



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: June 20, 2016
BOARD MEETING DATE: June 23, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Joint Powers Board
FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
SUBJECT: Repayment Agreement between the Peninsula Clean Energy Authority and the County of San Mateo for Six Million Dollar Loan

RECOMMENDATION:

Adopt a Resolution Authorizing the Chair of the Board to execute a loan agreement between the Peninsula Clean Energy Authority and the County of San Mateo in the amount of up to \$6 million to be repaid to County by Peninsula Clean Energy Authority for the purposes of securing a bank loan to address certain working capital needs at variable rates provided in the agreement.

BACKGROUND:

In December 2015, County staff, on behalf of the Peninsula Clean Energy Authority (PCEA) began to solicit interest from and meet with a number of local and regional banks with the capacity to provide required financing.

A loan in an amount not to exceed \$12 million was sought in order to establish a reserve fund in support of the power purchase agreements entered into by the PCEA, provide working capital for the pre-revenue collection phase and account for seasonal differences in cash flow, fund deposits required by the California Independent System Operator (ISO) and the California Public Utilities Commission, and provide for other working capital needs.

On May 10, 2016, the County Board of Supervisors authorized the County Manager or his designee to enter into negotiations regarding a deposit of up to \$6 million to serve as collateral to allow PCEA to secure necessary financing.

On May 26, 2016, your Board was presented with, and updated on the negotiations of terms to obtain a loan from Barclays Bank, PLC, in an amount not to exceed \$12,000,000, which will finance certain costs of purchased power and working capital costs of PCEA's operations.

On May 27, 2016, the Chief Executive Officer of PCEA signed a preliminary term sheet with Barclays and the underwriting process began to negotiate the final terms of the loan.

DISCUSSION:

With the selection of Barclays, the collateral requirement under the terms of the loan agreement, in the form of cash and/or securities, amounts to no less than 5/12 of the amount of the loan drawn upon by PCEA. Staff will likely request the full \$6 million as there are interest rate reductions equal to 0.55% for every 1/12 of additional collateral that is deposited, thereby saving on interest expenses to PCEA. However, the \$6 million will likely be taken in portions, on an as-needed basis.

This collateral will be deposited into an account pledged to Barclays and held by Wilmington Trust, a third party trustee approved by Barclay's. PCEA shall pay interest to the County on the collateral, which shall be the higher of the following two amounts: (1) the amount of interest that would have been earned by the Advance Amount had it been invested in the San Mateo County Pooled Investment Fund starting on the effective date and ending on the repayment date; or (2) the actual interest earned on any Advance Amount used as the Collateral until released.

The interest rate shall be calculated as follows:

$$\text{Principal} \times \text{Quarterly Interest Rate} \times \frac{\text{Number of Days in the Quarter}}{\text{Number of Days in the Year}}$$

Additionally, it is expected that the collateral deposit will be held until the PCEA has received and maintained an investment grade rating from Fitch, Moody's, or S&P. The deposit will be structured essentially as a loan, whereby so long as PCEA does not default on its loan repayment obligations, the full amount of the deposit (along with interest) will be returned at the end of the required collateral period.

PCEA shall repay the County the loan amounts, plus interest, within two years from the date when that portion of the loan amount is received by PCEA or when Collateral is released by Barclays, whichever is earlier.

FISCAL IMPACT:

Up to \$6 million will be transferred to an interest earning account held at Wilmington Trust for the purposes of securing a loan in a not to exceed amount of \$12 million from Barclay's Bank. The \$6 million plus interest will be returned to the County as described above.

RESOLUTION NO. _

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF
CALIFORNIA**

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**RESOLUTION AUTHORIZING A LOAN AGREEMENT BETWEEN PENINSULA
CLEAN ENERGY AUTHORITY AND THE COUNTY OF SAN MATEO IN THE
AMOUNT OF \$6 MILLION TO BE REPAID TO COUNTY BY PENINSULA CLEAN
ENERGY AUTHORITY FOR THE PURPOSES OF SECURING A BANK LOAN TO
ADDRESS CERTAIN WORKING CAPITAL NEEDS AT VARIABLE RATES
PROVIDED IN THE AGREEMENT**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, on February 29, 2016, Peninsula Clean Energy Authority (PCEA) was formed by all the cities in the county, as well as the County itself, to administer a Community Choice Aggregation program in San Mateo County; and

WHEREAS, PCEA may require up to \$12 million in financing from a bank or lending institution to fund certain working capital needs, including the creation of a reserve fund to support the power purchase agreements entered into by PCEA, working capital for the pre-revenue collection phase, seasonal differences in cash flow and deposits required by the California Independent System Operator and the California Public Utilities Commission; and

WHEREAS, given PCEA's recent establishment, PCEA is required to provide some form of collateral to secure the loan; and

WHEREAS, on May 10, 2016, the County Board of Supervisors authorized the County Manager or his designee to enter into negotiations regarding a deposit of up to \$6 million to serve as collateral to allow PCEA to secure a bank loan to fund working capital needs; and

WHEREAS, on May 26, 2016, your Board was presented with, and updated on the negotiation of terms to obtain a loan from Barclays Bank, PLC, in an amount not to exceed \$12,000,000, which will finance certain costs of purchased power and working capital costs of PCEA's operations; and

WHEREAS, On May 27, the Chief Executive Officer of PCEA signed a preliminary term sheet with Barclays and the underwriting process began to negotiate the final terms of the loan; and

WHEREAS, Barclays requires, as a condition of the loan, collateral in the form of cash and/or securities amounting to no less than 5/12 of the amount of the Loan drawn upon by PCEA, with loan interest rate reductions for collateral amounts over 5/12; and

WHEREAS, pursuant to the loan agreement with Barclays, Barclays will release the collateral requirement when PCEA receives and is able to maintain an investment grade rating from Fitch, Moody's, or S&P; and

WHEREAS, your Board has requested that the County loan PCEA \$6 million to serve as the requisite collateral for the loan; and

WHEREAS, in order to secure the loan, the County desires to lend PCEA up to \$6 million to serve as collateral to be returned to the County, with interest, upon release under the terms of the Barclays loan; and

WHEREAS, the County of San Mateo and PCEA desire to enter into the loan agreement to establish PCEA's repayment obligations to the County, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Chair of Peninsula Clean Energy is hereby authorized to execute, on behalf of the Board, a loan agreement between PCEA and the County of San Mateo in the amount of \$6,000,000 to be repaid by the County by PCEA, for the purposes of securing a bank loan to address certain working capital needs at variable rates provided in the agreement.

* * * * *

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND PENINSULA CLEAN ENERGY AUTHORITY FOR THE ADVANCE OF FUNDS

This Agreement, effective June 28, 2016 (“Effective Date”), is made and entered in the County of San Mateo, California, by and between the Peninsula Clean Energy Authority, a joint powers agency created pursuant to sections 6500 *et seq.* of the California Government Code (“PCEA”), and the County of San Mateo (“County”) for the purpose of stating the terms for an advance of funds to be repaid to County by PCEA as provided herein. PCEA and the County shall be referred to collectively as the “Parties” and individually as a “Party” herein.

RECITALS

WHEREAS, on February 29, 2016, PCEA was formed by all the cities in the County of San Mateo, as well as the County itself, to administer a community choice aggregation program in San Mateo County; and

WHEREAS, PCEA requires up to \$12 million in financing (“Loan”) from a bank or lending institution (“Banking Partner”) to fund certain working capital needs, including the creation of a reserve fund to support power purchase agreements entered into by the PCEA, working capital for the pre-revenue collection phase, seasonal differences in cash flow, and deposits required by California Independent System Operator and the California Public Utilities Commission; and

WHEREAS, given PCEA’s recent establishment, PCEA is required to provide some form of collateral to secure the Loan (“Collateral”); and

WHEREAS, PCEA has agreed upon terms with Barclays Bank PLC (“Barclays”) to serve as its Banking Partner by which Barclays will provide the Loan to PCEA, to be repaid in five years; and

WHEREAS, Barclays requires, as a condition of the Loan, collateral in the form of cash and/or securities amounting for no less than five-twelfths (5/12) of the amount of the Loan drawn upon by PCEA, with interest rate reductions for amounts of collateral above five-twelfths (5/12); and

WHEREAS, PCEA may opt to draw on the Loan in stages;

WHEREAS, the agreements with Barclays that will govern the Loan provide that Barclays will release the collateral requirement if and when PCEA receives and is able to maintain an investment grade rating from Fitch, Inc.; Moody's Investors Service, Inc.; or Standard & Poor's Ratings Services; and

WHEREAS, PCEA has requested that the County advance PCEA up to \$6 million to serve as the Collateral; and

WHEREAS, in order to assist PCEA in obtaining the Loan, the County desires to lend PCEA up to \$6 million to serve as the Collateral.

NOW THEREFORE, in consideration of their mutual promises and obligations, the Parties hereby agree as follows:

1. County Advance of Funds to PCEA.

a. County agrees to advance funds to PCEA in an amount not to exceed six million dollars (\$6,000,000) ("Advance Amount") to be used to as Collateral to secure the Loan. Such amount, or portions thereof, shall be available for delivery to PCEA no later than June 30, 2016. The date that a portion of the funds is received by PCEA shall be referred to as the "Advance Date" as to those specific funds.

b. Although the parties intend for the Advance Amount to be used as the Collateral to secure the Loan, PCEA's obligation to repay to County the Advance Amount plus interest

pursuant to the terms herein is absolute and is not, absent specific agreement in writing by the County to the contrary, contingent upon the terms of any agreement governing the Collateral, including the exercise of (or decision not to exercise) any right to or interest in the Collateral by Barclays, another Banking Partner, or any other third party.

c. PCEA acknowledges and agrees that by advancing said funds to PCEA, the County does not assume any liability, obligation, or duty with respect to the Loan or the Collateral or to Barclays, any Banking Partner, or third party. The County shall have no liability whatsoever for the repayment of the Loan.

2. Terms of Repayment; Interest.

a. PCEA shall repay to County the portions of the Advance Amount drawn by PCEA plus interest as described in Section 2.b herein no later than the “Repayment Date,” which shall be the earlier of: (1) two years after the Advance Date of those funds or (2) ten days after the release of any Collateral by Barclays (or any other Banking Partner). The Repayment Date may be revised upon mutual consent of the Parties in writing. The Parties understand that there will be different Repayment Dates for different portions of Advance Amounts drawn to the extent they are drawn on different Advance Dates.

b. PCEA shall pay interest to the County on the Advance Amount. Said interest shall be the higher of the following two amounts: (1) the amount of interest that would have been earned by the portion of the Advance Amount had it been invested in the San Mateo County Pooled Investment Fund starting on the Advance Date for that portion and ending on the Repayment Date (“Borrowing Period”), as described more fully in Section 2(c) (“County Pool Interest”); or (2) the actual interest earned on any Advance Amount used as the Collateral until

released by Barclays or any other Banking Partner pursuant to the terms of any agreements governing the Loan and deposit of the Collateral.

c. The County Pool Interest shall be calculated according to the sum of the following calculation performed for each quarter of the Borrowing Period:

Principal x Quarterly Interest Rate x (No. of Days in Quarter / No. of Days in Year)

Where “Principal” is the Advanced Amount; “Quarterly Interest Rate” is the gross earnings for the respective quarter of the Borrowing Period as reported in the San Mateo County Treasurer’s monthly investment report found on the Treasurer-Tax-Collector’s website

<http://www.sanmateocountytreasurer.org/investmentReports.html>); “No. of Days in Quarter” is the sum of days of each month that make up each respective quarter; and “No. of Days in Year” is 365, except in leap years, in which the number of days in the year shall be 366.

d. In the event the Advance Amount, along with any and all interest pursuant to Section 2(b), are not repaid by the Repayment Date, any such amounts that remain outstanding shall accrue interest at the rate specified by law for prejudgment interest.

3. Hold Harmless; Indemnity.

a. PCEA shall hold harmless, indemnify and defend the County, its officers, employees, and agents from and against any and all claims, suits or actions of every kind which arise out of (1) the Loan and any agreement with any Banking Partner, collateral agent, trustee, or similar entity in connection with the Loan or Collateral; and (2) the performance or nonperformance of PCEA’s covenants, responsibilities, and obligations under this Agreement

and which result from the negligent or wrongful acts of PCEA or its officers, employees, or agents.

b. County shall hold harmless, indemnify and defend PCEA, its officers, employees and agents from and against any and all claims, suits or actions of any kind which arise out of the performance or non-performance of the County's covenants, responsibilities and obligations under this Agreement and which result from the negligent or wrongful acts of the County or its officers, employees or agents.

c. In the event of concurrent negligence of the County, its officer or employees, and the PCEA, its officers and employees, the liability for any and all claims for injuries or damages to persons and/or property or any other loss or costs which arise out of the terms, conditions, covenants or responsibilities of this agreement shall be apportioned according to the California theory of comparative negligence.

4. General Provisions.

a. Waiver. The waiver by PCEA or the County of any term, covenant or condition herein contained shall not be deemed to a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

b. Successors and Assigns. The terms of this Agreement shall apply and bind the heirs, successors, executors, administrators and assigns of the Parties.

c. Amendment to Agreements. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties or their respective successors in interest. This Agreement shall not be effective or binding until fully executed by both Parties.

d. Choice of Law. This Agreement is subject to the laws and jurisdiction of the State of California and any action related to the Agreement shall be brought in the California

Superior Court for the County of San Mateo. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California.

e. Independent Entities. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, joint employer, or association.

f. Authority to Execute Agreement. The Parties each warrant that they have the authority to execute this Agreement and that all actions have occurred, and all necessary approvals or consents have been obtained to allow each party to enter into this Agreement.

g. Notices. All notices provided for herein shall be in writing and shall be delivered to the appropriate parties as provided below:

For PCEA:

Janis Pepper, CEO
Peninsula Clean Energy Authority
455 County Center, 4th Floor
Redwood City, CA 94063

For COUNTY:

County Manager
400 County Center, 1st Floor
Redwood City, CA 94063

IN WITNESS WHEREOF, PCEA and COUNTY have signed this Agreement on the dates set forth below.

PENINSULA CLEAN ENERGY AUTHORITY

Date: _____

By: _____

Title: _____

COUNTY OF SAN MATEO

Date: _____

By: _____

Title: _____