



**SPECIAL MEETING of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)  
Tuesday, January 12, 2021  
5:30 pm**

**PLEASE NOTE:** for Video conference: <https://meetings.ringcentral.com/j/1480690152>  
for Audio conference: dial 1-623-404-9000, or 1-773-231-9226,  
then enter the Meeting ID: 148 069 0152 followed by #

**You will be instructed to enter your participant ID followed by #.**

**NOTE: Please see attached document for additional detailed teleconference instructions.**

*PCEA shall make every effort to ensure that its video conferenced meetings are accessible to people with disabilities as required by Governor Newsom's March 17, 2020 Executive Order N-29-20. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact Anne Bartoletti, Board Clerk, at least 2 working days before the meeting at [abartoletti@peninsulacleanenergy.com](mailto:abartoletti@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make best efforts to reasonably accommodate accessibility to this meeting and the materials related to it.*

*If you wish to speak to the Board, please use the "Raise Your Hand" function on the Ring Central platform. If you have anything that you wish to be distributed to the Board and included in the official record, please send to [abartoletti@peninsulacleanenergy.com](mailto:abartoletti@peninsulacleanenergy.com).*

**CALL TO ORDER / ROLL CALL**

**PUBLIC COMMENT**

This item is reserved for persons wishing to address the Board on any PCEA-related matters that are as follows: 1) Not otherwise on this meeting agenda; 2) Listed on the Consent Agenda and/or Closed Session Agenda; 3) Chief Executive Officer's or Staff Report on the Regular Agenda; or 4) Board Members' Reports on the Regular Agenda. Public comments on matters not listed above shall be heard at the time the matter is called.

As with all public comment, members of the public who wish to address the Board shall be given an opportunity to do so by the Board Chair during the videoconference meeting. Speakers are customarily limited to two minutes, but an extension can be provided to you at the discretion of the Board Chair.

**ACTION TO SET AGENDA**

## **SPECIAL MEETING AGENDA**

1. Study Session on California Community Power (CCP) JPA (Joint Powers Authority) Agreement (Discussion)

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the Peninsula Clean Energy office, located at 2075 Woodside Road, Redwood City, CA 94061, for the purpose of making those public records available for inspection. The documents are also available on the PCEA's Internet Web site located at: <http://www.peninsulacleanenergy.com>.

## Instructions for Joining a RingCentral Meeting via Computer or Phone

### Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (Option 1 below) rather than your computer audio

### Options for Joining

- A. Videoconference with Phone Call Audio (*Recommended*) – see Option 1 below
- B. Videoconference with Computer Audio – see Option 2 below
- C. Calling in from iPhone using one-tap – see Option 3 below
- D. Calling in via Telephone/Landline – see Option 4 below

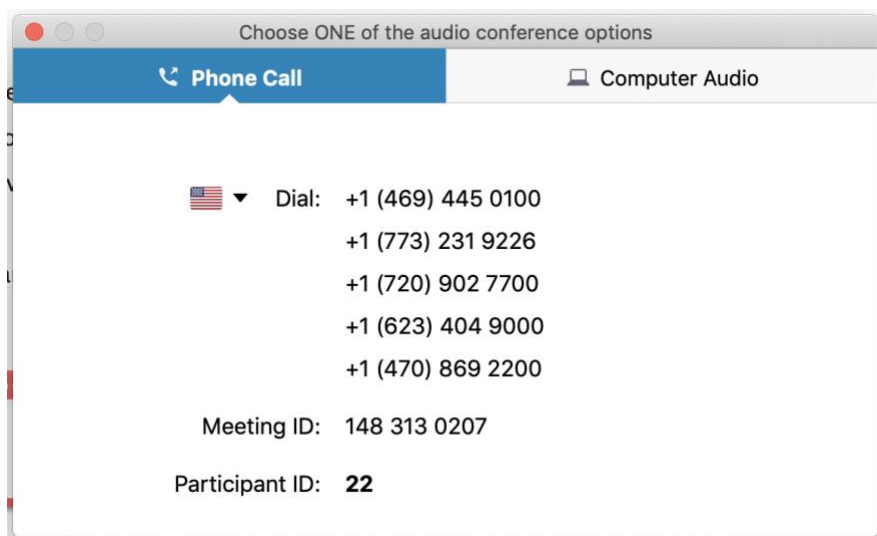
### Videoconference Options:

Prior to the meeting, we recommend that you install the RingCentral Meetings application on your computer by clicking here: <https://www.ringcentral.com/apps/rc-meetings>

If you want full capabilities for videoconferencing (audio, video, screensharing) you must download the RingCentral application.

### Option 1 Videoconference with Phone Call Audio (Recommended):

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2. The RingCentral Application will open on its own or you will be instructed to Open RingCentral Meetings.
3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Phone Call option at the top of the pop-up screen.

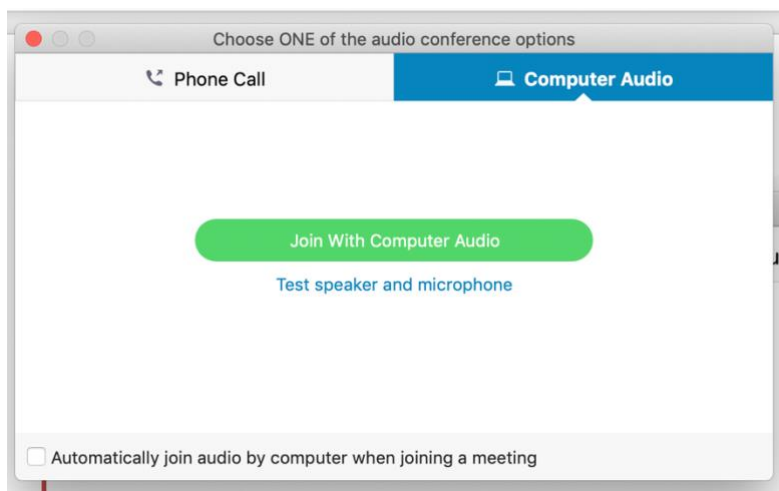


**IMPORTANT:** Please do not use the Participant ID that is in the picture to the left. Enter the Participant ID that appears on your own personal pop-up.

4. Please dial one of the phone numbers for the meeting (it does not matter which one):
  - +1 (623) 404 9000
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  - +1 (773) 231 9226
  - +1 (720) 902 7700
  - +1 (470) 869 2200
5. You will be instructed to enter the meeting ID: **148 069 0152 followed by #**
6. You will be instructed to enter in your **Participant ID followed by #**. Your Participant ID is unique to you and is what connects your phone number to your RingCentral account.
7. After a few seconds, your phone audio should be connected to the RingCentral application on your computer.
8. In order to enable video, click on “Start Video” in the bottom left hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

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1. From your computer, click on the following link:
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3. The RingCentral Application will open on its own or you will be instructed to Open RingCentral Meetings.
4. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.



5. Click the green **Join With Computer Audio** button
6. In order to enable video, click on “Start Video” in the bottom left hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

## **Audio Only Options:**

Please note that if you call in/use the audio only option, you will not be able to see the speakers or any presentation materials in real time.

### **Option 3: Calling in from iPhone using one-tap**

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+1(720)9027700,,1480690152# (US Central)

+1(773)2319226,,1480690152# (US North)

+1(469)4450100,,1480690152# (US South)

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This is the call-in number followed by the meeting ID. Your iPhone will dial both numbers for you.

You will be instructed to **enter your participant ID followed by #**

If you do not have a participant ID or do not know it, you can stay on the line and you will automatically join the meeting

### **Option 4: Calling in via Telephone/Landline:**

Dial a following number based off of your location:

**+1(623)4049000 (US West)**

+1(720)9027700 (US Central)

+1(773)2319226 (US North)

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You will be instructed to enter the **meeting ID: 148 069 0152 followed by #**

You will be instructed to enter your **participant ID followed by #**.

If you do not have a participant ID or do not know it, you can stay on the line and you will automatically join the meeting.

**PENINSULA CLEAN ENERGY AUTHORITY**  
**JPA Board Correspondence**

**DATE:** January 8, 2021  
**SPECIAL BOARD MEETING DATE:** January 12, 2021  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, Chief Executive Officer

**SUBJECT:** Study Session to answer questions about California Community Power  
(CC Power) JPA

**BACKGROUND:**

At the Board of Directors meeting on December 17, 2020, the Board raised questions about the structure of the proposed CC Power JPA and PCE's membership. At the request of the Board, a Study Session was requested on the topic. Staff has prepared a list of questions raised and drafted answers to those questions.

**Attachments:**

CC Power JPA FAQ, January 2021  
CC Power JPA Agreement

## California Community Power Joint Powers Authority (CC Power JPA) FAQ

January 2021

**Q1: How did this come about — did we come to the conclusion that we need more storage, and that creating and joining this new JPA would be the best way to find more storage? Or were we investigating creating a JPA and thought that a benefit of the JPA would be that we could do a large RFO for storage?**

A: A combination of the two. We have determined that storage, including long-duration storage, is an important component to meet our 2025 goal of 100% carbon-free energy on a 24 x 7 basis. For the last several years we have been working closely with the local CCAs: East Bay Community Energy, Silicon Valley Clean Energy, San Jose Clean Energy, and Central Coast Community Energy (formerly Monterey Bay Community Power). Creating a super-JPA was first discussed in 2018, prior to long-duration energy storage. The rationale at that time, was essentially the same as now, that benefits for individual CCA's from joint procurement economies of scale is an option to develop. Up to now, we have collaborated through cost sharing arrangements and on an ad hoc basis. The move by NextEra in introducing a pumped hydro storage bill that would be paid for by all LSEs and the CPUC IRP policy related to long-duration storage precipitated discussion of a super-JPA. It was thought that the super-JPA would bring value to individual CCAs not only for economies of scale but also strategic legislative and regulatory benefits. Recently there's been a lot of interest in storage at the California Public Utilities Commission (CPUC), and California Independent System Operator (CAISO) and how to provide reliability in times of need. We would prefer this storage and source of reliability to be a clean alternative. Additionally, since the potential JPA members have many of the same back office needs as these other CCAs, a future collaboration could look at ways to efficiently combine our efforts and reduce these costs.

**Q2: Are these other CCAs in line with us in terms of labor? Are they also in line with us in terms of local hiring, trying to site local projects, and considering the effects of energy projects on wildlife?**

A: Peninsula Clean Energy probably looks at labor most closely out of most of the CCAs. Many CCAs have PLAs for new projects that they have contracted for. We might have to work harder to get other CCAs to see our point of view, but we might also have to be flexible. In general, CCAs, being community organizations, are interested in local hiring, so we are all aligned there. We may not all be in alignment on whether that local labor should be union or non-union. Note that the California Labor Code does require payment of prevailing wages for certain construction work on projects funded at least in part with public funds and for certain energy service contracts (CA Labor Code § 1720, 1720.6). Thus, some labor on some projects may require payment of prevailing wages under California law. That will be a project by project determination. As far as adverse effects on wildlife, it would depend on the technology. We are always looking at the environmental impacts of any project, and we will continue to do so.

**Q3: If we have a large amount of distributed generation, and are committed to a certain amount of battery storage in a project with this JPA agreement, will we end up obligated to pay for power we won't need?**

A: That is an unlikely scenario since we have large power needs and likely will not be able to use distributed energy to meet the majority of our energy needs. We will still need to engage in large projects in order to meet our total needs.

The projects that CC Power will engage in through this long-duration storage solicitation are not simply for generating electricity. Rather, they are for energy storage during times when there is excess energy and discharging energy during times when energy is needed.

**Q4: What are the “Three Phases” of CC Power projects?**

A: Phase 1 is for project exploration; Phase 2 is for subscription to the project and negotiations of primary agreements between the contracting parties; and Phase 3 is the project commitment phase.

## CC Power Projects - 3 Phase process





**Q5: In Phase 1, CC Power and its members determine the need for a project. If the JPA as an organization then launches the RFO, but less than all 9 of the member CCAs decide that they want to explore the project, how is that managed? If only some of the CCAs that are members of CC Power want to participate in the exploration phase, would CC Power itself still be the entity doing project exploration or would it be the individual member CCAs that wanted to explore the project?**

**A:** In Phase 1, members of the CC Power JPA would be surveyed to see which are interested in a particular procurement solicitation. Members who are interested would sign an RFO Participation Agreement to go through an RFO process. Any costs associated with the Phase 1 RFO are **allocated equally** among those CCA members who are interested in an informal cost sharing agreement. PCE's cost allocation would come to PCE's Board for approval if the costs for any one particular RFO Participation Agreement involved a commitment of \$100,000 or more. Once CC Power is operational, the RFO Participation Agreement will be between CC Power and those individual CCA members who are interested in exploring the project.

**Q6: In Phase 2: Subscription & Negotiations you have gotten a response to the RFO that went out under Phase 1. What would happen if one or more of those CCAs that participated in Phase 1 drop out during Phase 2? If someone drops out in the negotiation phase because they don't like the terms of the negotiation, then how is that managed?**

**A:** For Phase 2 only those CCAs that signed the RFO Participation Agreement in Phase 1 would have the option to continue to the Phase 2 subscription and negotiation phase. Those that subscribe to projects in Phase 2 are considered committed and agree to help pay for a percentage of the costs associated with subscription and negotiations during this phase. If a CCA subscribed in Phase 2 and then dropped out during negotiations, that CCA would still have to pay its portion of the costs of subscription and negotiations. Note that the contribution for those costs is a self-nominating amount based on how much of the proposed project that CCA is interested in and does not have to correlate with load share. PCE's cost allocation would come to PCE's Board for approval if the costs for any one particular Phase 2 evaluation involved a commitment of \$100,000 or more.

**Q7: In Phase 3: Project Commitment, we have already engaged in negotiations, drafted a power purchase agreement and are about to enter into that agreement. Will that power purchase agreement be signed by CC Power? Will there be a contractual term in the agreement that limits liability only to those members that participate in the project?**

**A:** As currently contemplated the power purchase agreement would be signed by CC Power. We expect to learn from the discussions with developers and choose the commercial forms most beneficial to members. Phase 3 is the project commitment phase and is much more binding. We do anticipate that there will be contractual protections against liability for CC Power itself and liability for any members of CC Power that are not participating in the particular project, consistent with and in addition to the provisions already included in the Government Code. In other similar projects undertaken by JPAs, these agreements have been styled:

- (1) Power Purchase Agreement between CC Power and the developer
- (2) Project Participation Agreement between CC Power and the individual participating CCAs
- (3) Project Operations Agreement between CC Power and the individual participating CCAs

Each project is unique however and the exact commercial structure for the first CC Power project may differ from past JPA energy infrastructure projects. In prior JPA project efforts, the Power Purchase Agreement has incorporated by reference the Project Participation Agreement and the Project Operations Agreement, making it clear to the developer which CCAs have liability to the specific project, and that only those CCAs have liability. The Project Participation Agreement will specify what percentage each CCA is committing to. In other projects, Project Participants have agreed to “step-up” provisions that cover limited default on commitments to only project participants. This is standard to defray development risk and, in turn, make the development more financeable. However, this issue is still under discussion among possible JPA participants. The step-up provision would generally provide that in the event that any one member CCA fails and cannot satisfy its obligations, each of the other CCAs participating in that particular project would bear a set incremental additional amount of cost and project allocation. PCE’s participation in any of these 3 agreements would come to PCE’s Board for approval as part of the standard PCE policies requiring Board approval for any power procurement.

**Q8: In Phase 3 is there a requirement that the parent JPA (CC Power) be the contracting party with the developer? Or could individual CCAs who are still interested sign individual agreements with the developer, leaving out the parent JPA?**

A: The current plan is that CC Power itself will contract with the developer, because it serves as an umbrella organization that attracts the scale to lower costs, facilitates project management and hopefully realizes some cost savings. There are multiple possible structures in which projects can be jointly developed. There is not a legal requirement for the JPA to be the signing party to the power purchase agreement with the developer. However, that is the most commonly used structure, because it optimizes ease of administration and ease of the market understanding how it is going to do business with the JPA. This is a proven structure that has seen success in the municipal utility world with entities such as NCPA (Northern California Power Agency), SCPPA (Southern California Public Power Agency) and TANC (Transmission Agency of Northern California). It is commercially less desirable for the developer to enter multi-party agreements whereby each CCA is individually party to an agreement with a developer. Plus, the JPA is a known vehicle in power markets. If CC Power does not pursue a project as a JPA and relinquishes the project, individual CCAs would then be able to negotiate directly with the developer after that time.

**Q9: If CC Power signs the power purchase agreement with the developer, will CC Power itself, including member CCAs who are not participating in the project, be liable in the event of a default by the participating member CCAs?**

A: The Government Code already provides that the individual members are not liable for the contractual obligations of the JPA. We anticipate all the underlying commercial agreements will reflect this provision of law.

Although it is not possible to completely eliminate risk, the contemplated structure will include numerous layers of contractual protection against liability for CC Power members who do not participate in any given project. The CEOs of each of the potential member CCAs for CC Power are currently discussing how to structure projects and draft the operating agreements in a way to

minimize liability for non-participating CCAs. This will be a priority for all member CCAs. At this point, the primary agreements will likely include the following protections. As such, the CC Power JPA Agreement already provided the following:

- Pursuant to Section 8.03 of the CC Power JPA Agreement and Section 6508.1 of the Government Code, “no debt, liability or obligation of CC Power shall be a debt, liability or obligation of any Member” unless such member agrees to assume such obligation pursuant to a Project Agreement.
- Additionally, Section 11.03 provides that CC Power must defend, indemnify, and hold harmless each member CCA from all liability arising from the operation of CC Power except as otherwise provided under a Project Agreement.

**Q10: Would there be a clause in the Stage 3 agreements that would give protection to those CCAs who choose not to participate in that operating agreement?**

A: When you set up a JPA, Section 6508.1 of the Government Code of the State of California permits making the liabilities of the JPA only liabilities of the JPA and not of the constituent members. In Section 8.01 of this draft JPA agreement, the agreement provides that the liabilities of CC Power are liabilities of CC Power alone and not of the constituent members. Additionally, as discussed above, the participation agreements and power purchase agreements would all likely include provisions limiting liabilities of individual members and indemnification by CC Power of non-participating member agencies.

**Q11: What is the Board’s role in this? Are we negotiating this deal as a Board or is that staff’s role and we are just providing oversight and high-level guidance?**

A: Generally, PCE’s board has broad general powers and thus has some flexibility to decide how involved it wants to be in the operations of CC Power. Some decisions will require the PCE Board’s approval. Additionally, the Board has authority to order regular reporting by the CEO on CC Power operations. For example, the Board could direct the CEO to provide written reports regarding CC Power on a regular basis for PCE Board meetings. The Board could also direct the CEO to present an operational review of PCE’s participation in CC Power at the end of 2021 and then on an annual basis.

At this point, the PCE Board is considering whether to join CC Power as an initial member and approve and authorize the CEO to execute the JPA Agreement for CC Power. That decision falls to the PCE Board. The JPA Agreement is a formation document that describes the organization of the entity. The requirements of that agreement are fairly routine and come out of 6500 et seq. of the Government Code of the State of California. Whether or not to become a member of CC Power is the PCE Board’s decision.

If PCE joins CC Power, then the board of CC Power (comprised of the CEO or General Manager of each member CCA) would have authority to establish projects by a majority vote of CC Power directors in attendance at a meeting. All member CCAs—through their directors—would receive at least 60 days prior written notice of any project under consideration. At the end of that notice period, the CC Power board holds a vote to decide whether to approve the project. Once a project is

approved, all members have the right to participate in a pro-rata share. Practically speaking, because the PCE Board has broad authority, PCE's Board could opt to vest its CEO with authority to decide how to vote on CC Power's adoption of each project or could exercise its authority to decide whether its CEO will cast a vote on the CC Power board to approve any given project. Once a project is approved by the CC Power Board, PCE's Board would be charged with voting on whether PCE, as a member of CC Power, should participate in that project.

During Phase 3—the project commitment stage—the CEOs of the CCAs participating in that particular project will have input into the participation and operations agreements with the other participating CCAs.

Decisions regarding operations and administration of CC Power, such as hiring part-time contract employees or retaining consultants, would fall to the CC Power board. Any decision to approve PCE expenditures for CC Power of more than \$100,000 would come to the PCE Board for approval first.

**Q12: Can we make changes to the JPA Agreement? Under Section 8, both San Francisco and San Jose have special provisions addressing some of their own needs for their jurisdiction. Would Peninsula Clean Energy be able to add in a section addressing our needs?**

A: San Jose and San Francisco are individual cities acting as CCAs rather than JPA CCAs, like PCE. Because of this, CleanPowerSF and the City of San Jose must adhere to specific rules determined by the city regarding financial obligations and liabilities. Those two CCA-specific provisions are administrative requirements for those CCAs to be able to enter into the agreement. They are not special provisions based on policies and/or priorities of those individual CCAs. There was no discussion among counsel for the CCAs about incorporating policies into the CC Power JPA Agreement itself. This JPA document is simply a formation agreement, drafted to satisfy the Government Code's and any specific jurisdiction's requirements for formation of a JPA. The JPA Agreement is in final form and with 5 CCAs having already obtained approval to join (see Q16), it is unlikely that any will agree to make changes to the JPA agreement at this point in time. However, the structure of individual projects that the JPA approves is currently under discussion and has not yet been determined. Similarly, the forms of participation and power purchase agreements for specific projects have not yet been drafted. Those agreements will be more appropriate places for PCE to negotiate drafting in specific provisions that address its policies and needs. Additionally, the board of CC Power would be free to adopt policies for CC Power.

**Q13: How could PCE seek to assert our desires regarding our labor policy? Or our policy regarding unbundled RECs? Would we participate in that kind of a purchase?**

A. PCE would consider its policies when evaluating whether its CEO should vote to adopt a particular project and when deciding whether to participate in any given project. Additionally, PCE would have an opportunity to negotiate provisions into any given project agreement for a project in which PCE is participating that address its policies. There is of course no guarantee that PCE would be successful in convincing all other members participating in a project to include a provision in the project documentation specific to PCE.

**Q14: New members will be entertained in the future according to article 3 of the JPA agreement. Why does the PCE Board have to decide whether to join the JPA now?**

A. There is no deadline for PCE to join CC Power. The current plan is for all initial member CCAs to execute the JPA Agreement at the same time in early February to simplify filing requirements. The JPA Agreement and related notices will then be filed with the Secretary of State, the State Controller, and any other relevant local agency formation commissions. At that time, CC Power will be an operational JPA and begin engaging in procurement. There is currently a joint procurement for long duration storage underway. The timing of bringing the item to the Board in mid-December was to allow PCE to join CC Power as an initial JPA member and participate in the long duration storage procurement. If PCE does not join CC Power at this point, and is still interested in pursuing long duration energy storage, it would likely need to issue its own RFO. If PCE is an initial member of the JPA, PCE will have a greater ability to influence the policies CC Power implements. Once the JPA has been formed, PCE would no longer have the ability to join as of right and would have to go through a process to request membership. CC Power membership is governed by Article 3 of the JPA agreement. Section 3.01 provides that any public CCA may become a member upon: (a) filing with the CC Power board a certified copy of a resolution of the CCA's board whereby it agrees to the terms of the JPA Agreement and requests to become a member; and (b) its admission is approved by at least 2/3 of the entire CC Power board, and it deposits or agrees to pay CC Power its share of costs.

**Q15. What California legislation allows for the formation of Joint Powers Authorities such as CC Power?**

A. Joint Powers Authorities—legally created entities that allow two or more public agencies to jointly exercise common powers—are governed by the Joint Exercise of Powers Act, codified in California Government Code section 6500, *et seq.*

**Q16. What other CCAs have officially approved being a member of CC Power JPA?**

A. As of January 7, 2021, 5 CCAs have obtained approval to join CC Power. These are MCE, RCEA, SCP, SJCE and SVCE. C3E's Board will be considering this item on January 13, 2021 and CPSF in mid-February. It is unlikely that the CCA's that have already obtained approval to join will agree to make changes to the JPA agreement at this point in time.

**Q17. Who drafted the CC Power Joint Powers Agreement?**

A. The initial draft of the agreement was put together by Tony Braun and Brittany Iles at Braun Blasing Smith Wynne, P.C. The initial draft agreement then went through many rounds of review and comment over the course of a few months by counsel from PCE and eight other CCAs: Marin Clean Energy, CleanPowerSF, East Bay Community Energy, Central Coast Community Energy (formerly Monterey Bay Community Power), Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, and Sonoma Clean Power.

**Q18. Does this Joint Powers Agreement need to go to the State or any other regulatory agency for approval?**

A. There is no approval process, but there are filing requirements under Sections 6503.5, 6503.6 and 53051 of the Government Code. Specifically, a notice of the JPA formation—including the name, date of agreement, statement of purpose, and any amendments—and a copy of the JPA Agreement itself must be filed with the office of the Secretary of State within 30 days after the agreement's effective date (i.e. the date on which two or more members execute the agreement). Additionally, a statement of facts must be filed with the Secretary of State within 70 days of the commencement of CC Power's legal existence (which begins on the date that at least two entities execute the JPA Agreement). Any amendments to the Agreement and/or statement of facts must also be filed with the Secretary of State.

Individual projects entered into by CC Power would need to go through permitting and approval processes in the relevant jurisdiction.

**Q19. Who sits on the CC Power Board? Is it our CEO? If the CEO chose a designee, who could that be? Could one of our PCE Board Members represent PCE on the CC Power Board?**

A. The CC Power Board is comprised of one representative from each member CCA. Section 4.02 of the JPA agreement designates the CEO or General Manager, or a designee of the CEO or General Manager, of each member CCA as the board member. At this time, it is contemplated that the CEO of each member CCA will sit on the board. Technically, a PCE board member could serve as the CEO's "designee". This was a topic of discussion when the SVCE board approved membership in CC Power, and the solution was to have the CEO provide regular reports to the SVCE board (see response to Q11). There has been significant discussion in the CEO meetings about the value of the CC Power board member being a CEO or GM due to the technical nature of the discussions, and that is what the other CCAs are planning to do. If the PCE Board decides to join CC Power, we would recommend that PCE do similarly so that we are not at a disadvantage during CC Power board discussions. It is also important to have continuity of representation for these long term projects, not only for the initial evaluation/investment phase, but also for the operations phase of the project.

**Q20. Is it possible that our CEO might have to take a vote on an issue without getting approval of the PCE Board?**

A. Section 4.01 of the JPA Agreement provides that the board of CC Power will have "the authority to provide for the general management and oversight of the affairs, property and business of CC Power." Thus, unless the PCE Board directs otherwise, the CEO would vote on administrative decisions regarding day to day operations of CC Power. This might include hiring contract employees or consultants, renting office space (currently not contemplated), and the like. Under Section 6.02 of the JPA Agreement, the CC Power Board has the power by majority vote of directors in attendance at a meeting to establish projects and adopt guidelines for their implementation. However, prior to such a vote, each member CCA would receive at least 60 days prior written notice of any project being considered by the CC Power Board. Thus, PCE's board would be free to evaluate the project prior to its CEO casting a vote as a director of CC Power.

**Q21. If PCE voted “no” on a specific project in San Mateo County, can CC Power move forward with that project?**

A. Yes, if a majority of CC Power directors in attendance at a meeting voted in favor of it. To be clear, PCE would not need to be a participant in the project.

**Q22. Do city and/or county jurisdictions have final control over the approval and permitting process for these individual projects?**

A. This would depend on the type of project and its location. That will determine which agency is responsible for issuance of permits and approvals.

**Q23. When does a project come to PCE for approval, before or after city/county consideration?**

A. This depends on the particular project. Some projects may have been permitted before they come to the Board for approval, and others come to the Board for approval prior to completion of the permitting process. The Long-Duration Storage RFO projects contemplated by CC Power are still being evaluated, so it is not yet clear where these stand with respect to permitting. Since the expected commercial operation date (COD) for most of these projects is in 2025 and the project PPA Execution timeline is summer/fall, it is likely that most of these do not yet have permitting in place. The permitting risk will be part of the evaluation process.

**Q24. Is this JPA available to all CCAs for the entire state of California?**

A. Yes, as long as they meet the conditions for becoming a member set forth in Section 3.01 of the JPA Agreement. Generally, to join after CC Power’s initial formation, a CCA must file a resolution of its governing body with the CC Power Board and its admission must be approved by at least 2/3 of the entire CC Power Board. Pursuant to Section 3.02 of the JPA Agreement, the Board may adopt policies allowing other types of public agencies to be eligible to become a member of CC Power.

**Q25. Are all projects under this JPA new construction, or will it include already built projects and we are just buying energy?**

A. The projects will be determined by the CC Power board and may include purchasing energy from already built projects. Section 1.04 of the JPA Agreement includes all of the following in the definition of “Project:” construction, financing, acquisition of a wholesale power resource, resource adequacy and/or renewables environmental attributes for use by the members; bulk purchasing and/or financing of decarbonization products; energy risk management and CAISO scheduling products and services; acquisition, construction and financing of facilities for generation or transmission of electrical energy and any related transactions; grid integration services; acquisition of capacity rights in any facility for the generation or transmission of electric energy; and any other energy related programs.

**Q26. Could CC Power be purchasing renewable energy credits?**

A. Under the JPA Agreement, CC Power would have the authority to do so. Since PCE has the goal of 100% renewable energy on a 24/7 basis, PCE would likely not be interested in purchasing only renewable energy credits as we would not be able to control the dispatch of the project.

**Q27. Could CC Power be purchasing unbundled renewable energy credits (RECs)?**

A. Unbundled renewable energy credits (also known as Bucket 3 RECs) are unlikely to be purchased by CC Power. These RECs are not associated with a particular project and there is no reason to use joint agency action to execute such a transaction. Additionally, most if not all CCAs are not procuring Bucket 3 RECs.

**Q28. Can PCE put guidelines/requirements in CC Power Joint Powers Agreement?**

A. If this question is asking about incorporating PCE policies into the JPA, no. However, PCE can try to negotiate related provisions into individual project agreements. PCE could also propose policies for CC Power to adopt.

**Q29. Can PCE put guidelines/requirements in the CC Power Joint Powers Agreement that only apply to PCE?**

A. No. As addressed in response to Q12, San Jose and CleanPowerSF are the only CCAs with CCA-specific provisions in the JPA Agreement. Those special provisions are due to administrative requirements of the cities of San Francisco and San Jose. Please see response to Q12 for additional explanation of more appropriate places for PCE to negotiate drafting in specific provisions that address its policies and needs.

**Q30. Is PCE going to insist that before PCE joins CC Power, all PCE Policies are included in the CC Power Joint Powers Agreement?**

A. As noted above, the JPA Agreement is not the place for PCE to incorporate its policies. If/when CC Power develops its own policies, that would be the time for PCE to request that PCE policies are incorporated into the policies of CC Power.

**Q31. Will all construction for project approved by CC Power require prevailing wage?**

A. Not necessarily. If CC Power contracts for energy storage, then the construction of the facility may well be funded by a contractor who may or may not use public funds. If no public funds are used on construction for a project and the project is not on property owned by the state or a political



subdivision thereof, then the Labor Code probably would not require prevailing wages. However, PCE can request that CC Power require such a provision in its contracts.

**Q32. Why has an RFO already gone out before the JPA is official?**

A. The RFO was primarily driven by regulatory reasons. The CPUC IRP required respondents to describe their plans for procuring long duration storage. A group of CCAs issued an RFI last summer ahead of the IRP due date to collect information on available technology, projects and some costs. There is some concern that if PCE and other CCAs did nothing, the CPUC would direct IOUs to procure on our behalf and assign costs to PCE and other CCAs. There has been interest at the state level regarding long duration storage and part of the reason for the RFO was to demonstrate that CCAs were working together toward procuring long duration storage. Additionally, this type of technology could help PCE meet its goals to be 100% renewable on a time coincident basis.

**Q33. Has this PCE Board seen this RFO?**

A. The super JPA concept and LDES procurement was presented to the Executive Committee at their meetings in October and December. There was a note in the October 23 Board newsletter. There are links to articles about the RFO in the October 16, October 30, and November 6th Board weekly newsletters. The RFO has been posted on PCE's website since it was issued in October 2020.

**Q34. Why are CCA's listed in section 1.1 of the RFO shown as members before they are members?**

A. The RFO clarifies that the participating CCAs are working to form a "Super JPA" in January 2021. The RFO does not require CCAs to be organized into a "Super JPA" to contract, but it would make contracting easier.

**Q35. In Section 3, RFO Milestones and Offer Submission, is there any required reporting to CC Power JPA members.**

A. There is no required reporting. However, the CEOs and staff of the participating CCAs meet regularly to discuss and have shared access to the proposals.

**Q36. It appears the process is 100% staff driven until the developer is chosen, the terms have been negotiated, and the project is finalized except for CC Power Board approval. Is this true?**

A. Similar to generation projects that PCE pursues on its own, the process is initially staff driven. As noted above, once there is detailed information about a particular project and a decision to participate needs to occur, the CC Power board will receive 60 days prior notice of such decision.

This provides time for PCE to fully vet the project with the PCE Board, similar to how we vet procurement projects that we pursue on our own.

**Q37. When does the PCE Board get to consider this project?**

A. The goal for the Joint Long Duration Storage RFO is to short-list the projects in early March 2021. Accordingly, staff anticipates that CC Power will have a final power purchase agreement and associated project participation and operations agreements completed in September 2021, and these will be brought to the PCE Board for review and approval in the fourth quarter of 2021. At that time, and prior to consideration by the CC Power Board, PCE's Board would vote on whether to approve PCE's commitment to the project.

**Q38. In Appendix B, it appears that prevailing wage is only required if local, state or federal law requires it? Is prevailing wage required on this project? Under all circumstances?**

A. Prevailing wage is required under the California Labor Code for "construction, alteration, demolition, installation, or repair work" done under contract and "paid for in whole or in part out of public funds" (CA Labor Code Section 1720). It is also required for work performed in connection with the construction or maintenance of renewable energy generation capacity or energy efficiency improvements, provided that work is performed on the property of the state or a political subdivision thereof, and either (a) more than 50% of the energy generated is purchased or will be purchased by the state or a political subdivision thereof; or (b) the energy efficiency improvements are primarily intended to reduce energy costs that would otherwise be incurred by the state or political subdivision thereof (CA Labor Code Section 1720.6). Prevailing wage will be required for any work performed under the agreement that meets those criteria.

**Q39. Can CC Power require the payment of prevailing wage for all construction projects without local, state or federal requirement?**

A. Yes, if the CC Power Board voted to do so. The CC Power Board could also vote to adopt a CC Power policy like PCE's Policy 10.

# **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.

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

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