting fair compensation, fair worker treatment, multi-trade collaboration,  
8           and support of the existing and prevailing wage base in local communities where  
9           CC Power-contracted projects will be located.

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

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

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

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

1 (a) As public agencies, the members of CC Power have their own contracting  
2 provisions and imposition of each member's rules would be infeasible in operating CC Power.  
3 In addition, CC Power is subject to state laws prohibiting discrimination in hiring (Ca. Govt.  
4 Code Section 12940) and consideration of criminal history in hiring (Ca. Govt. Code Section  
5 12952).

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

- 10 (1) Nondiscrimination in contracts (Administrative Code Chapter 12B);
- 11 (2) Implementing the MacBride Principles (Administrative Code Chapter  
12 12F);
- 13 (3) Consideration of criminal history in hiring (Administrative Code Section  
14 12T);
- 15 (4) Increased participation by small and micro local businesses in City  
16 contracts (Administrative Code Chapter 14B);
- 17 (5) The competitive bidding requirement (Administrative Code Section 21.1);  
18 and
- 19 (6) The tropical hardwood and virgin redwood ban (Environment Code  
20 Chapter 8).

21  
22 Section 5. Effective Date.

23 This ordinance shall become effective 30 days after enactment. Enactment occurs  
24 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not  
25



## **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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<p><b>Item 6</b> <b>File 20-1344</b></p>	<p><b>Department:</b> Public Utilities Commission (PUC)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance (a) authorizes the SFPUC to become a member of a Joint Powers Authority consisting of Community Choice Aggregators in order to jointly purchase of electricity and related products and services, and (b) waives Administrative and Environment Code requirements for electricity and related product and service purchases, but not for Board of Supervisors approval for agreements of \$10 million or more, or for more than 10 years.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• The JPA purpose 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.</li> <li>• Administrative Code and Environment Code provisions that would be waived by the proposed ordinance include (a) competitive bidding, which would be subject to the procurement rules of Silicon Valley Clean energy until the JPA establishes its own competitive bidding rules; and (b) 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. According to SFPUC, imposition of each member’s procurement and contracting rules would be infeasible in operating CC Power.</li> <li>• In authorizing the SFPUC membership in the JPA, the Commission directed staff to work with other JPA members as appropriate to develop policies and guidelines for procuring products and services in a manner that “promotes the City’s and SFPUC’s environmental goals and efforts to foster an inclusive and sustainable workforce through support for measures such as fair and equitable compensation, local hiring, and support of local businesses, while maintaining affordable and stable rates for San Franciscans”</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• SFPUC’s share of the startup and ongoing administrative costs related to the JPA’s operations for calendar years 2021, 2022 and 2023 is up to \$50,000 per year.</li> <li>• The more significant costs associated with the development and procurement of joint electricity projects and related services will be part of future project agreements. SFPUC costs for project agreements of \$10 million or more, or more than 10 years, are subject to Board of Supervisors approval.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed ordinance.</li> </ul>	

## 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. CleanPowerSF currently serves around 60 percent of San Francisco's total electricity demand, or around 376,000 accounts.

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. 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.

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 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),
- 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 authorized the SFPUC to enter into the JPA at February 9, 2021 Commission meeting. As of February 18, 2021, all eight of the other CCAs have approved membership in the JPA and the JPA was legally formed as of February 1, 2021.

### DETAILS OF PROPOSED LEGISLATION

The proposed ordinance authorizes the SFPUC to become a member of a Joint Powers Authority consisting of Community Choice Aggregators in order to jointly purchase of electricity and related products and services. The proposed ordinance also waives Administrative and Environment Code requirements for electricity and related product and service purchases, but would not waive Board of Supervisors approval for agreements of \$10 million or more, or for more than 10 years. The proposed ordinance:

- approves the Joint Powers Agreement between the SFPUC and the other signatories to form a Joint Powers Authority called “California Community Power” (CC Power);
- authorizes 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;
- authorizes 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,
- waives certain provisions of the Administrative and Environment Code for contracts that do not require Board of Supervisors approval, 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:

- (a) the acquisition and operation of wholesale power supplies, resource adequacy and renewable attributes,
- (b) the provision of joint consulting and contracting services via master agreements and bulk purchasing and financing of decarbonization products,
- (c) the offering of energy risk management and California Independent System Operator (“CAISO”) scheduling services; and
- (d) 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.

### ***JPA Governance and Operating Structure***

The JPA will be governed by a Board of Directors made up of one representative from each member CCA.<sup>1</sup> 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.

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<sup>1</sup> Representatives must be the General Manager/ Chief Executive Officer or their designee.

**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 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. 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.

**Commission Resolution**

In authorizing the SFPUC membership in the JPA, the Commission directed staff to work with other JPA members as appropriate to develop policies and guidelines for procuring products and services in a manner that "promotes the City's and SFPUC's environmental goals and efforts to foster an inclusive and sustainable workforce through support for measures such as fair and equitable compensation, local hiring, and support of local businesses, while maintaining affordable and stable rates for San Franciscans".

**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**

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

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.

**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	<b>Nondiscrimination in contracts</b>	Prohibits employment discrimination by City contractors and sub-contractors.	Covered by CA Govt Code Sec. 12940
AC Ch. 12F	<b>MacBride Principles (Northern Ireland)</b>	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	<b>Consideration of criminal history in hiring</b>	Prohibits City contractors and sub-contractors to consider criminal history in employment decisions.	Covered by CA Govt Code Sec 12952
AC Ch. 14B	<b>Increased participation by small and micro local businesses in City Contracts</b>	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	<b>Competitive Bidding Requirement</b>	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). <sup>1</sup> Cupertino Municipal Code requires competitive bidding for goods and services above \$200,000 but exempts professional services from any competitive bidding requirements. <sup>2</sup>
EC Ch. 8	<b>Tropical hardwood and virgin redwood ban</b>	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.

<sup>1</sup> California Government Section 6509 and JPA Agreement Section 2.03.

<sup>2</sup> Cupertino Municipal Code Section 3.22

<b>Item 4</b> <b>File 20-1344</b>	<b>Department:</b> Public Utilities Commission (PUC)
<b>EXECUTIVE SUMMARY</b>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• 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,<sup>1</sup> including requirements for competitive bidding, local small business participation, non-discrimination in contracting, and others.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed ordinance.</li> </ul>	

<sup>1</sup> 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.<sup>2</sup> CleanPowerSF currently serves around 60% of San Francisco's total electricity demand, or around 376,000 accounts.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

CleanPowerSF is seeking to join a Joint Powers Authority (JPA) with eight other CCAs<sup>6</sup> 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),

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<sup>2</sup> 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.

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

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

<sup>5</sup> California Government Code Sections 6500 – 6599.3.

<sup>6</sup> 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 26<sup>th</sup> 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.<sup>7</sup>

## 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,<sup>8</sup> 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:

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<sup>7</sup> 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.

<sup>8</sup> 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.<sup>9</sup>

### ***JPA Governance and Operating Structure***

The JPA will be governed by a Board of Directors made up of one representative from each member CCA.<sup>10</sup> 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

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<sup>9</sup> JPA Agreement, section 8.02(b)

<sup>10</sup> 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.<sup>11</sup> 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
<b>Total</b>	<b>\$167,000</b>
<b><i>CleanPowerSF Share (1/9<sup>th</sup> of total)</i></b>	<b><i>\$18,555</i></b>

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.

<sup>11</sup> 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	<b>Nondiscrimination in contracts</b>	Prohibits employment discrimination by City contractors and sub-contractors.	Covered by CA Govt Code Sec. 12940
AC Ch. 12F	<b>MacBride Principles (Northern Ireland)</b>	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	<b>Consideration of criminal history in hiring</b>	Prohibits City contractors and sub-contractors to consider criminal history in employment decisions.	Covered by CA Govt Code Sec 12952
AC Ch. 14B	<b>Increased participation by small and micro local businesses in City Contracts</b>	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	<b>Competitive Bidding Requirement</b>	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). <sup>1</sup> Cupertino Municipal Code requires competitive bidding for goods and services above \$200,000 but exempts professional services from any competitive bidding requirements. <sup>2</sup>
EC Ch. 8	<b>Tropical hardwood and virgin redwood ban</b>	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.

<sup>1</sup> California Government Section 6509 and JPA Agreement Section 2.03.

<sup>2</sup> 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:

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\_\_\_\_\_

(Seal)

Attest:

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Date:

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CCA Name:

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Date:

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CCA Name:

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Address:

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(Seal)

Attest:

\_\_\_\_\_

Date:

\_\_\_\_\_

CCA Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

# PUBLIC UTILITIES COMMISSION

City and County of San Francisco

RESOLUTION NO.: 21-0023

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, The SFPUC is dedicated to equitable business practices and uplifting a culture of innovation, diversity and inclusion, environmental sustainability and standards, transparency, integrity, and a commitment to the communities we serve; and

WHEREAS, Consistent with the the Racial Equity Resolution (Resolution 20-0149), this Commission adopted on July 14, 2020, the SFPUC recognizes that a diverse and culturally competent workforce that is inclusive and reflective of the communities we serve is a key component for our agency to meet our core mission, goals, environmental standards, and better serve our diverse customers; and

WHEREAS, The SFPUC is committed to providing fair compensation and sustainable workforce opportunities for our diverse communities as CleanPowerSF delivers competitive and affordable power service and promotes the procurement and generation of renewable energy; and

WHEREAS, The SFPUC recognizes the opportunities that CleanPowerSF provides for workforce development and employment, and as such, the SFPUC supports fair compensation in hiring and in the development and procurement of renewable energy sources; and

WHEREAS, The SFPUC supports sustained job opportunities and job creation and recognizes and supports quality State of California approved apprenticeship and pre-apprenticeship training programs within SFPUC's service territory to foster long-term, fairly compensated employment opportunities and believes that apprenticeship and preapprenticeship programs are an efficient vehicle for delivering quality training in construction industry craft occupations; 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; now, 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; and be it

FURTHER RESOLVED, That staff should work with other CC Power members as appropriate to develop policies and guidelines for procuring products and services in a manner that promotes the City’s and SFPUC’s environmental goals and efforts to foster an inclusive and sustainable workforce through support for measures such as fair and equitable compensation, local hiring, and support of local businesses, while maintaining affordable and stable rates for San Franciscans; including:

- Engaging in outreach efforts in local and diverse communities, including disadvantaged and low-income communities, to create a diverse pool of candidates for open positions, while providing fair compensation that aligns with regional market indicators for compensation;
- Conducting marketing and outreach in an inclusive manner in CC Power member communities, including attending important multi-cultural community events with multi-lingual materials and speakers as appropriate, using local, diverse media outlets, and other opportunities to increase awareness of CleanPowerSF services and programs pursued in partnership with CC Power;
- Sharing information and collateral with CC Power members about SFPUC’s Racial Equity initiatives that are promoting inclusion, access, and diverse engagement in a manner consistent with the adopted SFPUC Racial Equity Resolution (Resolution 20-0149);
- Relying on a combination of local labor, union labor and apprenticeship programs, and following fair compensation practices, including proper assignment of work to crafts that traditionally perform the work, when constructing CC Power projects; and

- Promoting fair compensation, fair worker treatment, multi-trade collaboration, and support of the existing and prevailing wage base in local communities where CC Power-contracted projects will be located.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of February 9, 2021.*

A handwritten signature in black ink that reads "Alonna Wood". The signature is written in a cursive style with a large initial 'A'.

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*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]*

**Signature Page**

**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.

By: *Geof Syphers*  
Geof Syphers (Jan 29, 2021 09:56 PST)

Name: Geof Syphers

Title: CEO

CCA Name: Sonoma Clean Power Authority

Date: Jan 29, 2021

Approved as to form:

By: *Harriet Steiner*  
Harriet Steiner (Jan 29, 2021 09:46 PST)

Name: Harriet Steiner

Title: Special Counsel

Date: Jan 29, 2021

**Signature Page**

**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.

By: *Nick Chaset*  
Nick Chaset (Jan 29, 2021 17:24 PST)  
Name: Nick Chaset  
Title: Chief Executive Officer  
CCA Name: East Bay Community Energy  
Date: Jan 29, 2021

Approved as to form:

By: *Inder Khalsa*  
Inder Khalsa (Jan 29, 2021 16:09 PST)  
Name: Inder Khalsa  
Title: General Counsel  
Date: Jan 29, 2021

**Signature Page**

**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.

By: *Girish Balachandran*  
Girish Balachandran (Jan 29, 2021 09:12 PST)  
Name: Girish Balachandran  
Title: CEO  
CCA Name: Silicon Valley Clean Energy  
Date: Jan 29, 2021

Approved as to form:

By: *Gregory Stepanicich*  
Gregory Stepanicich (Jan 29, 2021 13:42 PST)  
Name: Gregory Stepanicich  
Title: General Counsel  
Date: Jan 29, 2021

**Signature Page**

**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.

By: 

Name: Matthew Marshall

Title: Executive Director

CCA Name: Redwood Coast Energy Authority

Date: January 29, 2021

Approved as to form:

By:   
Nancy Diamond (Jan 29, 2021 12:02 PST)

Name: Nancy Diamond

Title: General Counsel

Date: January 29, 2021

**Signature Page**

**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.

By: *Janis C. Pepper*  
Janis C. Pepper (Jan 29, 2021 15:52 PST)

Name: Janis C. Pepper

Title: CEO

CCA Name: Peninsula Clean Energy

Date: Jan 29, 2021

**Signature Page**

**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.

By:  \_\_\_\_\_

Name: Leland Wilcox

Title: Chief of Staff, Office of the City Manager

CCA Name: San José Clean Energy (SJCE)

Date: 1/29/21

Approved as to form:

By:  \_\_\_\_\_

Name: Luisa Elkins

Title: Senior Deputy City Attorney

Date: Jan 29, 2021

**Signature Page**

**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.

By:  \_\_\_\_\_  
69C253774488497...

Name: Tom Habashi

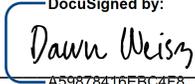
Title: Chief Executive Officer

CCA Name: Central Coast Community Energy

Date: 1/29/2021

**Signature Page**

**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.

By:  \_\_\_\_\_  
A59878416EBC4F8...

Name: Dawn Weisz

Title: CEO

CCA Name: MCE

Date: 1/29/21

**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**

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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](#)

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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

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

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

# File 201344: Authorizing Membership in Community Choice Aggregation Joint Powers Authority for CleanPowerSF



San Francisco  
**Water  
Power  
Sewer**

Services of the San Francisco  
Public Utilities Commission

**CleanPowerSF**

**February 24, 2021**

# California Community Power or “CC Power”: A new Joint Powers Authority

- Purpose is to leverage the combined buying power of a group of Community Choice Aggregators (CCAs) energy supply, programs and services.
- Initial focus will be on projects that support grid reliability, such as long-duration energy storage.





Services of the San Francisco  
Public Utilities Commission



# California Community Power Agency



## Joining CC Power would

- Provide CleanPowerSF the opportunity, but not the obligation, to participate in larger projects that may not otherwise be possible.
- Allow for broader collaboration on the development of new programs or services that might benefit from a scaled or regional approach.
- Not commit CleanPowerSF to participate in any specific projects or purchase any services.

## How it works

- Each member will support annual operating costs on a one member, one share basis.
- Estimate CleanPowerSF share of operating costs to not exceed \$50,000 per year.
- Project participation will require additional agreements to address the sharing of costs, risks, and benefits.
- CleanPowerSF is working with members to promote the City's environmental and social values in the projects CC Power undertakes.

# Timeline

- CC Power was formed on February 1.
- SFPUC Commission approved CleanPowerSF membership in CC Power on February 9.
- If Board of Supervisors approves the agreement and authorizes membership in early March, SFPUC will request to join CC Power in April.

# Proposed Amendments (1)

- On Page 2, Section 2(b), starting on line 19 insert:  
Silicon Valley Clean Energy Authority, Peninsula Clean Energy, and the...
- On page 4, Section 2(h), starting on line 8 insert:  
The PUC Commission authorized the General Manager to join CC Power on February 9, 2021, in Resolution No. 21-0023...

## Proposed Amendments (2)

- On page 4, add a new Section 2(i), starting on line 9, with the SFPUC Commission's direction to staff to work with other members to promote the City's environmental and workforce values in the projects CC Power undertakes.
- On page 5, Section 3(a), starting on line 15, insert:  
as a member of CC Power and to request approval from the CC Power governing board to become a member of CC Power, if necessary.

# Questions?



San Francisco  
**Water  
Power  
Sewer**

**CleanPowerSF**

Services of the San Francisco  
Public Utilities Commission

