



2075 Woodside Road | Redwood City, CA 94061
(650) 260-0005 | peninsulacleanenergy.com

**Regular Meeting of the Executive Committee of the
Peninsula Clean Energy Authority (PCEA)
AGENDA**

**Monday, June 10, 2024
10:00 am**

PLEASE NOTE: This meeting will be held in a hybrid format with both in-person and Zoom participation options for members of the public; Board members shall appear in person.

In-Person Meeting Location:
PCEA Lobby, **2075 Woodside Road, Redwood City, CA 94061**

Zoom, Virtual Meeting Link: <https://pencleanenergy.zoom.us/j/83252507093>
Meeting ID: 832-5250-7093 Passcode: 2075 Phone: +1 (669) 444-9171

This meeting of the Peninsula Clean Energy Executive Committee will be held at the Peninsula Clean Energy Lobby: 2075 Woodside Road, Redwood City, CA 94061 and by teleconference pursuant to California Assembly Bill 2449 and the Ralph M. Brown Act, CA Gov't Code. Section 54950, et seq. **Members of the Committee are expected to attend the meeting in person** and should reach out to Assistant General Counsel for Peninsula Clean Energy, Jennifer Stalzer, with questions or accommodation information (jstalzer@smcgov.org). For information regarding how to participate in the meeting remotely, please refer to the instructions at the end of the agenda. In addition, a video broadcast of the meeting can be viewed at <https://www.peninsulacleanenergy.com/executive-committee> following the meeting.

Public Participation

The PCEA Executive Committee meeting may be accessed through Zoom online at <https://pencleanenergy.zoom.us/j/83252507093>. The meeting ID is: 832 5250 7093 and the passcode is: 2075. The meeting may also be accessed via telephone by dialing +1(669) 444-9171. Enter the webinar ID: 832 5250 7093, then press #. (Find your local number: <https://pencleanenergy.zoom.us/j/83252507093>). Peninsula Clean Energy uses best efforts to ensure audio and visual clarity and connectivity. However, it cannot guarantee the connection quality.

Members of the public can also attend this meeting physically at the **Peninsula Clean Energy Lobby** at 2075 Woodside Road, Redwood City, CA 94061.

Written public comments may be emailed to PCEA Board Clerk, Nelly Wogberg (nwogberg@peninsulacleanenergy.com) and such written comments should indicate the specific agenda item on which the member of the public is commenting.

Spoken public comments will be accepted during the meeting in the Board Room(s) or remotely through Zoom at the option of the speaker. Please use the "Raise Your Hand" function in the Zoom platform, or press *6 if you phoned into the meeting, to indicate that you would like to provide comment.

Please note that Peninsula Clean Energy Executive Committee meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Committee. If comments do not relate to the subject matter jurisdiction of the Committee, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Committee.

ADA Requests

Individuals who require special assistance or a disability related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting, should contact Nelly Wogberg, Board Clerk, by 10:00 a.m. on the day before the meeting at (nwogberg@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make reasonable arrangements to ensure accessibility to this meeting, the materials related to it, and your ability to comment.

Closed Captioning is available for all PCEA Board meetings. While watching the video broadcast in Zoom, please enable captioning.

CALL TO ORDER / ROLL CALL / APPROVE TELECONFERENCE PARTICIPATION UNDER AB 2449

This item is reserved to approve teleconference participation request for this meeting by Director pursuant to Brown Act revisions of AB 2449 due to an emergency circumstance to be briefly described.

PUBLIC COMMENT

This item is reserved for persons wishing to address the Committee on any PCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. Members of the public who wish to address the Committee are customarily limited to two minutes per speaker. The Committee Chair may increase or decrease the time allotted to each speaker.

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. [Approval of Minutes from the May 13, 2024 Executive Committee Meeting](#)

REGULAR AGENDA

2. Chair Report (Discussion)
3. CEO Report (Discussion)
4. [Recommend to Board of Directors Approval of the Fiscal Year 2024-2025 Budget \(Action\)](#)
5. [Discussion of Proposed Updates to Peninsula Clean Energy Rate Tables, Rates, and Adjusting ECO100 Premium \(Discussion\)](#)
6. [Recommend to Board of Directors the Approval of Residential Low-Income Self-Generation Incentive Program \(SGIP\) Assistance Program \(Action\)](#)
7. [Discussion and Recommend Adoption to the Board of Directors Edits to Peninsula Clean Energy Operating Rules and Regulations: Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy", Policy 15, "Energy Supply Procurement Authority", and Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees" \(Action\)](#)

8. Discussion and Recommend to the Board of Directors to Approve Administrative Updates to the Peninsula Clean Energy Authority Joint Powers Authority (JPA) Agreement (Action)
9. Committee Members' Reports (Discussion)

ADJOURNMENT

Public records that relate to any item on the open session agenda are available for public inspection. The records are available at the Peninsula Clean Energy offices or on PCEA Website at: <https://www.peninsulacleanenergy.com>.

Instructions for Joining a Zoom Meeting via Computer or Phone

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- Please mute your microphone when you are not speaking to minimize audio feedback
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Options for Joining

- Videoconference with Computer Audio - see Option 1 below
- Videoconference with Phone Call Audio - see Option 2 below
- Calling in via Telephone/Landline - see Option 3 below

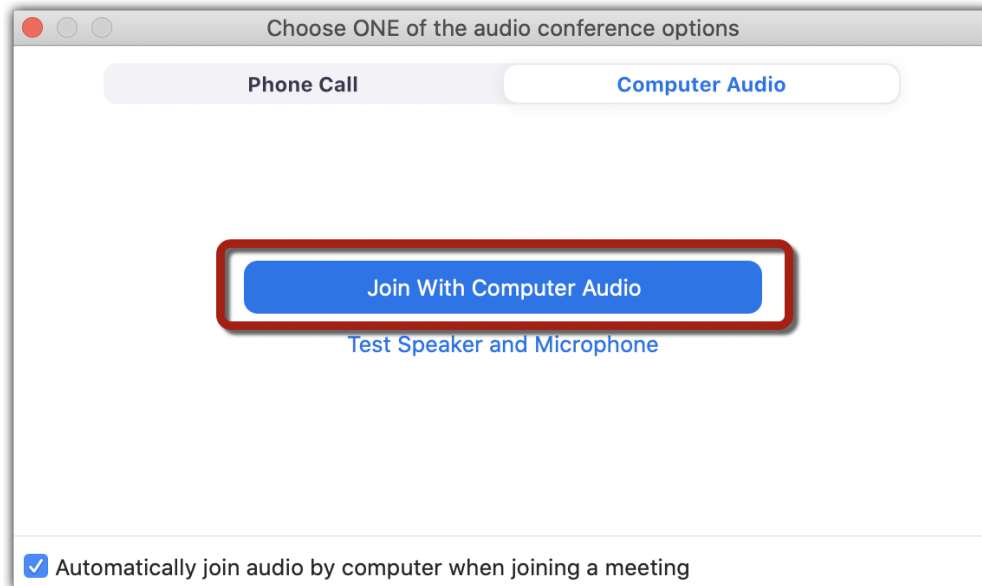
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- From your computer, click on the following link that is also included in the meeting calendar invitation: <https://pencleanenergy.zoom.us/j/83252507093>
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- After the application opens, the pop-up 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.

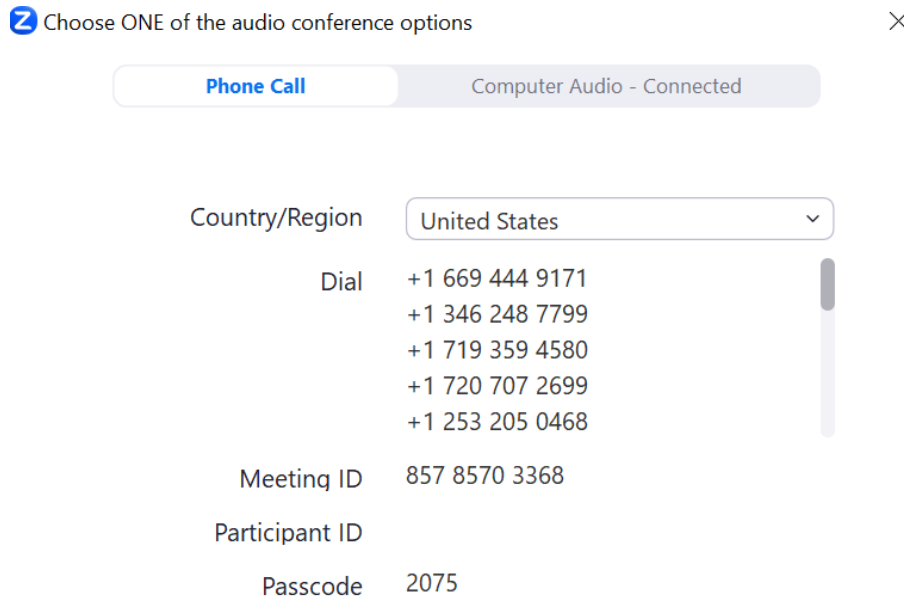


- Click the blue, "Join with Computer Audio" button.
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Option 2 Videoconference with Phone Call Audio

- From your computer, click on the following link that is also included in the meeting calendar invitation: <https://pencleanenergy.zoom.us/j/83252507093>
- The Zoom Application will open on its own or you will be instructed to Open Zoom.

- 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.



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Option 3: Calling in via Telephone/Landline:

- Please dial +1 (669) 444-9171.
- You will be instructed to enter the meeting ID: **832-5250-7093 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 press # to stay on the line.
- You will be instructed to enter the meeting passcode **2075 followed by #.**



**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: May 8, 2024
MEETING DATE: June 10, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee
FROM: Nelly Wogberg, Board Clerk
SUBJECT: Approval of Minutes from the May 13, 2024 Executive Committee Meeting

RECOMMENDATION

Approve minutes from the xxx and xxx Executive Committee Meetings

ATTACHMENTS:
[05-13-2024 EC Draft Minutes.docx](#)



Regular Meeting of the Executive Committee of the Peninsula Clean Energy Authority (PCEA) Minutes

Monday, May 13, 2024
10:00 a.m.
Zoom Video Conference and Teleconference

[CALL TO ORDER](#) [YouTube](#)

Meeting was called to order at 10:06 a.m. in virtual teleconference and in the Peninsula Clean Energy Authority lobby.

ROLL CALL

Participating:

Dave Pine, San Mateo County
Ray Mueller, San Mateo County
Rick DeGolia, Atherton
Coleen Mackin, Brisbane
Betsy Nash, Menlo Park
Anders Fung, Millbrae, arrived at 10:07 a.m.
Jeff Aalfs, Portola Valley
Marty Medina, San Bruno, Vice Chair

Absent:

Donna Colson, Burlingame, Chair

A quorum was established.

[PUBLIC COMMENT](#) [YouTube](#)

None

[ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS](#) [YouTube](#)

Public Comment: None

MOTION: Director Aalfs moved, seconded by Director Pine to set the Agenda and approve Agenda Item Number 1.

1. Approval of the Minutes for the May 8, 2023 and June 12, 2023 Executive Committee Meetings.

MOTION PASSED: 8-0 (Absent: Burlingame)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			

Atherton	Director DeGolia	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Portola Valley	Director Aalfs	X			
San Bruno	Director Medina	X			
	Totals	8			1

REGULAR AGENDA

2. Chair Report

None

3. [CEO Report](#) YouTube

4. [Recommend to Board of Directors Approval of Staff Proposal to Move Forward With Development of an In-House Customer Contact Center \(Action\)](#). YouTube

Leslie Brown, Director of Account Services, and Stephanie Elmore, Call Center Manager, gave a presentation on the development of an in-house customer contact center.

Public Comment: None

MOTION: Director Aalfs moved, seconded by Director Mackin to Recommend to Board of Directors the approval of PCE staff's proposal to move forward with the development of an in-house customer contact center.

MOTION PASSED: 8-0 (Absent: Burlingame)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			
Atherton	Director DeGolia	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson				X
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Portola Valley	Director Aalfs	X			
San Bruno	Director Medina	X			
	Totals	8			1

5. [Semi Annual Strategic Plan Updates \(Discussion\)](#). YouTube

Shawn Marshall, Chief Executive Officer, introduced the semi-annual Strategic Plan update and provided an overview on the presentation.

Roy Xu, Director of Power Resources provided an update for the Power Resources Team.

Rafael Reyes, Director of Energy Programs, provided an update for the Programs Team.

Gwen Rose, Director of Marketing and Community Relations, provided an update for the Marketing and Community Relations Team.

Leslie Brown, Director of Account Services, provided an update for the Account Services Team.

Jeremy Waen, Senior Director of Regulatory Affairs, and Marc Hershman, Director of Legislative Affairs, gave an update on Public Policy.

Nick Bijur, Chief Financial Officer, provided a Financial Stewardship update.

Kim Le, Director of Data and Technology, provided an update for the Data and Technology Team.

Shawn Marshall, Chief Executive Officer, Provided an Organizational Excellence Update.

Public Comment: None

6. [Committee Members' Reports](#)  YouTube

ADJOURNMENT

Meeting was adjourned at 11:55 a.m.



**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: June 5, 2024
MEETING DATE: June 10, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee
FROM: Nicholas Bijur, Chief Financial Officer
SUBJECT: Recommend to Board of Directors Approval of the Fiscal Year 2024-2025 Budget (Action)

RECOMMENDATION

Recommend approval by the Board of Directors of the fiscal year 2024-2025 budget (July 1, 2024 through June 30, 2025).

BACKGROUND

On May 13, 2024, staff presented a draft fiscal year 2024-2025 budget to the Audit and Finance Committee to solicit comments and input. The Audit and Finance Committee was supportive of the draft budget and did not have any suggested changes. Since the Audit and Finance Committee meeting on May 13, 2024, staff have made minor changes to the budget, the most notable of which is a reduction in forecasted load based on updated assumptions and enhanced modeling which reduced forecasted revenues and costs by a similar amount. The resulting forecasted net position has not changed materially since the last Audit and Finance Committee meeting.

DISCUSSION

Fiscal Year 2024-2025 (July 1, 2024 through June 30, 2025) budget presentation and details will be provided for Executive Committee review. The bottom-up budgeting approach included individual discussions with the department heads to develop their portions of the budget. For the first time, staff also conducted a cross-department half-day meeting to review Agency priorities and cost reduction opportunities. Based on this meeting, significant changes were made to the budget in order to ensure greater accuracy and reduce costs where possible.

The budget being presented includes sufficient operating expenses to support the Agency's mission to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. Given a significant increase in the forecasted cost of energy, driven largely by the cost of Renewable Energy Credits (RECs) and Resource Adequacy (RA), the proposed budget assumes the recognition of \$15 million of revenues from the recently approved Rate Stabilization Fund, which will allow Peninsula Clean Energy (PCE or the Agency) to set rates in August at a 5% net discount to Pacific Gas and Electric Company

(PG&E) (breakeven is ~3%), while reporting a positive change in net position.

FISCAL IMPACT

Approving the fiscal year 2024-2025 budget will provide sufficient resources to support the Agency's mission, allows PCE to offer its customers a 5% net discount to PG&E as of August 2024, and supports PCE's long-term financial viability.



**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: June 4, 2024
MEETING DATE: June 10, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Executive Committee
FROM: Leslie Brown Director of Account Services
SUBJECT: Discussion of Proposed Updates to Peninsula Clean Energy Rate Tables, Rates, and Adjusting ECO100 Premium (Discussion)

BACKGROUND

At the January 2024 Board meeting, PCE staff proposed and the Board approved holding PCE customer rates at 2023 levels through at least July 1, 2024 rather than to immediately follow PG&E's January 1 rate increase. PG&E's January 1 rate increase included an accelerated (6-month) recapture of under-collected energy costs from the previous year (2023), and a mid-year adjustment and generation rate decrease that will occur on July 1, 2024 as the cost recovery surcharge sunsets. Holding rates at 2023 levels has allowed PCE's customers to realize a higher discount relative to PG&E for the past several months (12-15% for most customers).

With the upcoming budget cycle, PCE is transitioning to a hybrid Cost of Service (COS) rate setting process to more closely align our rate setting to our actual cost to serve instead of only following PG&E rates as a benchmark. Analyst models are projecting that PG&E's system average generation rate will decrease by approximately 11% in July. That decrease is expected to bring PG&E's generation rates back down closer to 2023 levels. As with every rate change, PG&E's individual tariff adjustments are not expected to be published until 1-2 days before they become effective, but for budgeting purposes our Finance team utilized the most recent modeling available from CalCCA's rate tools and reports.

An estimated 'break even' cost recovery would likely be achieved by re-calibrating PCE's rates at a 3% discount from PG&E's July 1 rates, while providing a 5% discount is estimated to require ~\$15M from the newly established rate stabilization fund. Rate and budget impact analysis was run assuming a single rate schedule accounting for Vintage 2016 PCIA and franchise fee surcharges (FFS) across PCE's full customer base.

DISCUSSION

Rate Table Updates:

Since launching service in 2016, PCE has calculated rates for San Mateo County customers that include PG&E Vintage 2016 PCIA and FFS into the ratemaking. When PCE launched service in Los Banos in 2022 a different set of rates was implemented for those customers based off the 2021 Vintage PCIA and FFS to ensure that the newly enrolled Los Banos customers would also receive a total 5% discount in generation service costs. At the time PCE launched service in Los Banos the differential between the 2016 and 2021 Vintage surcharges was such that Los Banos customers would not have been able to realize savings from PCE service without a separate rate schedule being created and applied to their service territory.

During our last major rate change in 2023, PCE again created and implemented a separate rate schedule for a subset of Los Banos customers, the net energy metering (NEM) customers, and other new services enrolled after July 1 2022 with a 2022 PCIA Vintage assignment to again ensure a minimum 5% generation rate discount across PCE's customer base.

As we approach the upcoming rate change that would take effect in August, staff is proposing to move back to a single rate table with rates based off the 2016 PCIA Vintage and FFS to apply throughout our service territory to all customers. The reasons are as follows:

- 1) Over 95% of PCE customers are assigned to the 2016 PCIA Vintage, and using that baseline for ratemaking this next cycle will ensure a minimum 5% discount to all customers regardless of their current Vintage year assignment;
- 2) Since starting service in San Mateo County, PCE has always had a mix of Vintages within our customer base due to a variety of specific enrollment circumstances. The differential of mixed vintages became more pronounced with the enrollment of Los Banos as we now have a fixed new bulk of customers in a secondary PCIA Vintage to consider as we continue to balance transitioning to a hybrid 'cost of service' ratemaking model while also ensuring value and a minimum level of affordability for all customers regardless of their Vintage year; and,
- 3) Moving to a single rate schedule would reduce confusion and complexity for customers when trying to determine which of our published rate schedule applies to them, and it also ensures that all customers receive a minimum 5% discount on generation rates.

The circumstances around PCIA Vintage surcharges do fluctuate annually and it's possible that there may be a time in the future when staff and/or the Board may determine that splitting rates back into Vintage specific tables makes more sense for PCE and its customers. But for now, staff believes that a single rate schedule applied to all customers is the best option.

ECO100 Pricing Update

Over the past several months, staff has been evaluating PCE's voluntary ECO100 service offering. This initially started as an exercise around how to sunset the program under the now revised assumption that our ECOplus offering would become 100% renewable by 2025. In addition, proposed external changes to the Green-e certification of our ECO100 product potentially included material and costly changes that may have altered PCE's ability to maintain the certification.

Fortunately, the external issues surrounding Green-e certification have since resolved and nothing will change there. However, during the evaluative analysis of ECO100, our Power Resources team determined that our legacy \$0.01 per kWh (1 cent) surcharge is currently underpriced for the types of RECs we are required to procure and retire to meet Green-e's

specifications. Through much analysis, including evaluating the primary buyers of our ECO100 product, their requirements for a third party (Green-e) 'certified' product, and the past and future 'true cost' of providing this premium product, staff is recommending that the premium for ECO100 be increased to \$0.015 per kWh (1.5 cents) effective January 1, 2025. This will allow time for customers to be sufficiently notified of the price increase as well as reducing complexity with compliance reporting for the Green-e certification which operates on a calendar year.

FISCAL IMPACT

PCE's Finance team has modeled a single rate schedule at a proposed 5% net discount from PG&E's projected July generation rates and is projecting to need \$15,000,000 from our rate stabilization fund to cover a 5% discount utilizing the 2016 PCIA Vintage surcharges. Implementing a new premium for ECO100 in January 2025 will allow PCE to collect revenues valued at ~\$1,500,000 which more closely aligns with the current cost of providing that voluntary product offering.



**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: June 3, 2024
MEETING DATE: June 10, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Jana Kopyciok-Lande, Associate Director of Innovation Strategy

SUBJECT: Recommend to Board of Directors the Approval of Residential Low-Income Self-Generation Incentive Program (SGIP) Assistance Program (Action)

RECOMMENDATION

Recommend to Board of Directors the approval of a program to support low-income residential customers to access incentives under the statewide Self-Generation Incentive Program (SGIP).

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions and reinvest in the San Mateo County and Los Banos community. Outages and high utility costs, especially for low-income customers, are a material concern in PCE's service territory.

The Self-Generation Incentive Program (SGIP) is California's statewide program to incentivize behind-the-meter (BTM) energy storage systems (ESS). AB 209 (2022) and AB 102 (2023) allocated \$280 million of new funding to SGIP for income-qualified residential customers and expanded incentives to also include behind-the-meter solar+storage projects (instead of only standalone storage system like previous years). SGIP provides significant incentives which can fully cover solar and battery systems for eligible low-income customers.

Accessing these incentives is challenging, especially for underserved communities. One primary barrier is the complexity in navigating the SGIP application process. This has led many customers and installers not to apply for SGIP funding for their residential battery energy storage projects. The result is higher costs for customers and inaccessibility for income-qualified customers.

DISCUSSION

PCE is undertaking a broad effort to diversify revenue sources for its programs to increase its impact. This includes pursuing select, high impact state and federal funding opportunities where PCE is well positioned for success. The SGIP program provides an opportunity to help low-income customers install residential storage or solar with storage systems, including

customers that have received electrification support from PCE via the Home Upgrade program. To help simplify the SGIP application process on behalf of our customers and installers, and to support more installations of solar and battery energy storage systems, PCE is developing a program to facilitate access to SGIP incentives for eligible customers.

The new funding for SGIP is expected to become available in Q4 2024. Applications for the rebates must be immediately submitted at the time applications open because available funds are typically quickly reserved. As a result, eligible customers must be identified in advance and an experienced rebate administrator must be selected to file the applications and manage associated activity.

To that end, PCE would issue a competitive solicitation for a rebate administrator to handle the SGIP applications. PCE would also potentially select one or more installers to participate, with prevailing wage compensation. PCE would identify and recruit customers eligible for the SGIP program, verify their eligibility for incentives in advance of new funding becoming available, secure the SGIP rebates for the eligible customers by working with the selected rebate administrator, and support the installations of solar+storage or standalone storage systems in 2025 for customers with reserved SGIP funds.

It is anticipated that some income-qualified homes may also need roofing work. This is a common major barrier for solar installations. While the SGIP program provides up to \$3,500 in additional incentives for remediation work, the program will likely not be able to cover major roofing work. Hence, the prospective PCE SGIP Assistance Program could include additional support for roof repairs. Costs for roof repair vary significantly depending on need, ranging from under \$1,000 to over \$10,000. Because customers will see substantial on-bill savings from solar and storage systems it may be possible to finance roof repairs when needed.

It is envisioned that PCE would offer its Zero Percent Loan on-bill finance to address roof repair costs but with the intention that customers would still see savings even with the finance payments during the loan term. Details of this element remain to be developed but assuming 200 homes participate, possibly half might have solar (100) and half of those (50) might need roof work. Assuming an average of \$10,000 per home would result in \$500,000. This budget is within the planned budget for residential solar and storage financing for FY25.

Finally, it is also envisioned that the battery storage dispatch of the systems installed under the SGIP Assistance Program would be optimized under a future PCE Virtual Power Plant (VPP) to also provide grid value. This would mean maximizing the dispatch in the evening net peak. In the long-run, PCE plans to put in place a distributed energy resource management system (DERMS) under which these resources would be integrated. However, the PCE DERMS is unlikely to be in place in time for these deployments. The specific near-term method of ensuring grid value is under development and may be contractual with the battery provider.

FISCAL IMPACT

Estimated direct costs of under \$100,000 for the SGIP rebate administrator. Program would include some financing which would be repaid by customers which could be in approximately \$500,000 which is within the planned residential solar and storage financing of up to \$3 million for FY25. Other program incentive funds would be entirely from SGIP. If PCE enables 200 customers access to SGIP incentives (100 of them for standalone storage systems and 100

for solar+storage systems), PCE would bring more than \$4.5 million in SGIP incentives to our low-income residential customers.

STRATEGIC PLAN

The proposed program supports the following elements of the strategic plan:

Goal 3 – Community Energy Programs, Objective B: Support strategic decarbonization and local power

- Key Tactic 1: Create minimum of 20 MW of new local renewable power sources in PCE service territory by 2025

Reduce barriers to residential solar including methods to drive down installation costs

- Key Tactic 2: Support distributed energy resources to lower costs, support reliability, and advance distributed and grid decarbonization

Develop and implement programs to lower customer energy costs through distributed generation and load shaping

- Key Tactic 3: Foster resilience

Support residential storage



**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: June 4, 2024
MEETING DATE: June 10, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Shawn Marshall, Chief Executive Officer
Nelly Wogberg, Board Clerk

SUBJECT: Discussion and Recommend Adoption to the Board of Directors Edits to Peninsula Clean Energy Operating Rules and Regulations: Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy", Policy 15, "Energy Supply Procurement Authority", and Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees" (Action)

RECOMMENDATION

Provide feedback on and recommend adoption to the Board of Directors edits to Peninsula Clean Energy Operating Rules and Regulations, including name updates to: Policy 14, "Non-Energy Agreement Signatory and Delegation Policy", and Policy 16, "Policies and Procedures for Board of Directors, Committees, and Advisory Groups".

BACKGROUND

Peninsula Clean Energy's Operating Rules and Regulations are comprised of Board Policies. These policies are updated regularly based on changing needs of the organization and require Board approval. Staff has identified inconsistencies between these policies and the Joint Powers Authority (JPA) Agreement, which has resulted in proposed administrative updates as well as functional updates as appropriate.

Policy 14 - Delegation of Non-Energy Contracts Commitment and Financial Authority Policy

Policy 14 was first adopted by Peninsula Clean Energy's Board of Directors on November 16, 2017, when Peninsula Clean Energy had very few employees and limited operations.

It was amended on January 24, 2019, following the appointment of Peninsula Clean Energy's first Chief Financial Officer (CFO) to authorize the CFO to approve some limited transactions and to diversify some approval authority beyond a select few financial operations personnel.

On January 26, 2023, following the appointment of Peninsula Clean Energy's first Chief

Operating Officer (COO), the policy was amended to authorize the COO to approve some limited transactions and to further diversify the approval authority.

On August 24, 2023, the policy was further amended to streamline operations and place some limited responsibility for the approval of lower value contracts with several senior-level staff who are closer to the specific subject matter of a particular scope and agreement.

Policy 15 - Energy Supply Procurement Authority

In December 2017, the PCE Board adopted Policy 15 related to Energy Supply Procurement Authority. This policy authorizes the Chief Executive Officer (CEO) to approve agreements with terms of twelve months or less. The CEO is also authorized to approve agreements up to five years in consultation with the General Counsel and Board Chair.

On January 23, 2020, the PCE Board amended the policy to: a) extend the CEO's authority to approve energy procurement contracts specific to local resource adequacy (RA) with terms up to thirty-six (36) months and b) allow the CFO authority to approve energy procurement contracts up to twelve (12) months, when CEO is unavailable and with prior written approval from CEO, and c) allow CEO authority, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary to execute amendments to energy procurement contracts that had previously been approved by the Board.

Policy 16 - Selection of the Chair and Vice Chair and Appointment to the Executive Committee and Other Standing Board Committees

In January 2018, the PCE Board adopted Policy 16 to govern the selection of the Chair and Vice Chair and appointment to the Executive Committee and other standing Board Committees.

The PCE Board has established three Standing committees:

- 1) April 2016 it established an Executive Committee currently made up of nine Board members.
- 2) April 2017 it established the Audit and Finance Committee made up of five Board members.
- 3) May 2017 it established the Community Advisory Committee currently made up of 13 community members who do not serve on the Board.

On January 24, 2019, in order to ease the Executive Committee and Audit and Finance Committee's ability to reach a quorum, Policy 16 was revised to allow "up to nine members" on the Executive Committee, and "up to five members" on the Audit and Finance Committee.

On March 25, 2021, Policy 16 was revised to enable the newly elected Chair and Vice Chair to make appointments to the Executive Committee and other standing Board Committees on an interim basis if there are vacancies, until the new slates for these committees are approved by the Board of Directors.

Policy 16 currently provides a process for selecting the Board Chair and Vice Chair, and appointments to the Executive Committee and Audit and Finance Committee but does not include any Board or committee operating procedures beyond that. This has been identified as an area of operational deficiency, which is discussed along with other administrative policy amendments below.

DISCUSSION

Staff has identified discrepancies between the Joint Powers Authority (JPA) Agreement and certain PCE policies, and has proposed edits to ensure consistency and streamline the documents governing PCE and the Board of Directors.

Policy 14 - Proposed name change to, "Non-Energy Agreement Signatory and Delegation Policy"

Staff identified that the approval authority for the Chief Executive Officer (CEO) was housed both in the JPA Agreement and in Policy 14. Staff recommends retaining this authority in Policy 14 only to allow staff and Board to respond quickly to any necessary future updates. A survey of other Community Choice Aggregators (CCAs) identified that the CEO signing authority can live in either the JPA or the PCE Operating Rules and Regulations, such as is the case in Policy 14.

Upon review of the JPA Agreement and policy, Staff recommends some additional functional updates detailed below:

In Section 4.1, we are recommending an increase in the CEO contract signing authority from \$100,000 to \$250,000. Staff evaluated the \$100,000 signing authority threshold originally adopted in 2015 as a percentage of non-energy costs in the table below.

	2018	2019	2020	2021	2022	2023	2024	2025
Non-Energy Costs	10,835,518	12,877,163	15,271,586	22,477,651	19,861,267	25,946,496	39,395,928	57,145,616
\$100k	0.92%	0.78%	0.65%	0.44%	0.50%	0.39%	0.25%	0.17%
\$150k								0.26%
\$200k								0.35%
\$250k								0.44%

As you can see, in 2018, \$100,000 represented 0.92% of costs, which ranged between 0.40% - 0.80% over the next five years. Using a similar approach, staff suggests increasing the signing authority threshold to \$250,000, which is 0.44% of the 2025 non-energy budgeted costs. It is worth noting that while staff is recommending this increase to streamline operations and reduce the number of lower value contracts the Board must approve, it is also fine with whatever threshold increase the Board deems appropriate.

Finally, staff also recommends the addition of Section 4.2 to delegate contracting authority to the Chief Financial Officer and/or the Chief Operating Officer in the event that the Chief Executive Officer is unavailable and provides prior written approval.

Policy 15 - "Energy Supply Procurement Authority"

In addition to minor administrative edits, Staff recognized a need for delegation of authority in the event that the Chief Executive Officer is unavailable. Proposed edits to newly created Section 5 allow for the Chief Financial Officer to have the same energy contract authorities provided to the CEO in Policy 15, with written consent by the CEO or Board Chair, in the CEO's absence.

Policy 16 - Proposed name change to, "Policies and Procedures for Board of Directors, Committees, and Advisory Groups"

Policy 16 has the most extensive set of proposed updates to better reflect and institutionalize current practices. Staff recommends updating this policy to detail the operating processes that the Board already follows and to create greater transparency for the public regarding how to engage with our public hybrid meetings. Earlier this year, the Board Chair requested language to guide decorum at PCE's public meetings. Other notable edits include:

- Removing officer term limits as they are housed in the JPA Agreement. Policy 16 will continue to guide the process and timeline for selecting a new Board Chair and Vice Chair;
- The inclusion of the Community Advisory Committee as a Standing Committee, and noting the difference between a Standing Committee and a Board Standing Committee which is comprised of members of the Board;
- The definition of Ad Hoc Committees and Staff-Led Committees and how they differ from Brown Act meeting bodies;
- The inclusion of the Emeritus Advisory Group, designated by the Board and maintained by staff, and used as a resource for subject matter and institutional knowledge;
- An in depth guide to remote meeting attendance for both Board members and members of the public; and,
- Clear guidelines around public participation decorum in Board and Committee meetings.

Staff expects that adopting these proposed updates to Policy 16 will create more clarity and transparency for members of the Board, members of Committees, Advisory Group members, and members of the public.

FISCAL IMPACT

None.

ATTACHMENTS:

[Policy 14 - Revised Delegation of Authority Policy - Proposed Edits June 2024 - Clean.pdf](#)

[Policy 14 - Revised Delegation of Authority Policy - Proposed Edits June 2024 - Redline.pdf](#)

[Policy 15 - Procurement Authority - Proposed Edits June 2024 - Clean.pdf](#)

[Policy 15 - Procurement Authority - Proposed Edits June 2024 - Redline.pdf](#)

[Policy 16 - Board and Committee Appointments - Proposed Edits June 2024 - Clean.pdf](#)

[Policy 16 - Board and Committee Appointments - Proposed Edits June 2024 - Redline.pdf](#)

Non-Energy Agreement Signatory and Delegation Policy

Overview and Purpose

Peninsula Clean Energy (PCE) is committed to effective and efficient management of its operations and finances. The purpose of this policy is to:

- Establish the principles that govern the delegation of non-energy contracting and financial commitment authority.
- Support accountability and efficiency in non-energy contracting
- Approval of expenses and disbursement authority is outlined in PCE Operating Rules and Regulations Policy 17, “Disbursement and Invoice Approval Authority”

1. Responsible Parties

The Chief Executive Officer, Chief Operating Officer and Chief Financial Officer are responsible for ensuring that uniform policies and procedures are followed for delegating and implementing approval authorities.

2. General Policy Guidelines

The cumulative amount of contracts and financial authority is limited by approved budgets. Approval from the Board of Directors for all financial commitments is required in order to exceed a budgeted amount as directed by PCE’s Joint Powers Agreement, Section 5.2.3.

3. Scope

3.1 This policy applies to all the employees of Peninsula Clean Energy.

3.2 This policy is for staff only and does not cover the Board of Directors’ powers and responsibilities, which are detailed in PCE’s Joint Powers Agreement.

4. Policy Details

4.1 The Chief Executive Officer, the Chief Operating Officer, or the Chief Financial officer may approve and enter into any contract agreement if the total amount payable under the agreement is less than \$250,000 in any fiscal year, as stated in the PCE Joint Powers Agreement, section 3.4, except for the specific approval authority granted in PCE Operating Rules and Regulations Policy 15 “Energy Supply Procurement Authority”, and the approval amount is included in the Board-approved budget for the current fiscal year.

4.2 In the absence of the Chief Executive Officer, with written approval delegating their authority by the CEO or the Board Chair, the Chief Financial Officer (CFO) and/or the

Chief Operating Officer (COO), may execute the delegated non-energy agreement as approved by the Board of Directors.

- 4.3 Upon request by the Board of Directors, The Chief Financial Officer will prepare a written monthly report for the Chief Executive Officer and Chief Operating Officer that lists all contract agreements approved that month.

~~Delegation of Non-Energy Contracts Commitment and Financial Authority Policy~~ Non-Energy Agreement Signatory and Delegation Policy

Overview and Purpose

Peninsula Clean Energy (PCE) is committed to effective and efficient management of its operations and finances. The purpose of this policy is to:

- Establish the principles that govern the delegation of non-energy contracting and financial commitment authority.
- Support accountability and efficiency in non-energy contracting
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amount is included in the Board-approved budget for the current fiscal year. ~~the then-current fiscal year's Board-approved budget.~~

- 4.2 In the absence of the Chief Executive Officer, with written approval delegating their authority to the Chief Financial Officer (CFO) and/or the Chief Operating Officer (COO), either the CFO and/or the COO may execute the delegated non-energy agreement as approved by the Board of Directors.
- 4.3 Upon request by the Board of Directors, The Chief Financial Officer will prepare a written monthly report for the Chief Executive Officer and Chief Operating Officer that lists all contract agreements approved that month.

Energy Supply Procurement Authority

Overview and Purpose

“Energy Procurement” shall mean all contracting for energy and energy-related products for PCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage. In Energy Procurement, Peninsula Clean Energy Authority will procure according to the following guidelines:

1. Short-Term Agreements:

- a. The Chief Executive Officer (CEO) has the authority to approve Energy Procurement contracts with terms of less than twelve (12) months ~~or less, and; in addition to contracts for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.~~
- b. The Chief Executive Officer has authority to approve Energy Procurement contracts for Resource Adequacy that meet PCE’s three (3) year forward capacity obligations measured in megawatts (MW) and that meet the specifications in Table 1 below, which are set annually by the California Public Utilities Commission and the California Independent System Operator for compliance requirements.

Table 1:

Product	Year-Ahead Compliance Obligation	Term Limit
Local Resource Adequacy	In years 1 & 2, must demonstrate capacity to meet 100% of monthly local obligation for years 1 and 2 and 50% of monthly local obligation for year 3 by October 31 st of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of systems obligation for summer months (May – September) by October 31 st of the prior year	Up to 12 months
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by October 31 st of the prior year	Up to 12 months

~~c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.~~

~~d.c.~~ The CEO shall report all such agreements to the Peninsula Clean Energy Board monthly through the quarterly procurement report.

2. Medium-Term Agreements:

The Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as the Chief Executive Officer deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The Chief Executive Officer shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report. ~~The CEO shall report all such agreements to the PCE board monthly.~~

3. Intermediate and Long-Term Agreements:

Approval by the Peninsula Clean Energy Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.

4. Amendments to Agreements

The Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

5. Delegation of Authority in the Absence of the Chief Executive Officer

- a. In the absence of the CEO, with written consent by the CEO or the Board Chair, the Chief Financial Officer shall have all energy contract authorities of the CEO as described above.
- b. The CEO shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report.

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- a. In the absence of the CEO, with written consent by the CEO or the Board Chair, the Chief Financial Officer shall have all energy contract authorities of the CEO as described above.
- b. The CEO shall report all such agreements to the Peninsula Clean Energy Board through the quarterly procurement report.

Policies and Procedures for Board of Directors, Committees, and Advisory Groups

Overview and Purpose

The purpose of these policies and procedures is to provide a set of guidelines through which Peninsula Clean Energy (PCE) Board and Committees conducts their business in a fair, equitable and effective manner. If a provision of these policies or procedures conflicts or is inconsistent with State or Federal law, the State or Federal law shall govern. These rules are intended to enhance public participation and ensure effective committee meetings so that the best possible decisions can be made for Peninsula Clean Energy.

This policy governs the function of various boards and committees of Peninsula Clean Energy including the Board of Directors, the Executive Committee, Audit and Finance Committee, Staff Committees, Ad Hoc Committees, and the Emeritus Advisory Group.

1. Standing Committees

It is the policy of the Board to use standing committees in open and public meetings to conduct PCE business in greater depth than what is possible in the time allotted for Board meetings. The standing committees of PCE are: 1) Executive Committee, 2) Audit and Finance Committee, and 3) Community Advisory Committee. All standing committees are subject to the Brown Act and are conducted in publicly noticed in-person meetings. PCE standing committees are described below and shall be subject to the following procedural rules:

Executive Committee:

As a Standing Board Committee, the role of the PCE Executive Committee is to consider and make recommendations on matters relating to non-routine PCE operational procedures, significant policy matters that may require additional study or feedback before moving to the full Board, and/or matters referred to it by the Board.

The Executive Committee will consist of up to nine members, two of whom will be the Chair and Vice-Chair and up to seven of whom will be separately elected by the Board to serve one-year terms. The Chair of the Board shall also serve as the Chair of the Executive Committee. The Vice-Chair of the Board shall also serve as the Vice-Chair of the Executive Committee. Members of the Executive Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Executive Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to seven Executive Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Executive Committee or the Board may direct the Chair to return at the April Board meeting with a new slate. If there is an interim vacancy on the Executive Committee, the Board Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

Audit and Finance Committee:

As a Standing Board Committee, the role of the Board Audit and Finance Committee is to consider and make recommendations on matters referred to it by the Board relating to PCE finance, budget, financial audits, and debt.

The Audit and Finance Committee will consist of up to five members elected by the Board to serve one-year terms. Members of the Audit and Finance Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Audit and Finance Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to five Audit and Finance Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Audit and Finance Committee, or the Board may direct the Chair to return at the April Board meeting with a new slate. Annually, the Audit and Finance Committee will elect a Chair and Vice Chair of the Audit and Finance Committee at their first meeting following the election of the slate. If there is an interim vacancy on the Audit and Finance Committee, the Board Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

Community Advisory Committee:

The role of the Community Advisory Committee (CAC) is to advise on substantial public-facing program initiatives before they are presented to the Board of Directors for approval, as practical given timeliness, staff, and CAC capacity. CAC members also engage in outreach to the community and advocate for Peninsula Clean Energy's mission, goals, and programs; advise on high-level legislative and regulatory direction of the organization; provide a forum for community discussions on a wide variety of strategies in conjunction with staff and the Board; and form working groups, as recommended by the CAC membership, to assist Peninsula Clean Energy's staff and Board with projects of importance to the organization.

The Community Advisory Committee will consist of between 11 to 15 members drawn from the community and appointed by the PCE Board. Members might be affiliated with a community group but will not formally represent any particular group on the CAC. CAC members will serve three-year terms. Committee members may serve a total of three terms and serve at the pleasure of the Board.

Please see additional information regarding the Community Advisory Committee on PCE's website at: <https://www.peninsulacleanenergy.com/community-advisory-committee>.

General Standing Committee Requirements:

a. General purpose and function of Committees

The purpose and intent of standing committee meetings is to expedite Board action by providing more thorough and detailed discussion and study of prospective or current Board agenda items with a full and complete airing of all sentiments and expressions of opinion by both the committee and the public. Actions of the standing committee shall be advisory recommendations only, except as to matters expressly delegated to a committee by the Board. If a matter is taken forward to the full Board for approval after receiving a unanimous vote of approval at the committee level, the item may be placed on the Board's Consent Calendar, unless otherwise recommended by the Committee, Chair, General Counsel or Chief Executive Officer.

b. Quorum

A majority of the committee membership shall constitute a meeting quorum.

c. Attendance by Nonmembers

As required by the Brown Act, Board members who are not on a committee may attend the committee meeting but only as an observer; they may not speak in an official capacity or otherwise participate in the committee meeting. If the Board wishes to allow Board members who are not serving on the committee to speak, the meeting should be noticed as a meeting of the full Board, and all Board meeting procedural requirements will apply.

d. Minutes and Report of Committees

PCE staff, generally the Board Clerk, shall be responsible for the preparation and distribution to the Board of the minutes of the Executive and Audit and Finance committee meetings. In addition, a video recording of each meeting shall be posted on the PCE website in case a member of the public would like to watch the full meeting. The minutes of each committee meeting serve as the report to the Board and should be included, as appropriate, in subsequent Board meeting packets.

The CAC Committee Chair, in consultation with PCE staff, shall provide a written or verbal report of CAC meeting content and any action items during the CAC Report segment at the next publicly noticed Board meeting.

e. Committee Agendas

The Chair of each standing committee shall work with staff to prepare the agenda for committee meetings. Items should be scheduled as they are ready, taking into account the time required for staff research and analysis to support committee discussions, the time-sensitivity of particular items, and other factors as determined by staff and the committee chair.

f. Public Participation at Committees

Please see Section 4 for complete details on public participation at Board and Committee meetings.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is on the agenda or within the subject matter jurisdiction of the Board and Agency. If comments do not relate to the agenda or subject matter jurisdiction of the Board and Agency, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the meeting agenda or subject matter jurisdiction of the Board and Agency.

g. New Standing Committees

The Board may establish new standing committees as needed.

2. Board Ad Hoc Committees and Staff-Led Committees

The Board of Directors may create Ad Hoc Committees on a limited basis and subject matter when necessary to study PCE business in greater depth than what is possible in the time allotted for Board and Standing Committee meetings. The following rules are intended to clarify the distinction between Standing Committees, Ad Hoc Board Committees, and Staff-Led Subcommittees to establish operating guidelines for such committees:

a. Definition of Ad Hoc Committee

An Ad Hoc Committee of the Board is a temporary advisory committee composed of less than a quorum of Board members or any Standing Committee. The work of an Ad Hoc Committee has a limited or single purpose. An Ad Hoc committee is not intended to be perpetual but rather dissolved once its specific task is completed. By contrast, a Standing Committee has ongoing subject matter jurisdiction over a variety of related topics.

b. Definition of a Staff-Led Committee

A PCE staff-led committee is an informal group focused on a particular PCE topic or function that includes less than a quorum of Board or other standing committee members.

It is a non-Brown Act committee staffed by a member of PCE's executive team or PCE department head that meets periodically and at staff's direction. Staff shall utilize group feedback and/or vet a particular department specific topic. A staff-led subcommittee does not set Agency or Board policy or direction.

c. Brown Act

The procedural requirements of the Brown Act apply to all committees that have either: (a) continuing subject matter jurisdiction over a matter or group of related matters; or (b) a regular meeting schedule set by Board action. All Standing Committees are Brown Act bodies. Ad hoc committees are generally not Brown Act bodies, provided that: 1) they are temporary bodies, formed for the purpose of addressing a limited or single purpose, 2) include only members of Board, and 3) do not have a regular meeting schedule set by Board action. When the Board creates an Ad Hoc committee that is not a Brown Act body, the Board may, at its discretion, direct that the committee follow Brown Act procedures.

d. Creation and Appointment

The Board Chair or the full Board may create an Ad Hoc Committee and appoint less than a quorum of the Board or any Standing Committee to serve. The Chair will publicly announce any Ad Hoc Committee created, its membership, and stated purpose. In contrast, only the Board and not the Chair alone can create an ongoing Standing Committee. Staff-led subcommittees are organized and led by PCE executive and/or director-level staff.

e. Members

Ad Hoc Committees shall consist of less than a quorum of the Board, and shall not include any other persons, including members of other legislative bodies. Staff-led subcommittees shall consist of less than a quorum of the Board and may include others from the CAC or outside the Board as may be warranted.

f. Reporting

Ad Hoc Committees shall report their recommendations to the Board in the timeframe directed by the Board.

g. Termination of Ad Hoc Committee by Majority of the Board

A majority of the Board may vote to terminate any Ad Hoc Committee following placement of the issue on an agenda.

h. Conclusion

A public announcement shall be made any time the Ad Hoc Committee has concluded its work and/or upon dissolution.

3. Emeritus Advisory Group

Staff will maintain a list of interested former Directors or alternates of the PCEA Board of Directors, who have retired from public office, as the Emeritus Advisory Group. These group members will remain connected and engaged to PCEA business through their review of publicly posted Agenda Packets and newsletters. These group members could be called upon by Staff to provide expertise on particular issues/initiatives and to participate in subcommittee meetings on topics such as: outreach, legislative advocacy, technical assistance, teaching, review of staff work product, or any other means by which the Staff or the Community Advisory Committee can reasonably deploy their knowledge, enthusiasm and passion around clean energy advocacy and advancement of the mission of Peninsula Clean Energy Authority.

4. General Procedures for Board of Directors Meetings

The purpose of these guidelines is to facilitate the orderly and efficient conduct of PCE business. This purpose recognizes the value of establishing a community understanding of meeting procedures so that broad public participation is encouraged. This purpose also recognizes that Board members must have a common approach to the discussion and debate of PCE business so that meetings are both streamlined and thorough.

These are guidelines rather than rules. The Board intends that PCE staff and Board members will follow these guidelines; however, these guidelines should not be used in a way that leads to inefficiency, unfairness, or the promotion of form over substance.

In addition to Board-adopted guidelines, State law establishes a variety of mandatory meeting rules that the Board must follow in order to ensure open government and fair process, regardless of unusual situations and consequences. (See Cal. Govt Code section 54950.)

a. Chair and Vice-Chair

The Chair and Vice-Chair will be elected by the Board to serve one-year terms and be subject to term limits as defined by the Peninsula Clean Energy Joint Powers Authority Section 3.8, "Selection of Board Officer". A member may serve as Chair for one-year terms, however, after a break in service of at least one-year, a member may again serve as Chair. The same rules apply to the position of Vice-Chair. A member may serve consecutive terms as Vice-Chair and then subsequently serve as Chair. There is a general expectation that Vice-Chairs will serve as Chair following their term as Vice-Chair. However, ultimately, the decision of whom to elect is at the discretion of the Board.

With respect to the process and timing for nomination and election of the Chair and Vice-Chair, every January the Chair will appoint an ad hoc nominating committee made up of between three and five Board members, each of whom has indicated to the Chair an intention not to seek the positions of Chair or Vice-Chair. At the January meeting of the Board, the Chair will inform the Board of the composition of the nominating committee and invite interested members to notify the nominating committee of their desire to serve as either Chair or Vice-Chair. Prior to the February meeting of the Board, the nominating committee shall confer and prepare a recommendation regarding who should serve as Chair and Vice-Chair for that year. At the February Board meeting, that recommendation shall be submitted to the Board and the Board shall take action thereon.

b. Meeting Schedules, Agendas and Supporting Materials

The Board of Directors generally conducts two different kinds of meetings: regular meetings and special meetings. The PCE Joint Exercise of Powers Authority (the JPA Agreement) provides that the PCE Board of Directors holds at least six regular meetings 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 or ordinance of the Board.

The Board also schedules periodic special meetings, which are meetings on any day or time other than the regular meeting time. The Board may call a special meeting on a minimum of 24 hours' notice. The Board makes every effort to provide notice well in advance of 24 hours.

c. Posting of Agendas

Under the Brown Act, meeting agendas must be posted no later than 72 hours prior to regular meetings and 24 hours prior to special meetings. Agendas are posted at meeting locations and on the PCE Board web page.

d. Supporting Reports and Materials

It is Board policy to make every effort to provide supporting reports and materials at the time the agenda is posted. Materials that are not available at the time of agenda posting will be distributed as soon as feasible before the meeting. Materials that are distributed to a majority of the Board will be made available to the public at the same time, as required by law. Some materials, such as presentation materials or "supplemental memoranda" may be distributed to Board members and the public at the meeting.

e. Attendance Procedures

The PCE Board expects its members to attend Board meetings regularly and consistently. Board members should notify their Alternates and the Board Clerk of any planned

absences. If a Member Jurisdiction has more than three (3) absences at Board meetings or three (3) absences at Standing Committee meetings, the Board Chair will direct staff to notify the subject Board member with the intention of resolving the participation issue, and with further absence will direct staff to send a letter to the city manager, mayor and city council with a request to designate a replacement.

f. Remote Attendance of Board Members at Board and Standing Committee Meetings

Board members are strongly encouraged to attend meetings in person. State law allows Board members to attend meetings remotely by following the procedures outlined in Government Code Section 54953(b) ("Standard Remote Attendance") or the procedures outlined in Assembly Bill 2449 (2022) ("AB 2449 Remote Attendance"). For convenience, these procedures are summarized below and are current as of the date of this Policy revision. If state law is subsequently amended, the amended terms of State law will apply.

Board members are encouraged to consult in advance with the Board Clerk and, if needed, PCE's General Counsel to ensure compliance with all required procedures.

i. Number of Remote Appearances

Standard remote attendance shall be permitted not more than five (5) times a year per legislative body (for example, five times a year for full Board meetings and five additional times a year for each Board committee).

AB 2449 Remote Attendance rules state that no more than two (2) meetings may be attended remotely during a calendar year under AB 2449 for "just cause," as described below.

ii. General Procedures for Appearing Remotely

Board members must follow mandatory procedures set forth in State law. At any meeting where a Board member is attending remotely, the following requirements must be met:

1. At least a quorum of the Board must participate from a singular physical location within the jurisdiction.
2. The agenda must identify and include an opportunity for the public to attend and directly address the Board member through a call-in option, an internet-based service option, and in-person at the location of the meeting.
3. The Board may not take action if there is an unresolved disruption to the meeting broadcast or to the ability to take call-in or internet-based public comment.

If the above threshold requirements are met, the Board member attending remotely must ensure they follow the procedures associated with either Standard Remote Attendance or AB 2449 Remote Attendance.

iii. Standard Remote Attendance Procedures

A Board member attending remotely using these procedures must ensure that:

1. The meeting agenda identifies the remote attendance location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.
2. The remote attendance location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
3. The remote attendance technology used is open and fully accessible to all members of the public, including those with disabilities.
4. Members of the public who attend the meeting at the remote attendance location have the same opportunity to address the Board from the remote location that they would if they were present at the quorum location.
5. The remote attendance location must not require an admission fee or any payment for attendance.
6. If the meeting includes a closed session, the Board Member must ensure that there is a private location available for that portion of the meeting. A private location means a closed room such that no other person can hear any portion of the closed session.
7. A Board member attending remotely must participate through audio and visual technology.

If the Board Member intends to follow the procedures of Standard Remote Attendance but determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using Standard Remote Attendance procedures.

iv. Standard Remote Attendance Guidelines

1. Five (5) days written notice in advance of the publication of the agenda must be given by the Board member to the Board Clerk about their intent to participate remotely; the notice must include the address at which the remote attendance will occur, and the address the Board packet should be mailed to, if a hard copy is requested.

2. The Board member is responsible for posting the Board agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The Board Clerk will assist, if necessary, by emailing, faxing or mailing the agenda to whatever address or fax number the Board member requests; however, it is the Board member's responsibility to ensure that the agenda arrives and is posted. If the Board Member needs the assistance of the Board Clerk in delivery of the agenda, the fax number or address must be included in the five-day advance written notice above.
3. The Board Member must ensure that the location will be publicly accessible while the meeting is in progress.
4. The Board Member must state at the beginning of the Board meeting that the posting requirement was met at the location and that the location is publicly accessible and must describe the location.

v. AB 2449 Remote Attendance Procedures

1. In 2022 the Legislature adopted AB 2449, which amended the Brown Act to allow remote participation in certain narrow circumstances (listed below) without publishing the remote location on the meeting agenda and without providing public access from the remote location. AB 2449 will remain in effect until January 1, 2026.
2. Where the requirements of AB 2449 are met, a Board member is not required to follow the standard remote guidelines described above.
3. A Board member may use AB 2449 if the Board member has either "just cause" or "emergency circumstances" that require remote participation, as defined by AB 2449.

A. **"Just cause"** is defined as:

- a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote attendance,
- a contagious illness that prevents in-person attendance,
- a need related to a physical or mental disability which cannot be resolved by a request for reasonable accommodation, or
- travel while on the business of a state or local agency.

A Board member with "just cause" to attend remotely must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity, including at the start of the meeting, of their need to participate remotely and provide a general description of the circumstances.

- B. **“Emergency circumstances”** is defined as a physical or family medical emergency that prevents a Board member from attending the Board meeting in person.

A Board member attending remotely due to “emergency circumstances” must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity.

The Board or Board committee must request a general description of the circumstances relating to the Board member’s need to appear remotely. The description does not need to have more than 20 words, and the Board member does not have to disclose any personal medical information.

At the earliest opportunity available to it, the Board or Board committee must, by a majority vote of its members, take action on the request to approve or disapprove it. If the request does not allow sufficient time to place it on the agenda for the meeting for which the request is made, the legislative body must take action on the request at the beginning of the meeting by majority vote.

- C. **Disclosures.** Board members attending remotely must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member’s relationship with the individual.

- D. **Technology.** Board members attending remotely shall participate using both audio and visual technology.

If the Board member intending to follow the procedures of AB 2449 Remote Attendance determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using AB 2449 Remote Attendance procedures.

E. **AB 2449 Remote Attendance Sample Scripts**

At the start of the meeting, the Board member attending remotely may use the following language to identify under which provision they are attending remotely:

Just Cause:

“I have just cause to attend this meeting remotely under AB 2449. I have not attended a meeting remotely due to just cause more than once this calendar year. I have attended [NUMBER] meetings remotely this calendar year. I must attend this meeting remotely because...

1. "... I must provide caregiving to [RELATION]."
2. "... a contagious illness prevents me from attending in person."
3. "... I have a need related to a disability which could not be accommodated at this meeting."
4. "... I am travelling while on official business of [STATE OR LOCAL AGENCY]."

"In this room, I am accompanied by...

1. "...no one over the age of 18."
2. "...one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)]."

Emergency Circumstances:

"Due to emergency circumstances, I request to attend this meeting remotely under AB 2449. I have attended [NUMBER] meetings remotely this calendar year. The [PHYSICAL OR FAMILY] medical emergency I am facing requires my remote attendance because [BRIEF DESCRIPTION]."

"In this room, I am accompanied by...

1. "...no one over the age of 18."
2. "...one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)]."

5. How the Public Engages with the Board and Committees

Public Participation During Peninsula Clean Energy meetings

The Board and its Committees welcomes members of the public to participate in meetings through public comment opportunities. It is the policy of the Board to assure that members of the public have the opportunity to speak on any regular or special meeting agenda item before final action. These rules are intended to enhance public participation and Board and Committee debate so that the best possible decisions can be made for PCE and its member agencies. Open government meetings must allow everyone to be heard without fear of cheers or jeers. For these reasons, the Board and Committees take these rules seriously. Disruptive or unruly behavior in violation of the law can result in removal from the Peninsula Clean Energy meeting and/or arrest and prosecution.

a. Access to Meetings

In-Person and Remote Participation - Peninsula Clean Energy meetings are available in person in the locations provided on the agenda and through an online meeting platform. Members of the public are welcome to attend the meeting in person or to join the online meeting platform.

Translators - Speakers may bring a translator as needed and will be allotted additional time, as appropriate.

ADA Access - PCEA makes every reasonable effort to accommodate the needs of the disabled consistent with law. Any provision of these rules may be modified if needed to provide reasonable accommodation. Persons needing assistance should contact: the Board Clerk, at 650-414-1533 (voice) or nelly.wogberg@peninsulacleanenergy.com (email).

If found feasible by staff, members of the public may be given the opportunity to activate their personal video during their public comments.

b. Summary of Rules for Public Participation

Every regular agenda has two different kinds of opportunities for the public to speak. The first is during General Public Comment. The second is during the public comment or public hearing portion of each agenda item.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Board. If comments do not relate to the subject matter jurisdiction of the Board, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Board.

General Public Comment

This part of the meeting is provided so that the public can speak to any subject that is in the PCE jurisdiction, when there is no item listed on the agenda for that topic. State law does not permit the meeting body to act on or discuss an item raised at that meeting during General Public Comment. Board members shall not enter into debate with speakers but may ask brief clarifying questions and may ask PCE staff to follow up on any concerns raised.

Public comment or public hearing portion of each agenda item

The Brown Act requires the opportunity for public comment on all listed agenda items, except ceremonial items, procedural items (Agenda Changes and Deletions) and brief announcements (Chair Report, CAC Report, CEO Report and Board Member Reports). Public comments or testimony must be related to the matter under consideration.

c. Time Limits

The presiding officer (usually the Chair or Vice Chair) may announce the time that each speaker may use. PCE generally allows 2 minutes per speaker, but a shorter time may be designated when there are many speakers, numerous items on the agenda, or items anticipated to be lengthy.

d. Gaining Permission to Speak

Any person who wants to make a spoken public comment on an item on the agenda can do so if they are attending either in person or virtually. Members of the public participating virtually should use the “raise hand” function in the online meeting platform, or if participating via phone, hit *9 to notify the Clerk that they wish to speak. The Clerk will provide the names of the speakers to the Chair or Vice Chair so that the speakers can be identified and organized in an orderly way when the Chair calls for public comment.

e. Public Decorum During Meetings

The presiding officer at PCE meetings (usually the Chair or Vice Chair) is authorized and required to “preserve strict order and decorum.” This is important in order to ensure a fair opportunity for everyone to participate in an open and civil setting.

- i. No person, other than a Board or Committee member and the person having the floor, shall be permitted to speak without the permission of the presiding officer.
- ii. All remarks should be addressed to the Board or Committee as a body and not to any individual member or staff person.
- iii. It is unlawful for any person to: (1) Disrupt the conduct of a meeting; (2) Make threats against any person or against public order and security while in the Board Room.

Any Board or Committee Member may appeal the presiding officer’s decision on a decorum violation to the full Board or Committee. A meeting disruption may lead to a person being removed from the meeting and/or misdemeanor charges pursuant to the California Pe. See Cal. Penal Code Sections 403 and 422.

f. Record of Speakers

- i. Persons wishing to address the Board or Committee within the meeting room, shall use the microphone provided for the public. All public speakers, whether in person or virtual participants shall speak in a recordable tone, either personally or with assistance, if necessary.
- ii. Speakers are requested to state their name but cannot be compelled to do so as a condition of addressing the Board or Committee.

Selection of the Chair and Vice Chair and appointment to the Executive Committee and other standing Board Committees Policies and Procedures for Board of Directors, Committees, and Advisory Groups

Overview and Purpose

The purpose of these policies and procedures is to provide a set of guidelines through which Peninsula Clean Energy (PCE) Board and Committees conducts their business in a fair, equitable and effective manner. If a provision of these policies or procedures conflicts or is inconsistent with State or Federal law, the State or Federal law shall govern. These rules are intended to enhance public participation and ensure effective committee meetings so that the best possible decisions can be made for Peninsula Clean Energy.

4. This policy governs the function of various boards and committees of Peninsula Clean Energy including the Board of Directors, the Executive Committee, Audit and Finance Committee, Staff Committees, Ad Hoc Committees, and the Emeritus Advisory Group. Policy governing: (i) the appointment of the Chair and Vice Chair; (ii) the make up of, and appointment process for, the Executive Committee, the Audit Committee, and the Finance Committee; and (iii) the maximum term length, if any, of the Chair, Vice Chair, and members the Executive Committee, and the Audit and Finance Committee.

1. Standing Committees

It is the policy of the Board to use standing committees in open and public meetings to conduct PCE business in greater depth than what is possible in the time allotted for Board meetings. The standing committees of PCE are: 1) Executive Committee, 2) Audit and Finance Committee, and 3) Community Advisory Committee. All standing committees are subject to the Brown Act and are conducted in publicly noticed in-person meetings. PCE standing committees are described below and shall be subject to the following procedural rules:

Executive Committee:

As a Standing Board Committee, the role of the PCE Executive Committee is to consider and make recommendations on matters relating to non-routine PCE operational procedures, significant policy matters that may require additional study or feedback before moving to the full Board, and/or matters referred to it by the Board.

The Executive Committee will consist of up to nine members, two of whom will be the Chair and Vice-Chair and up to seven of whom will be separately elected by the Board to serve one-year terms. The Chair of the Board shall also serve as the Chair of the Executive Committee. The Vice-Chair of the Board shall also serve as the Vice-Chair of the Executive Committee. Members of the Executive Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Executive Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to seven Executive Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Executive Committee or the Board may direct the Chair to return at the April Board meeting with a new slate. If there is an interim vacancy on the Executive Committee, the [Board](#) Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

Audit and Finance Committee:

[As a Standing Board Committee, the role of the Board Audit and Finance Committee is to consider and make recommendations on matters referred to it by the Board relating to PCE finance, budget, financial audits, and debt.](#)

The Audit and Finance Committee will consist of up to five members elected by the Board to serve one-year terms. Members of the Audit and Finance Committee will not be subject to term limits.

With respect to the process and timing for nomination and election of the Audit and Finance Committee, the Chair elected in February will, in consultation with the Vice-Chair, recommend to the Board at its March meeting a slate of up to five Audit and Finance Committee members. The Board will be asked to cast a vote either for or against the entire slate at the March Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Audit and Finance Committee, or the Board may direct the Chair to return at the April Board meeting with a new slate. Annually, the Audit and Finance Committee will elect a Chair [and Vice Chair](#) of the Audit and Finance Committee at their first meeting following the election of the slate. If there is an interim vacancy on the Audit and Finance Committee, the [Board](#) Chair and Vice Chair are authorized to fill that vacancy until the new slate is approved by the Board.

[Community Advisory Committee:](#)

[The role of the Community Advisory Committee \(CAC\) is to advise on substantial public-facing program initiatives before they are presented to the Board of Directors for approval.](#)

as practical given timeliness, staff, and CAC capacity. CAC members also engage in outreach to the community and advocate for Peninsula Clean Energy's mission, goals, and programs; advise on high-level legislative and regulatory direction of the organization; provide a forum for community discussions on a wide variety of strategies in conjunction with staff and the Board; and form working groups, as recommended by the CAC membership, to assist Peninsula Clean Energy's staff and Board with projects of importance to the organization.

The Community Advisory Committee will consist of between 11 to 15 members drawn from the community and appointed by the PCE Board. Members might be affiliated with a community group but will not formally represent any particular group on the CAC. CAC members will serve three-year terms. Committee members may serve a total of three terms and serve at the pleasure of the Board.

Please see additional information regarding the Community Advisory Committee on PCE's website at: <https://www.peninsulacleanenergy.com/community-advisory-committee>.

General Standing Committee Requirements:

a. General purpose and function of Committees

The purpose and intent of standing committee meetings is to expedite Board action by providing more thorough and detailed discussion and study of prospective or current Board agenda items with a full and complete airing of all sentiments and expressions of opinion by both the committee and the public. Actions of the standing committee shall be advisory recommendations only, except as to matters expressly delegated to a committee by the Board. If a matter is taken forward to the full Board for approval after receiving a unanimous vote of approval at the committee level, the item may be placed on the Board's Consent Calendar, unless otherwise recommended by the Committee, Chair, General Counsel or Chief Executive Officer.

b. Quorum

A majority of the committee membership shall constitute a meeting quorum.

c. Attendance by Nonmembers

As required by the Brown Act, Board members who are not on a committee may attend the committee meeting but only as an observer; they may not speak in an official capacity or otherwise participate in the committee meeting. If the Board wishes to allow Board members who are not serving on the committee to speak, the meeting should be noticed as a meeting of the full Board, and all Board meeting procedural requirements will apply.

d. Minutes and Report of Committees

PCE staff, generally the Board Clerk, shall be responsible for the preparation and distribution to the Board of the minutes of the Executive and Audit and Finance committee

meetings.- In addition, a video recording of each meeting shall be posted on the PCE website in case a member of the public would like to watch the full meeting. The minutes of each committee meeting serve as the report to the Board and should be included, as appropriate, in subsequent Board meeting packets.

The CAC Committee Chair, in consultation with PCE staff, shall provide a written or verbal report of CAC meeting content and any action items during the CAC Report segment at the next publicly noticed Board meeting.

e. Committee Agendas

The Chair of each standing committee shall work with staff to prepare the agenda for committee meetings. Items should be scheduled as they are ready, taking into account the time required for staff research and analysis to support committee discussions, the time-sensitivity of particular items, and other factors as determined by staff and the committee chair.

f. Public Participation at Committees

Please see Section 4 for complete details on public participation at Board and Committee meetings.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is on the agenda or within the subject matter jurisdiction of the Board and Agency. If comments do not relate to the agenda or subject matter jurisdiction of the Board and Agency, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the meeting agenda or subject matter jurisdiction of the Board and Agency.

g. New Standing Committees

The Board may establish new standing committees as needed.

2. Board Ad Hoc Committees and Staff-Led Committees

The Board of Directors may create Ad Hoc Committees on a limited basis and subject matter when necessary to study PCE business in greater depth than what is possible in the time allotted for Board and Standing Committee meetings. The following rules are intended to clarify the distinction between Standing Committees, Ad Hoc Board Committees, and Staff-Led Subcommittees to establish operating guidelines for such committees:

a. Definition of Ad Hoc Committee

An Ad Hoc Committee of the Board is a temporary advisory committee composed of less than a quorum of Board members or any Standing Committee. The work of an Ad Hoc Committee has a limited or single purpose. An Ad Hoc committee is not intended to be

perpetual but rather dissolved once its specific task is completed. By contrast, a Standing Committee has ongoing subject matter jurisdiction over a variety of related topics.

b. Definition of a Staff-Led Committee

A PCE staff-led committee is an informal group focused on a particular PCE topic or function that includes less than a quorum of Board or other standing committee members. It is a non-Brown Act committee staffed by a member of PCE's executive team or PCE department head that meets periodically and at staff's direction. Staff shall utilize group feedback and/or vet a particular department specific topic. A staff-led subcommittee does not set Agency or Board policy or direction.

c. Brown Act

The procedural requirements of the Brown Act apply to all committees that have either: (a) continuing subject matter jurisdiction over a matter or group of related matters; or (b) a regular meeting schedule set by Board action. All Standing Committees are Brown Act bodies. Ad hoc committees are generally not Brown Act bodies, provided that: 1) they are temporary bodies, formed for the purpose of addressing a limited or single purpose, 2) include only members of Board, and 3) do not have a regular meeting schedule set by Board action. When the Board creates an Ad Hoc committee that is not a Brown Act body, the Board may, at its discretion, direct that the committee follow Brown Act procedures.

d. Creation and Appointment

The Board Chair or the full Board may create an Ad Hoc Committee and appoint less than a quorum of the Board or any Standing Committee to serve. The Chair will publicly announce any Ad Hoc Committee created, its membership, and stated purpose. In contrast, only the Board and not the Chair alone can create an ongoing Standing Committee. Staff-led subcommittees are organized and led by PCE executive and/or director-level staff.

e. Members

Ad Hoc Committees shall consist of less than a quorum of the Board, and shall not include any other persons, including members of other legislative bodies. Staff-led subcommittees shall consist of less than a quorum of the Board and may include others from the CAC or outside the Board as may be warranted.

f. Reporting

Ad Hoc Committees shall report their recommendations to the Board in the timeframe directed by the Board.

g. Termination of Ad Hoc Committee by Majority of the Board

A majority of the Board may vote to terminate any Ad Hoc Committee following placement of the issue on an agenda.

h. Conclusion

A public announcement shall be made any time the Ad Hoc Committee has concluded its work and/or upon dissolution.

3. Emeritus Advisory Group

Staff will maintain a list of interested former Directors or alternates of the PCEA Board of Directors, who have retired from public office, as the Emeritus Advisory Group. These group members will remain connected and engaged to PCEA business through their review of publicly posted Agenda Packets and newsletters. These group members could be called upon by Staff to provide expertise on particular issues/initiatives and to participate in subcommittee meetings on topics such as: outreach, legislative advocacy, technical assistance, teaching, review of staff work product, or any other means by which the Staff or the Community Advisory Committee can reasonably deploy their knowledge, enthusiasm and passion around clean energy advocacy and advancement of the mission of Peninsula Clean Energy Authority.

2.4. General Procedures for Board of Directors Meetings

The purpose of these guidelines is to facilitate the orderly and efficient conduct of PCE business. This purpose recognizes the value of establishing a community understanding of meeting procedures so that broad public participation is encouraged. This purpose also recognizes that Board members must have a common approach to the discussion and debate of PCE business so that meetings are both streamlined and thorough.

These are guidelines rather than rules. The Board intends that PCE staff and Board members will follow these guidelines; however, these guidelines should not be used in a way that leads to inefficiency, unfairness, or the promotion of form over substance.

In addition to Board-adopted guidelines, State law establishes a variety of mandatory meeting rules that the Board must follow in order to ensure open government and fair process, regardless of unusual situations and consequences. (See Cal. Govt Code section 54950.)

a. Chair and Vice-Chair

The Chair and Vice-Chair will be elected by the Board to serve one-year terms and be subject to term limits as defined by the Peninsula Clean Energy Joint Powers Authority Section 3.8, "Selection of Board Officer". ~~The Chair and Vice-Chair will each be subject to a consecutive term limit of three years. That means that a~~ A member may serve as Chair for ~~up to three consecutive~~ one-year terms. However, after a break in service of at least one-year, a member may again serve as Chair. The same rules apply to the position of Vice-Chair. A member may serve consecutive terms ~~by serve three years~~ as Vice-Chair and then ~~three years~~ subsequently serve as Chair. There is a general expectation that Vice-Chairs will serve as Chair following their term as Vice-Chair. However, ultimately, the decision of whom to elect is at the discretion of the Board.

With respect to the process and timing for nomination and election of the Chair and Vice-Chair, every January the Chair will appoint an ad hoc nominating committee made up of between three and five Board members, each of whom has indicated to the Chair an intention not to seek the positions of Chair or Vice-Chair. At the January meeting of the Board, the Chair will inform the Board of the composition of the nominating committee and invite interested members to notify the nominating committee of their desire to serve as either Chair or Vice-Chair. Prior to the February meeting of the Board, the nominating committee shall confer and prepare a recommendation regarding who should serve as Chair and Vice-Chair for that year. At the February Board meeting, that recommendation shall be submitted to the Board and the Board shall take action thereon.

b. Meeting Schedules, Agendas and Supporting Materials

The Board of Directors generally conducts two different kinds of meetings: regular meetings and special meetings. The PCE Joint Exercise of Powers Authority (the JPA Agreement) provides that the PCE Board of Directors holds at least six regular meetings 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 or ordinance of the Board.

The Board also schedules periodic special meetings, which are meetings on any day or time other than the regular meeting time. The Board may call a special meeting on a minimum of 24 hours' notice. The Board makes every effort to provide notice well in advance of 24 hours.

c. Posting of Agendas

Under the Brown Act, meeting agendas must be posted no later than 72 hours prior to regular meetings and 24 hours prior to special meetings. Agendas are posted at meeting locations and on the PCE Board web page.

d. Supporting Reports and Materials

It is Board policy to make every effort to provide supporting reports and materials at the time the agenda is posted. Materials that are not available at the time of agenda posting will be distributed as soon as feasible before the meeting. Materials that are distributed to a majority of the Board will be made available to the public at the same time, as required by law. Some materials, such as presentation materials or “supplemental memoranda” may be distributed to Board members and the public at the meeting.

e. Attendance Procedures

The PCE Board expects its members to attend Board meetings regularly and consistently. Board members should notify their Alternates and the Board Clerk of any planned absences. If a Member Jurisdiction has more than three (3) absences at Board meetings or three (3) absences at Standing Committee meetings, the Board Chair will direct staff to notify the subject Board member with the intention of resolving the participation issue, and with further absence will direct staff to send a letter to the city manager, mayor and city council with a request to designate a replacement.

f. Remote Attendance of Board Members at Board and Standing Committee Meetings

Board members are strongly encouraged to attend meetings in person. State law allows Board members to attend meetings remotely by following the procedures outlined in Government Code Section 54953(b) (“Standard Remote Attendance”) or the procedures outlined in Assembly Bill 2449 (2022) (“AB 2449 Remote Attendance”). For convenience, these procedures are summarized below and are current as of the date of this Policy revision. If state law is subsequently amended, the amended terms of State law will apply.

Board members are encouraged to consult in advance with the Board Clerk and, if needed, PCE’s General Counsel to ensure compliance with all required procedures.

i. Number of Remote Appearances

Standard remote attendance shall be permitted not more than five (5) times a year per legislative body (for example, five times a year for full Board meetings and five additional times a year for each Board committee).

AB 2449 Remote Attendance rules state that no more than two (2) meetings may be attended remotely during a calendar year under AB 2449 for “just cause,” as described below.

ii. General Procedures for Appearing Remotely

Board members must follow mandatory procedures set forth in State law. At any meeting where a Board member is attending remotely, the following requirements must be met:

1. At least a quorum of the Board must participate from a singular physical location within the jurisdiction.
2. The agenda must identify and include an opportunity for the public to attend and directly address the Board member through a call-in option, an internet-based service option, and in-person at the location of the meeting.
3. The Board may not take action if there is an unresolved disruption to the meeting broadcast or to the ability to take call-in or internet-based public comment.

If the above threshold requirements are met, the Board member attending remotely must ensure they follow the procedures associated with either Standard Remote Attendance or AB 2449 Remote Attendance.

iii. Standard Remote Attendance Procedures

A Board member attending remotely using these procedures must ensure that:

1. The meeting agenda identifies the remote attendance location and is posted at that location in an area that is accessible and visible 24 hours a day for at least 72 hours prior to a regular meeting and 24 hours prior to a special meeting.
2. The remote attendance location is open and fully accessible to the public, and fully accessible under the Americans with Disabilities Act, throughout the entire meeting. These requirements apply to private residences, hotel rooms, and similar facilities, all of which must remain fully open and accessible throughout the meeting, without requiring identification or registration.
3. The remote attendance technology used is open and fully accessible to all members of the public, including those with disabilities.
4. Members of the public who attend the meeting at the remote attendance location have the same opportunity to address the Board from the remote location that they would if they were present at the quorum location.
5. The remote attendance location must not require an admission fee or any payment for attendance.
6. If the meeting includes a closed session, the Board Member must ensure that there is a private location available for that portion of the meeting. A private location means a closed room such that no other person can hear any portion of the closed session.
7. A Board member attending remotely must participate through audio and visual technology.

If the Board Member intends to follow the procedures of Standard Remote Attendance but determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using Standard Remote Attendance procedures.

iv. Standard Remote Attendance Guidelines

1. Five (5) days written notice in advance of the publication of the agenda must be given by the Board member to the Board Clerk about their intent to participate remotely; the notice must include the address at which the remote attendance will occur, and the address the Board packet should be mailed to, if a hard copy is requested.
2. The Board member is responsible for posting the Board agenda in the remote location, or having the agenda posted by somebody at the location and confirming that posting has occurred. The Board Clerk will assist, if necessary, by emailing, faxing or mailing the agenda to whatever address or fax number the Board member requests; however, it is the Board member's responsibility to ensure that the agenda arrives and is posted. If the Board Member needs the assistance of the Board Clerk in delivery of the agenda, the fax number or address must be included in the five-day advance written notice above.
3. The Board Member must ensure that the location will be publicly accessible while the meeting is in progress.
4. The Board Member must state at the beginning of the Board meeting that the posting requirement was met at the location and that the location is publicly accessible and must describe the location.

v. AB 2449 Remote Attendance Procedures

1. In 2022 the Legislature adopted AB 2449, which amended the Brown Act to allow remote participation in certain narrow circumstances (listed below) without publishing the remote location on the meeting agenda and without providing public access from the remote location. AB 2449 will remain in effect until January 1, 2026.
2. Where the requirements of AB 2449 are met, a Board member is not required to follow the standard remote guidelines described above.
3. A Board member may use AB 2449 if the Board member has either "just cause" or "emergency circumstances" that require remote participation, as defined by AB 2449.

A. "Just cause" is defined as:

- a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote attendance,
- a contagious illness that prevents in-person attendance,
- a need related to a physical or mental disability which cannot be resolved by a request for reasonable accommodation, or
- travel while on the business of a state or local agency.

A Board member with “just cause” to attend remotely must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity, including at the start of the meeting, of their need to participate remotely and provide a general description of the circumstances.

B. “Emergency circumstances” is defined as a physical or family medical emergency that prevents a Board member from attending the Board meeting in person.

A Board member attending remotely due to “emergency circumstances” must notify the Board or Board committee and the Board Clerk at the earliest possible opportunity.

The Board or Board committee must request a general description of the circumstances relating to the Board member’s need to appear remotely. The description does not need to have more than 20 words, and the Board member does not have to disclose any personal medical information.

At the earliest opportunity available to it, the Board or Board committee must, by a majority vote of its members, take action on the request to approve or disapprove it. If the request does not allow sufficient time to place it on the agenda for the meeting for which the request is made, the legislative body must take action on the request at the beginning of the meeting by majority vote.

C. Disclosures. Board members attending remotely must publicly disclose at the meeting before any action is taken whether any other individuals 18 years of age or older are present in the room at the remote location with the member and the general nature of the member’s relationship with the individual.

D. Technology. Board members attending remotely shall participate using both audio and visual technology.

If the Board member intending to follow the procedures of AB 2449 Remote Attendance determines that any or all of these requirements cannot be met, he or she shall not participate in the meeting remotely using AB 2449 Remote Attendance procedures.

E. AB 2449 Remote Attendance Sample Scripts

At the start of the meeting, the Board member attending remotely may use the following language to identify under which provision they are attending remotely:

Just Cause:

“I have just cause to attend this meeting remotely under AB 2449. I have not attended a meeting remotely due to just cause more than once this calendar year. I have attended [NUMBER] meetings remotely this calendar year. I must attend this meeting remotely because...

1. “... I must provide caregiving to [RELATION].”
2. “... a contagious illness prevents me from attending in person.”
3. “... I have a need related to a disability which could not be accommodated at this meeting.”
4. “... I am travelling while on official business of [STATE OR LOCAL AGENCY].”

“In this room, I am accompanied by...

1. “...no one over the age of 18.”
2. “...one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)].”

Emergency Circumstances:

“Due to emergency circumstances, I request to attend this meeting remotely under AB 2449. I have attended [NUMBER] meetings remotely this calendar year. The [PHYSICAL OR FAMILY] medical emergency I am facing requires my remote attendance because [BRIEF DESCRIPTION].”

“In this room, I am accompanied by...

1. “...no one over the age of 18.”
- ~~1.~~2. “...one or more individuals over the age of 18. They are [RELATION (e.g., my spouse, coworker, medical provider)].”

5. How the Public Engages with the Board and Committees

Public Participation During Peninsula Clean Energy meetings

The Board and its Committees welcomes members of the public to participate in meetings through public comment opportunities. It is the policy of the Board to assure that members of the public have the opportunity to speak on any regular or special meeting agenda item before final action. These rules are intended to enhance public participation and Board and Committee debate so that the best possible decisions can be made for PCE and its member agencies. Open government meetings must allow everyone to be heard without fear of cheers or jeers. For these reasons, the Board and Committees take these rules seriously. Disruptive or unruly behavior in violation of the law can result in removal from the Peninsula Clean Energy meeting and/or arrest and prosecution.

a. Access to Meetings

In-Person and Remote Participation - Peninsula Clean Energy meetings are available in person in the locations provided on the agenda and through an online meeting platform. Members of the public are welcome to attend the meeting in person or to join the online meeting platform.

Translators - Speakers may bring a translator as needed and will be allotted additional time, as appropriate.

ADA Access - PCEA makes every reasonable effort to accommodate the needs of the disabled consistent with law. Any provision of these rules may be modified if needed to provide reasonable accommodation. Persons needing assistance should contact: the Board Clerk, at 650-414-1533 (voice) or nelly.wogberg@peninsulacleanenergy.com (email).

If found feasible by staff, members of the public may be given the opportunity to activate their personal video during their public comments.

b. Summary of Rules for Public Participation

Every regular agenda has two different kinds of opportunities for the public to speak. The first is during General Public Comment. The second is during the public comment or public hearing portion of each agenda item.

Please note that Peninsula Clean Energy meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Board. If comments do not relate to the subject matter jurisdiction of the Board, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Board.

General Public Comment

This part of the meeting is provided so that the public can speak to any subject that is in the PCE jurisdiction, when there is no item listed on the agenda for that topic. State law does not permit the meeting body to act on or discuss an item raised at that meeting during General Public Comment. Board members shall not enter into debate with

speakers but may ask brief clarifying questions and may ask PCE staff to follow up on any concerns raised.

Public comment or public hearing portion of each agenda Item

The Brown Act requires the opportunity for public comment on all listed agenda items, except ceremonial items, procedural items (Agenda Changes and Deletions) and brief announcements (Chair Report, CAC Report, CEO Report and Board Member Reports). Public comments or testimony must be related to the matter under consideration.

c. Time Limits

The presiding officer (usually the Chair or Vice Chair) may announce the time that each speaker may use. PCE generally allows 2 minutes per speaker, but a shorter time may be designated when there are many speakers, numerous items on the agenda, or items anticipated to be lengthy.

d. Gaining Permission to Speak

Any person who wants to make a spoken public comment on an item on the agenda can do so if they are attending either in person or virtually. Members of the public participating virtually should use the “raise hand” function in the online meeting platform, or if participating via phone, hit *9 to notify the Clerk that they wish to speak. The Clerk will provide the names of the speakers to the Chair or Vice Chair so that the speakers can be identified and organized in an orderly way when the Chair calls for public comment.

e. Public Decorum During Meetings

The presiding officer at PCE meetings (usually the Chair or Vice Chair) is authorized and required to “preserve strict order and decorum.” This is important in order to ensure a fair opportunity for everyone to participate in an open and civil setting.

- i. No person, other than a Board or Committee member and the person having the floor, shall be permitted to speak without the permission of the presiding officer.
- ii. All remarks should be addressed to the Board or Committee as a body and not to any individual member or staff person.
- iii. It is unlawful for any person to: (1) Disrupt the conduct of a meeting; (2) Make threats against any person or against public order and security while in the Board Room.

Any Board or Committee Member may appeal the presiding officer’s decision on a decorum violation to the full Board or Committee. A meeting disruption may lead to a person being removed from the meeting and/or misdemeanor charges pursuant to the California Pe. See Cal. Penal Code Sections 403 and 422.

f. Record of Speakers

- i. Persons wishing to address the Board or Committee within the meeting room, shall use the microphone provided for the public. All public speakers, whether in person or virtual participants shall speak in a recordable tone, either personally or with assistance, if necessary.
- ~~i.~~ii. Speakers are requested to state their name but cannot be compelled to do so as a condition of addressing the Board or Committee.



**PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence**

DATE: June 4, 2024

MEETING DATE: June 10, 2024

VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Shawn Marshall, Chief Executive Officer
Nelly Wogberg, Board Clerk

SUBJECT: Discussion and Recommend to the Board of Directors to Approve
Administrative Updates to the Peninsula Clean Energy Authority Joint Powers
Authority (JPA) Agreement (Action)

RECOMMENDATION

Discuss and Recommend to the Board of Directors approval of administrative updates to the Peninsula Clean Energy Authority Joint Powers Authority (JPA) Agreement.

BACKGROUND

Peninsula Clean Energy Authority (PCE) was formed in February 2016 by the County of San Mateo and all twenty cities within the County. The original Joint Powers Authority (JPA) Agreement was approved at this time. On March 28, 2019 the Board of Directors amended the JPA to include a section for Directors Emeritus and to appoint the Chief Financial Officer as Treasurer. On October 22, 2020 the Board of Directors again amended the JPA Agreement to add a new jurisdiction, the City of Los Banos.

DISCUSSION

Staff has identified and noted some inconsistencies and duplication between the Operating Rules and Regulations of the Board, namely PCE's Board Policies, and the Joint Powers Authority (JPA) Agreement. The following administrative updates are being proposed to remove duplication and to ensure that all documents governing the PCE Board are in alignment. The proposed changes are as follows:

1. Removal of Section 3.1.1, Directors Emeritus - based on the Board decision at the February 23, 2023 Board meeting to transition away from two Director Emeritus Ex-Officio seats to an Emeritus Advisory Group maintained by staff. The Emeritus Advisory Group is proposed to be included as part of the proposed edits to PCE's Policy 16.
2. An inclusion of delegation authority to Section 3.3.7, Powers and Functions of the Board, for filings with the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency.

3. To ensure consistencies between Operating Rules and Regulations (Policy 14, "Delegation of Non-Energy Contracts Commitment and Financial Authority Policy") and the JPA Agreement, Section 3.4 Chief Executive Officer, has been edited to remove the dollar value of the signing authority limit and house it in Policy 14. Staff found that including the signing authority limit in multiple places causes confusion and operational risk if there is misalignment.
4. To ensure consistencies between Operating Rules and Regulations (Policy 16, "Selection of the Chair and Vice Chair and appointment to the Executive Committee and other standing Board Committees") and the JPA Agreement, Section 3.9.1, Selection of Board Officers, has been updated to include term limits for the Chair and Vice Chair. Staff has suggested term limits of two (2) years to better coincide with election cycles, but suggests that the Committee direct Staff if another option is preferred. It may also make sense to retain the current Chair and Vice Chair terms to end in January 2027 following the election in 2026 to better align with election cycles.
5. An update from six (6) to twelve (12) months in Section 6.1.1, Right to Withdraw, to better align with current rules around Resource Adequacy.

Please see the attached redline as a cross reference and to see other minor administrative corrections as proposed. Once the proposed amendments are approved by the Board, hopefully at its June Board meeting, the JPA Agreement will be sent to all member agencies for a 30 day comment period. It is expected that the final red line amendments will come back to the Board for approval at its August 2024 Board meeting.

FISCAL IMPACT

None.

ATTACHMENTS:

[JPA - Proposed Third Amended - Clean.pdf](#)

[JPA - Proposed Third Amended - Redline.pdf](#)

**THIRD AMENDED JOINT EXERCISE OF POWERS AGREEMENT RELATING TO
AND CREATING THE**

PENINSULA CLEAN ENERGY AUTHORITY

This Joint Exercise of Powers Agreement, effective on the date determined by Section 2.1, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the Parties set forth in Exhibit B, and establishes the Peninsula Clean Energy Authority (“Authority”), is by and between the County of San Mateo (“County”) and those counties, cities and towns within the State of California who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto.

RECITALS

- A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.
- B. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local governments to develop programs to reduce greenhouse gas emissions.
- C. The purposes for entering into this Agreement include:
 - a. Reducing greenhouse gas emissions related to the use of power in San Mateo County and the State of California;
 - b. Providing electric power and other forms of energy to customers at a competitive cost;
 - c. Carrying out programs to reduce energy consumption;
 - d. Stimulating and sustaining the local economy by developing local jobs in renewable energy; and
 - e. Promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources.
- D. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar, wind, and biomass energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State’s transition to clean power resources to the extent feasible. The Agency will also add increasing levels of locally generated renewable

resources as these projects are developed and customer energy needs expand.

- E. The Parties desire to establish a separate public agency, known as the Peninsula Clean Energy Authority, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
- F. The Parties anticipate adopting an ordinance electing to implement through the Authority a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(c) and 366.2. The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1: DEFINITIONS AND EXHIBITS

- 1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.
- 1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

- Exhibit A: Definitions
- Exhibit B: List of the Parties
- Exhibit C: Annual Energy Use
- Exhibit D: Voting Shares
- Exhibit E: Signatures

ARTICLE 2: FORMATION OF PENINSULA CLEAN ENERGY AUTHORITY

- 2.1 Effective Date and Term. This Agreement shall become effective and Peninsula Clean Energy Authority shall exist as a separate public agency on February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later. The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from the Authority.
- 2.2 Formation. There is formed as of the Effective Date a public agency named the Peninsula Clean Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties

unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 7.4 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.3 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by the Authority.

2.4 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.7 through 3.7.5:

2.4.1 to make and enter into contracts;

2.4.2 to employ agents and employees, including but not limited to a Chief Executive Officer;

2.4.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;

2.4.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection without first meeting and conferring in good faith.

2.4.5 to lease any property;

2.4.6 to sue and be sued in its own name;

2.4.7 to 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;

2.4.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;

2.4.9 to issue revenue bonds and other forms of indebtedness;

2.4.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

2.4.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.4.12 to adopt Operating Rules and Regulations; and

2.4.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.4.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate the Authority to act as the community choice aggregator on its behalf.

2.5 Limitation on Powers. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by San Mateo County.

2.6 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 the Authority within the territory of the Authority 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 ("CEQA").

ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION

3.1 Board of Directors. The governing body of the Authority shall be a Board of Directors ("Board"). The Board shall consist of 2 (two) directors appointed by the San Mateo County Board of Supervisors and 1 (one) director appointed by each County, City or Town that becomes a signatory to the Agreement ("Directors"). Each Director shall serve at the pleasure of the governing board of the Party who appointed such Director and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 90 days of the date that such position becomes vacant. Directors must be members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement. Each Party may appoint an alternate(s) to serve in the absence of its Director(s). Alternates may be either (1) members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement, or (2) staff members of the County or any such municipality.

3.1.1 .

3.2 Quorum. A majority of the appointed Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

3.3 Powers and Functions of the Board. The Board shall exercise general governance and oversight over the business and activities of the Authority, consistent with this Agreement and applicable law. The Board shall provide general policy guidance to the CCA Program. Board approval shall be required for any of the following actions:

3.3.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.

3.3.2 The hiring or termination of the Chief Executive Officer and General Counsel.

3.3.3 The appointment or removal of officers described in Section 3.9, subject to Section 3.9.3.

3.3.4 The adoption of the Annual Budget.

3.3.5 The adoption of an ordinance.

3.3.6 The approval of agreements, except as provided by Section 3.4.

3.3.7 The initiation or resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant, or cross petitioner, or intervenor; provided, however, that the Chief Executive Officer or General Counsel or by delegation thereof, on behalf of the Authority, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board as long as such action is consistent with any adopted Board policies.

3.3.8 The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority.

3.3.9 Termination of the CCA Program.

3.4 Chief Executive Officer. The Board of Directors shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer may exercise all powers of the Authority, including the power to hire, discipline, and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement is equal to or less than the amount specified in the Operating Rules and Regulations (Policy 15, "Delegation of Non-Energy Contract Authority") except for the powers specifically set forth in Section 3.3 or those powers which by law must be exercised by the Board of Directors.

3.5 Commissions, Boards, and Committees. The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying

out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement which shall comply with the requirements of the Ralph M. Brown Act. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees if the Board deems appropriate to appoint such commissions, boards or committees, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

3.6 Director Compensation. Directors shall serve without compensation from the Authority. However, Directors may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by the Authority of expenses incurred by Directors.

3.7 Voting In general, as described below in Section 3.7.3, action by the Authority Board will be taken solely by a majority vote of the Directors present. However, as described below in Section 3.7.4, upon request of a Director, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the weighted vote by shares present. No action may be approved solely by a vote by shares. The voting shares of Directors and approval requirements for actions of the Board shall be as follows:

3.7.1. Voting Shares.

Each Director shall have a voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100, where:

(a) “Annual Energy Use” means, (i) with respect to the first year following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWh”), within the Party’s respective jurisdiction and (ii) with respect to the period after the anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party’s respective jurisdiction that are served by the Authority; and

(b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy Use will be designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. These adjustments shall be approved by the Board.

(c) The combined voting share of all Directors representing the County of San Mateo shall be based upon the annual electricity usage within the unincorporated area of San Mateo County.

For the purposes of Weighted Voting, if a Party has more than one director, then the voting shares allocated to the entity shall be equally divided amongst its Directors.

3.7.2. Exhibit Showing Voting Shares. The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Parties and changes in the Parties’ Annual Energy Use. Exhibit D and adjustments shall be approved by the Board.

3.7.3. Approval Requirements Relating to CCA Program. Except as provided in Sections 3.7.4 and 3.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.4. Option for Approval by Voting Shares. Notwithstanding Section 3.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both voting shares and by the affirmative vote of a majority of Directors present at the meeting. If a Director makes such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of voting shares present, as determined by Section 3.7.1 except as provided in Section 3.7.5.

3.7.5. Special Voting Requirements for Certain Matters.

(a) Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 6.2 and 7.4. Action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Party), or Section 7.4 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present; provided, however, that (i) notwithstanding the foregoing, any Director present at the meeting may demand that the vote be determined on the basis of both voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require the affirmative vote of both at least two-thirds of Directors present and the affirmative vote of Directors having at least two-thirds of the voting shares present, as determined by Section 3.7.1; (ii) but, at least two Parties must vote against a matter for the vote to fail; and (iii) for votes to involuntarily terminate a Party under Section 6.2, the Director(s) for the Party subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and the weighted vote of each Party shall be recalculated as if the Party subject to possible termination were not a Party.

(b) Seventy Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.

(i) A decision to exercise the power of eminent domain on behalf of the Authority to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least 75% of all Directors.

(ii) The imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Parties who are being asked to make such contribution or pledge.

(iii) Notwithstanding the foregoing, any Director present at the meeting may demand that a vote under subsections (i) or (ii) be determined on the basis of voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require both the affirmative vote of at least 75% of

Directors present and the affirmative vote of Directors having at least 75% of the voting shares present, as determined by Section 3.7.1, but at least two Parties must vote against a matter for the vote to fail. For purposes of this section, “imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program” does not include any obligations of a withdrawing or terminated party imposed under Section 6.3.

3.8 Meetings and Special Meetings of the Board. The Board shall hold at least six regular meetings 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 or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency Meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

3.9 Selection of Board Officers.

3.9.1 Chair and Vice Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall be specified in the Operating Rules and Regulations (Policy 16, “Policies and Procedures for Board of Directors, Committees, and Advisory Groups”). The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if:

- (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or
- (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

3.9.2 Secretary. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

3.9.3 Treasurer and Auditor. The Chief Financial Officer shall, among other duties, act as the Treasurer for the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5.

3.10 Administrative Services Provider. The Board may appoint one or more administrative

services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. An Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

4.1 Preliminary Implementation of the CCA Program.

4.1.1 Enabling Ordinance. To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

4.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 3.7.3.

4.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

4.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution. The Parties agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 6.

4.3 Addition of Parties. Other incorporated municipalities and counties may become Parties subject to all applicable terms of this Agreement, including but not limited to those in Article 6, upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 3.7, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other

pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county as required by the Board, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board.__

4.3.1 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 4.3. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

4.3.2 Termination by Additional Parties. In addition to any financial obligations under Article 6, and in the events that the Board does not require a membership payment to reflect the additional party's pro rata share of organizational planning and other pre-existing expenditures as allowed by Section 4.3(b) and the additional party withdraws its membership in the Authority within the first five years of becoming a party, the party shall be obligated to reimburse the Authority for all the costs related to the cost of launch, including but not limited to the costs of updating the Implementation Plan and mailings to party's accounts.

ARTICLE 5: FINANCIAL PROVISIONS

5.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 or the date selected by the Agency and ending June 30. The fiscal year may be changed by Board resolution.

5.2 Depository.

5.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

5.3 Budget and Recovery of Costs.

5.3.1 Budget. The initial 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 unexpected expenses. All subsequent budgets of the Authority shall be approved by the Board in accordance with the Operating Rules and Regulations.

5.3.2 Funding of Initial Costs. The County of San Mateo has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these Initial Costs paid by the County of San Mateo shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and the County of San Mateo shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such reimbursement, the County of San Mateo shall provide such documentation of costs paid as the Board may request. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of San Mateo shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

5.3.3 CCA Program Costs. The Parties desire that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources.

ARTICLE 6: WITHDRAWAL AND TERMINATION

6.1 Withdrawal.

6.1.1 Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of the Authority's fiscal year, by giving no less than 12 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.

6.1.2 Right to Withdraw After Amendment. Notwithstanding Section 6.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Board which the Party's Director(s) voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.

6.1.3 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, the Authority must provide to the Parties the report from the electrical utility consultant retained by the Authority that compares the total estimated electrical rates that

the Authority will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility. If the report provides that the Authority is unable to provide total electrical rates, as part of its baseline offering, to the customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in the Authority without any financial obligation, as long as the Party provides written notice of its intent to withdraw to the Authority Board no more than fifteen days after receiving the report.

6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.

6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of Board members as provided in Section 3.7.5. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.

6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or other financial obligations arising from the Party membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Party's load. With respect to such financial obligations, upon notice by a Party that it wishes to withdraw from the CCA Program, the Authority shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or

obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Board of Directors, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any financial obligations shall be returned to the Party. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.

6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. The Parties and the Authority 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, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

7.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties, and the public. The Authority shall defend, indemnify, and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, 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 the Authority under this Agreement.

7.4 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in Section 3.7.5. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date

of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments.

7.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 7.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

7.6 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

7.7 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

7.8 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

7.9 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

Exhibit A Definitions

“Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*)

“Administrative Services Agreement” means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

“Agreement” means this Joint Powers Agreement.

“Annual Energy Use” has the meaning given in Section 3.7.1.

“Authority” means the Peninsula Clean Energy Authority.

“Authority Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions, and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

“Board” means the Board of Directors of the Authority.

“CCA” or “Community Choice Aggregation” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

“CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.3, 2.4, and 4.1.

“Director” means a member of the Board of Directors representing a Party.

“Effective Date” means February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later, as further described in Section 2.1.

“Implementation Plan” means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

“Initial Costs” means all costs incurred by the County and/or Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of the Authority’s initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.

Exhibit A (cont.)
Definitions

“Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

“Parties” means, collectively, any municipality or county that executes this Agreement.

“Party” means a signatory to this Agreement.

“Total Annual Energy” has the meaning given in Section 3.7.1.

Exhibit B
List of Parties

Parties:

Atherton
Belmont
Brisbane
Burlingame
Colma
County of San Mateo
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Los Banos
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside

Exhibits C and D
Annual Energy Use and Voting Shares

ANNUAL ENERGY USE WITHIN PCE JURISDICTIONS AND VOTING SHARES		
Twelve Months Ended November [date]		
<u>Party</u>	<u>Total kWh</u>	<u>Voting Share</u>
SAN MATEO COUNTY		
Total		100

**~~SECOND-THIRD~~ AMENDED JOINT EXERCISE OF POWERS AGREEMENT RELATING TO
AND CREATING THE**

PENINSULA CLEAN ENERGY AUTHORITY

This Joint Exercise of Powers Agreement, effective on the date determined by Section 2.1, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Sections 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the Parties set forth in Exhibit B, and establishes the Peninsula Clean Energy Authority (“Authority”), is by and between the County of San Mateo (“County”) and those counties, cities and towns within the State of California who become signatories to this Agreement, and relates to the joint exercise of powers among the signatories hereto.

RECITALS

- A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.
- B. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local governments to develop programs to reduce greenhouse gas emissions.
- C. The purposes for entering into this Agreement include:
 - a. Reducing greenhouse gas emissions related to the use of power in San Mateo County and the State of California;
 - b. Providing electric power and other forms of energy to customers at a competitive cost;
 - c. Carrying out programs to reduce energy consumption;
 - d. Stimulating and sustaining the local economy by developing local jobs in renewable energy; and
 - e. Promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources.
- D. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar, wind, and biomass energy production. The purchase of renewable power and greenhouse gas-free energy sources will be the desired approach to decrease regional greenhouse gas emissions and accelerate the State’s transition to clean power resources to the extent feasible. The Agency will also add increasing levels of locally generated renewable

resources as these projects are developed and customer energy needs expand.

- E. The Parties desire to establish a separate public agency, known as the Peninsula Clean Energy Authority, under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
- F. The Parties anticipate adopting an ordinance electing to implement through the Authority a common Community Choice Aggregation (CCA) program, an electric service enterprise available to cities and counties pursuant to California Public Utilities Code Sections 331.1(c) and 366.2. The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

ARTICLE 1: DEFINITIONS AND EXHIBITS

- 1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.
- 1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

- Exhibit A: Definitions
- Exhibit B: List of the Parties
- Exhibit C: Annual Energy Use
- Exhibit D: Voting Shares
- Exhibit E: Signatures

ARTICLE 2: FORMATION OF PENINSULA CLEAN ENERGY AUTHORITY

- 2.1 Effective Date and Term. This Agreement shall become effective and Peninsula Clean Energy Authority shall exist as a separate public agency on February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later. The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 6.4, subject to the rights of the Parties to withdraw from the Authority.
- 2.2 Formation. There is formed as of the Effective Date a public agency named the Peninsula Clean Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties

unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 7.4 of this Agreement, this Section 2.2 may not be amended unless such amendment is approved by the governing board of each Party.

2.3 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate in the CCA Program, as further described in Section 4.1. The Parties intend that other agreements shall define the terms and conditions associated with the implementation of the CCA Program and any other energy programs approved by the Authority.

2.4 Powers. The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 3.7 through 3.7.5:

2.4.1 to make and enter into contracts;

2.4.2 to employ agents and employees, including but not limited to a Chief Executive Officer;

2.4.3 to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;

2.4.4 to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property; however, the Authority shall not exercise the power of eminent domain within the jurisdiction of a Party over its objection without first meeting and conferring in good faith.

2.4.5 to lease any property;

2.4.6 to sue and be sued in its own name;

2.4.7 to 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;

2.4.8 to form subsidiary or independent corporations or entities if necessary, to carry out energy supply and energy conservation programs at the lowest possible cost or to take advantage of legislative or regulatory changes;

2.4.9 to issue revenue bonds and other forms of indebtedness;

2.4.10 to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;

2.4.11 to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;

2.4.12 to adopt Operating Rules and Regulations; and

2.4.13 to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

2.4.14 to permit additional Parties to enter into this Agreement after the Effective Date and to permit another entity authorized to be a community choice aggregator to designate the Authority to act as the community choice aggregator on its behalf.

2.5 Limitation on Powers. As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by San Mateo County.

2.6 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 the Authority within the territory of the Authority 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 ("CEQA").

ARTICLE 3: GOVERNANCE AND INTERNAL ORGANIZATION

3.1 Board of Directors. The governing body of the Authority shall be a Board of Directors ("Board"). The Board shall consist of 2 (two) directors appointed by the San Mateo County Board of Supervisors and 1 (one) director appointed by each County, City or Town that becomes a signatory to the Agreement ("Directors"). Each Director shall serve at the pleasure of the governing board of the Party who appointed such Director and may be removed as Director by such governing board at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director within 90 days of the date that such position becomes vacant. Directors must be members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement. Each Party may appoint an alternate(s) to serve in the absence of its Director(s). Alternates may be either (1) members of the Board of Supervisors or members of the governing board of the municipality that is the signatory to this Agreement, or (2) staff members of the County or any such municipality.

3.1.1 Directors Emeritus.

~~The Board may select up to two board directors emeritus (“Directors Emeritus”). Directors Emeritus will be selected from former directors who served on the Board with distinction and excellence. The Board may fill any vacant emeritus position(s) by a simple majority vote of Directors. The Chair may delegate the initial review of applicants and/or nominations to a committee. Directors Emeritus will serve at the pleasure of the Board for two-year terms, subject to the discretion of the Board to shorten or end a term. There shall be no limit on the number of terms held. It is the Board’s intention that Directors Emeritus receive all written notices and information provided to the Board, be permitted to attend all Board meetings, be permitted to participate in committee meetings without need for an appointment, and be encouraged to attend other PCE events. Directors Emeritus will not be counted in determining if a quorum is present, will not be entitled to hold office, and will not be entitled to vote at any Board or committee meeting. Director Emeritus status does not entitle participation in closed sessions of the Board.~~

3.2 Quorum. A majority of the appointed Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

3.3 Powers and Functions of the Board. The Board shall exercise general governance and oversight over the business and activities of the Authority, consistent with this Agreement and applicable law. The Board shall provide general policy guidance to the CCA Program. Board approval shall be required for any of the following actions:

- 3.3.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.
- 3.3.2 The hiring or termination of the Chief Executive Officer and General Counsel.
- 3.3.3 The appointment or removal of officers described in Section 3.9, subject to Section 3.9.3.
- 3.3.4 The adoption of the Annual Budget.
- 3.3.5 The adoption of an ordinance.
- 3.3.6 The approval of agreements, except as provided by Section 3.4.
- 3.3.7 The initiation or resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant, or cross petitioner, or intervenor; provided, however, that the Chief Executive Officer or General Counsel or by delegation thereof, on behalf of the Authority, may intervene in, become a party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board as long as such action is consistent with any adopted Board policies.
- 3.3.8 The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority.

3.3.9 Termination of the CCA Program.

3.4 Chief Executive Officer. The Board of Directors shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer, may exercise all powers of the Authority, including the power to hire, discipline, and terminate employees as well as the power to approve any agreement if the total amount payable under the agreement is equal to or less than the amount is less than \$100 specified in the Operating Rules and Regulations (Policy 15, "Delegation of Non-Energy Contract Authority") ,000 in any fiscal year, except for the powers specifically set forth in Section 3.3 or those powers which by law must be exercised by the Board of Directors.

3.5 Commissions, Boards, and Committees. The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement which shall comply with the requirements of the Ralph M. Brown Act. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees if the Board deems appropriate to appoint such commissions, boards or committees, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

3.6 Director Compensation. Directors shall serve without compensation from the Authority. However, Directors may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by the Authority of expenses incurred by Directors.

3.7 Voting In general, as described below in Section 3.7.3, action by the Authority Board will be taken solely by a majority vote of the Directors present. However, as described below in Section 3.7.4, upon request of a Director, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the weighted vote by shares present. No action may be approved solely by a vote by shares. The voting shares of Directors and approval requirements for actions of the Board shall be as follows:

3.7.1. Voting Shares.

Each Director shall have a voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100, where:

(a) "Annual Energy Use" means, (i) with respect to the first year following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("kWh"), within the Party's respective jurisdiction and (ii) with respect to the period after the anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party's respective jurisdiction that are served by the Authority; and

(b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy Use will be designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than

March 1 of each year. These adjustments shall be approved by the Board.

(c) The combined voting share of all Directors representing the County of San Mateo shall be based upon the annual electricity usage within the unincorporated area of San Mateo County.

For the purposes of Weighted Voting, if a Party has more than one director, then the voting shares allocated to the entity shall be equally divided amongst its Directors.

3.7.2. Exhibit Showing Voting Shares. The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Parties and changes in the Parties' Annual Energy Use. Exhibit D and adjustments shall be approved by the Board.

3.7.3. Approval Requirements Relating to CCA Program. Except as provided in Sections 3.7.4 and 3.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.4. Option for Approval by Voting Shares. Notwithstanding Section 3.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both voting shares and by the affirmative vote of a majority of Directors present at the meeting. If a Director makes such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of voting shares present, as determined by Section 3.7.1 except as provided in Section 3.7.5.

3.7.5. Special Voting Requirements for Certain Matters.

(a) Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 6.2 and 7.4. Action of the Board on the matters set forth in Section 6.2 (involuntary termination of a Party), or Section 7.4 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of Directors present; provided, however, that (i) notwithstanding the foregoing, any Director present at the meeting may demand that the vote be determined on the basis of both voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require the affirmative vote of both at least two-thirds of Directors present and the affirmative vote of Directors having at least two-thirds of the voting shares present, as determined by Section 3.7.1; (ii) but, at least two Parties must vote against a matter for the vote to fail; and (iii) for votes to involuntarily terminate a Party under Section 6.2, the Director(s) for the Party subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and the weighted vote of each Party shall be recalculated as if the Party subject to possible termination were not a Party.

(b) Seventy Five Percent Special Voting Requirements for Eminent Domain and Contributions or Pledge of Assets.

(i) A decision to exercise the power of eminent domain on behalf of the Authority to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least 75% of all Directors.

(ii) The imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program shall require a vote of at least 75% of all Directors and the approval of the governing boards of the Parties who are being asked to make such contribution or pledge.

(iii) Notwithstanding the foregoing, any Director present at the meeting may demand that a vote under subsections (i) or (ii) be determined on the basis of voting shares and by the affirmative vote of Directors, and if a Director makes such a demand, then approval shall require both the affirmative vote of at least 75% of Directors present and the affirmative vote of Directors having at least 75% of the voting shares present, as determined by Section 3.7.1, but at least two Parties must vote against a matter for the vote to fail. For purposes of this section, “imposition on any Party of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program” does not include any obligations of a withdrawing or terminated party imposed under Section 6.3.

3.8 Meetings and Special Meetings of the Board. The Board shall hold at least six regular meetings 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 or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency Meetings of the Board may be called in accordance with the provisions of California Government Code Sections 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

3.9 Selection of Board Officers.

3.9.1 Chair and Vice Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair ~~shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair~~ shall be specified in the Operating Rules and Regulations (Policy 16, “Policies and Procedures for Board of Directors, Committees, and Advisory Groups”). The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if:

- (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or
- (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

3.9.2 Secretary. The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all

other official records of the Authority.

3.9.3 Treasurer and Auditor. The Chief Financial Officer shall, among other duties, act as the Treasurer for the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 5.

3.10 Administrative Services Provider. The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. An Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 4: IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

4.1 Preliminary Implementation of the CCA Program.

4.1.1 Enabling Ordinance. To be eligible to participate in the CCA Program, each Party must adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.

4.1.2 Implementation Plan. The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 3.7.3.

4.1.3 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

4.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution. The Parties agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board, subject to the Parties' right to withdraw from the Authority as described in Article 6.

4.3 Addition of Parties. Other incorporated municipalities and counties may become Parties subject to all applicable terms of this Agreement, including but not limited to those in Article 6, upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 3.7, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county as required by the Board, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. __

4.3.1 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 4.3. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

4.3.2 Termination by Additional Parties. In addition to any financial obligations under Article 6, and in the events that the Board does not require a membership payment to reflect the additional party's pro rata share of organizational planning and other pre-existing expenditures as allowed by Section 4.3(b) and the additional party withdraws its membership in the Authority within the first five years of becoming a party, the party shall be obligated to reimburse the Authority for all the costs related to the cost of launch, including but not limited to the costs of updating the Implementation Plan and mailings to party's accounts.

ARTICLE 5: FINANCIAL PROVISIONS

5.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 or the date selected by the Agency and ending June 30. The fiscal year may be changed by Board resolution.

5.2 Depository.

5.2.1 All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

5.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

5.2.3 All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

5.3 Budget and Recovery of Costs.

5.3.1 Budget. The initial 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 unexpected expenses. All subsequent budgets of the Authority shall be approved by the Board in accordance with the Operating Rules and Regulations.

5.3.2 Funding of Initial Costs. The County of San Mateo has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these Initial Costs paid by the County of San Mateo shall be included in the customer charges for electric services as provided by Section 5.3.3 to the extent permitted by law, and the County of San Mateo shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such reimbursement, the County of San Mateo shall provide such documentation of costs paid as the Board may request. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of San Mateo shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

5.3.3 CCA Program Costs. The Parties desire that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but not limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources.

ARTICLE 6: WITHDRAWAL AND TERMINATION

6.1 Withdrawal.

6.1.1 Right to Withdraw. A Party may withdraw its participation in the CCA Program, effective as of the beginning of the Authority's fiscal year, by giving no less than ~~6~~12 months

advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.

6.1.2 Right to Withdraw After Amendment. Notwithstanding Section 6.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Board which the Party's Director(s) voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Party shall require an affirmative vote of the Party's governing board and shall not be subject to the six month advance notice provided in Section 6.1.1. In the event of such withdrawal, the Party shall be subject to the provisions of Section 6.3.

6.1.3 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers, the Authority must provide to the Parties the report from the electrical utility consultant retained by the Authority that compares the total estimated electrical rates that the Authority will be charging to customers as well as the estimated greenhouse gas emissions rate and the amount of estimated renewable energy used with that of the incumbent utility. If the report provides that the Authority is unable to provide total electrical rates, as part of its baseline offering, to the customers that are equal to or lower than the incumbent utility or to provide power in a manner that has a lower greenhouse gas emissions rate or uses more renewable energy than the incumbent utility, a Party may immediately withdraw its membership in the Authority without any financial obligation, as long as the Party provides written notice of its intent to withdraw to the Authority Board no more than fifteen days after receiving the report.

6.1.4 Continuing Financial Obligation; Further Assurances. Except as provided by Section 6.1.3, a Party that withdraws its participation in the CCA Program may be subject to certain continuing financial obligations, as described in Section 6.3. Each withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from participation in the CCA Program.

6.2 Involuntary Termination of a Party. Participation of a Party in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Party's participation in the CCA Program upon a vote of Board members as provided in Section 3.7.5. Prior to any vote to terminate participation with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 6.3.

6.3 Continuing Financial Obligations; Refund. Except as provided by Section 6.1.3, upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims,

demands, damages, or other financial obligations arising from the Party membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any financial obligations arising after the date of the Party's withdrawal or involuntary termination. Claims, demands, damages, or other financial obligations for which a withdrawing or terminated Party may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Party's load. With respect to such financial obligations, upon notice by a Party that it wishes to withdraw from the CCA Program, the Authority shall notify the Party of the minimum waiting period under which the Party would have no costs for withdrawal if the Party agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Party elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Party shall also be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Board of Directors, to cover the Party's financial obligations for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any financial obligations shall be returned to the Party. The liability of any Party under this section 6.3 is subject and subordinate to the provisions of Section 2.2, and nothing in this section 6.3 shall reduce, impair, or eliminate any immunity from liability provided by Section 2.2.

6.4 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its participation in the CCA Program, as described in Section 6.1.

6.5 Disposition of Property upon Termination of Authority. Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 7: MISCELLANEOUS PROVISIONS

7.1 Dispute Resolution. The Parties and the Authority 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, after reasonable efforts, fail, the dispute shall be mediated in accordance with policies and procedures established by the Board.

7.2 Liability of Directors, Officers, and Employees. The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors,

officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Sections 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

7.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties, and the public. The Authority shall defend, indemnify, and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, 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 the Authority under this Agreement.

7.4 Amendment of this Agreement. This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in Section 3.7.5. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments.

7.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 7.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 7.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

7.6 Severability. If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

7.7 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

7.8 Execution by Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

7.9 Parties to be Served Notice. Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States

mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

Exhibit A Definitions

“Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*)

“Administrative Services Agreement” means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

“Agreement” means this Joint Powers Agreement.

“Annual Energy Use” has the meaning given in Section 3.7.1.

“Authority” means the Peninsula Clean Energy Authority.

“Authority Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions, and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

“Board” means the Board of Directors of the Authority.

“CCA” or “Community Choice Aggregation” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

“CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.3, 2.4, and 4.1.

“Director” means a member of the Board of Directors representing a Party.

“Effective Date” means February 29, 2016 or when the County of San Mateo and at least two municipalities execute this Agreement, whichever occurs later, as further described in Section 2.1.

“Implementation Plan” means the plan generally described in Section 4.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

“Initial Costs” means all costs incurred by the County and/or Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, and any required accounting, administrative, technical, or legal services in support of the Authority’s initial activities or in support of the negotiation, preparation, and approval of one or more Administrative Services Agreements.

Exhibit A (cont.)
Definitions

“Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

“Parties” means, collectively, any municipality or county that executes this Agreement.

“Party” means a signatory to this Agreement.

“Total Annual Energy” has the meaning given in Section 3.7.1.

Exhibit B
List of Parties

Parties:

Atherton
Belmont
Brisbane
Burlingame
Colma
County of San Mateo
Daly City
East Palo Alto
Foster City
Half Moon Bay
Hillsborough
Los Banos
Menlo Park
Millbrae
Pacifica
Portola Valley
Redwood City
San Bruno
San Carlos
San Mateo
South San Francisco
Woodside

Exhibits C and D
Annual Energy Use and Voting Shares

ANNUAL ENERGY USE WITHIN PCE JURISDICTIONS AND VOTING SHARES		
Twelve Months Ended November [date]		
<u>Party</u>	<u>Total kWh</u>	<u>Voting Share</u>
SAN MATEO COUNTY		
Total		100