

AGENDA
SONOMA CLEAN POWER AUTHORITY
BOARD OF DIRECTORS
THURSDAY, JULY 25, 2013

Directors David Rabbitt, Shirlee Zane, Mike McGuire, Efren Carrillo, Bruce Okrepkie

1:30 P.M.

490 MENDOCINO AVENUE, SUITE 206
SANTA ROSA, CALIFORNIA

I. CALL TO ORDER

II. CLOSED SESSION CALENDAR

1. The Board of Directors of the Sonoma Clean Power Authority will consider the following in closed session: Public Employee Performance Evaluation: Sonoma Clean Power Authority Interim Chief Executive Officer (Govt. Code Section 54957); Labor Negotiations – Interim Chief Executive Officer Position (Govt. Code Section 54957.6)

III. REPORT ON CLOSED SESSION

IV. SONOMA CLEAN POWER INTERIM CHIEF EXECUTIVE OFFICER REPORT

V. REGULAR CALENDAR

2. Approve and authorize the Chair to execute a Professional Services Agreement with Geof Syphers.
3. Approve the Second Amended and Restated Joint Powers Agreement Relating to and Creating the Sonoma Clean Power Authority.
4. Approve the Cities of Cotati, Sebastopol, and Sonoma as participants in the Sonoma Clean Power community choice aggregation program, and approve the City of Santa Rosa as a participant in the SCP program, contingent upon the final adoption by Santa Rosa of the required ordinance by July 31, 2013.
5. Approve the June 25, 2013 and July 2, 2013 meeting minutes of the Sonoma Clean Power Authority.
6. Consider setting August 1, 2013 at 3:30 p.m. in the PRMD Hearing Room, 2550 Ventura Avenue, Santa Rosa, California as the time and place for the next Sonoma Clean Power Authority Board Meeting.

VI. BOARD MEMBER ANNOUNCEMENTS

VII. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA

(Comments are restricted to matters within the Board jurisdiction. The Board will hear public comments at this time for up to thirty minutes. Please be brief and limit your comments to three minutes. Any additional public comments will be heard at the conclusion of the meeting.)

VIII. ADJOURN

DISABLED ACCOMMODATION: If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact the Clerk of the Board at (707) 565-2241, as soon as possible to ensure arrangements for accommodation.



Staff Report

To: Sonoma Clean Power Authority Board of Directors

From: Steven S. Shupe

Item: Contract for Interim Chief Executive Officer

Date: July 25, 2013

Agenda Title: Contract for Interim Chief Executive Officer

Requested Action: Approve and authorize the Chair to execute the Professional Services Agreement between the Sonoma Clean Power Authority and Geof Syphers

Background:

On July 2, 2013, the Board appointed Geof Syphers as Interim Chief Executive Officer for the Sonoma Clean Power Authority, and authorized staff to negotiate a contract with Mr. Syphers for a six-month period.

The draft Professional Services Agreement, which is based upon the County of Sonoma's standard agreement for professional services, is on file with the Clerk. Compensation will be determined by the Board at the July 25 meeting. The agreement also contains a limitation on the indemnity obligation of the Interim CEO for any non-personal injury or property damage claims.

The amount budgeted for the salary of the CEO in the pro forma preliminary budget in the Draft Implementation Plan was \$250,000 plus benefits, and this amount is included in the \$228,000 per month figure contained in the Draft Implementation Plan for all staff and consultants during the first year of SCP operations. The amounts payable under the proposed agreement thus have been accounted for in the preliminary budget (and are in fact will be less than estimated). A table showing the preliminary budget is attached. Funding for the operations of SCP during the period before SCP begins receiving revenues from power sales will be provided by the \$2.5 million line of credit with First Community Bank that was approved by the Board on July 25.

Requested Action: Approve and authorize the Chair to execute the Professional Services Agreement between the Sonoma Clean Power Authority and Geof Syphers

Vote:

Director	Aye	No	Absent/Abstain
Rabbitt			
Gorin			
Zane			
McGuire			
Okrepkie			

Attachment: Preliminary 1-Year Operating Budget

	Jul-Dec 2013	Jan-Jun 2014	Total Year 1
Revenues and Other Sources			
Revenues – Electricity Sales	-	11,620,000	11,620,000
Expenditures and Other Uses			
Cost of Energy	-	8,380,000	8,380,000
Professional Services			
Staffing	402,000	630,000	1,032,000
Consultants	510,000	738,000	1,248,000
Data Manager	-	160,000	160,000
PG&E Service Fees	-	50,000	50,000
Miscellaneous A&G	100,000	150,000	250,000
Total Expenditures	1,012,000	10,108,000	11,120,000
Debt Service			
Principal	-	-	-
Interest	41,000	151,000	192,000
Total Debt Service	41,000	151,000	192,000
Other Uses			
Uncollectible Accounts	-	35,000	35,000
Pre-startup seed loan repayment (SCWA)	-	-	-
CCA Bond and PG&E Deposit	115,000	-	115,000
Total Other Uses	115,000	35,000	150,000
Total Expenditures, Debt Svc., Other Uses	1,168,000	10,294,000	11,462,000
Net increase / (decrease) in fund balance	(1,168,000)	1,326,000	158,000

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement (“Agreement”), dated as of July 25, 2013 (“Effective Date”) is by and between the Sonoma Clean Power Authority, a California joint powers authority (“SCPA”), and Geof Syphers, an individual (hereinafter “Consultant”).

R E C I T A L S

WHEREAS, Consultant represents that he is a qualified and experienced executive manager, experienced in all areas necessary to the performance of the functions of Interim Chief Executive Office of the SCPA as described in Exhibit A hereto; and

WHEREAS, in the judgment of the Board of Directors, it is necessary and desirable to employ the services of Consultant to act as Interim Chief Executive Officer for SCPA;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. Scope of Services.

1.1 Consultant's Specified Services. Consultant shall perform the services described in Exhibit “A,” attached hereto and incorporated herein by this reference (hereinafter “Scope of Work”).

1.2 Cooperation With SCPA. Consultant shall cooperate with the SCPA Board of Directors and the SCPA staff in the performance of all work hereunder.

1.3 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant's profession. SCPA has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by SCPA shall not operate as a waiver or release. If SCPA determines that any of Consultant's work is not in accordance with such level of competency and standard of care, SCPA, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SCPA to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

2. Payment.

For all services and incidental costs required hereunder, Consultant shall be paid in accordance with the following terms:

Consultant shall be paid a total of \$_____ for the six month period beginning July 2, 2013 and ending on January 2, 2014, in six equal monthly payments of \$_____. Consultant shall submit its bills in arrears on a monthly basis in a form approved by SCPA. The bills shall show or include the task(s) performed, the time in quarter hours devoted to the task(s).

Unless otherwise noted in this agreement, payments shall be made within the normal course of business after presentation of an invoice in a form approved by SCPA for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the SCPA.

3. Term of Agreement. The term of this Agreement shall be from July 2, 2013 to January 2, 2014 unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, SCPA shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Consultant.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SCPA may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to SCPA all materials and work product subject to Section 9.11 (Ownership and Disclosure of Work Product) and shall submit to SCPA an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by SCPA, Consultant shall be entitled to receive payment for all services satisfactorily rendered and expenses incurred hereunder, provided, however, that if SCPA terminates the Agreement for cause pursuant to Section 4.2, SCPA shall deduct from such amount the amount of damage, if any, sustained by SCPA by virtue of the breach of the Agreement by Consultant.

4.5 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SCPA.

5. Indemnification. (a) Except as provided in subsection 5(b) below, Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SCPA, and to indemnify, hold harmless, and release SCPA, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, that arise out of, pertain to, or relate to Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SCPA based upon a claim relating to such Consultant's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Consultant's obligations under this Section apply whether or not there is concurrent negligence on SCPA's part, but to the extent required by law, excluding liability due to SCPA's conduct. SCPA shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

(b) Notwithstanding anything in subsection 5(a) to the contrary, Consultant's indemnity obligation for any actions, claims, damages, liabilities, disabilities, or expenses other than those involving personal injury or property damage shall be limited to the amount payable by SCPA to Consultant under this Agreement.

6. Insurance. With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein by this reference.

7. Extra or Changed Work; Amendments. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by Consultant and by the Chair of the Board of Directors of SCPA. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SCPA.

8. Representations of Consultant.

8.1 Standard of Care. SCPA has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by SCPA shall not operate as a waiver or release.

8.2 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SCPA and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SCPA provides its employees. In the event SCPA exercises its right to terminate this Agreement pursuant to Article 4, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

8.3 No Suspension or Debarment. Consultant warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Consultant also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Consultant becomes debarred, consultant has the obligation to inform SCPA.

8.4 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Consultant agrees to indemnify and hold SCPA harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SCPA is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SCPA with proof of payment of taxes on these earnings.

8.5 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SCPA for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder.

8.6 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SCPA, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SCPA disclosing Consultant's or such other person's financial interests.

8.7 Statutory Compliance. Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

8.8 Nondiscrimination. Without limiting any other provision hereunder, Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

8.9 Assignment of Rights. Consultant assigns to SCPA all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of any plans, specifications, or writings, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SCPA in this Agreement, and to refrain from taking any action which would impair those rights.

8.10 Ownership and Disclosure of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, and other agents in connection with this Agreement shall be the property of SCPA. SCPA shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SCPA all such documents, which have not already been provided to SCPA in such form or format, as SCPA deems appropriate. Such documents shall be and will remain the property of SCPA without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SCPA.

8.11 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Consultant.

9. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits SCPA’s right to terminate this Agreement pursuant to Article 4.

10. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

11. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: SCPA:	Sonoma Clean Power Authority 404 Aviation Boulevard Santa Rosa, CA 95403 Attn: Cordel Stillman
-----------	---

TO: CONSULTANT:	Geof Syphers [address]
-----------------	---------------------------

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

12. Miscellaneous Provisions.

12.1 No Waiver of Breach. The waiver by SCPA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

12.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SCPA

acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SCPA acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

12.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

12.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

12.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

12.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

12.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

12.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

12.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT:

Geof Syphers

Date: _____

SCPA:

By: _____
Chair, Board of Directors

Date: _____

APPROVED AS TO FORM FOR SCPA:

By: _____
Steven S. Shupe

Date: _____

Exhibit A

Scope of Services

The Sonoma Clean Power Authority (SCPA) executive consultant will coordinate all aspects of launching the Community Choice Aggregation (CCA) and building it into an innovative enterprise that benefits Sonoma County residents and businesses by providing reliable electric service at stable rates, creating jobs and stimulating local economic activity, lowering environmental impacts, and expanding renewable energy and energy efficiency programs. He will direct all activities of the SCPA, including operations, resource procurement and planning, infrastructure development, finance, regulatory affairs, external communications and strategic planning, and will report to the SCPA's Board of Directors.

SCPA will be on the forefront of a rapidly changing energy industry. A key focus of SCPA will be to implement programs that enhance the county's economic and environmental health, including local renewable energy facilities, energy efficiency building retrofits and adoption of cost-effective new technologies. The consultant shall track industry developments, anticipate and proactively address challenges, and seize emerging opportunities. He or she must develop a flexible enterprise that will evolve with the industry and, where appropriate, help shape the industry. To this end, the consultant will be required to build a multidisciplinary team of staff and contractors with expertise in the engineering and operational aspects of power systems, the economics of retail and wholesale electricity markets, renewable

power development, emerging technological advances in the industry, and state and federal regulatory frameworks and procedures.

The consultant must foster and maintain strong relationships with the SCPA Board of Directors, City and State governments, other municipalities and county governments, customers, employees, the California Public Utilities Commission (CPUC), and other key stakeholders, and shall have demonstrated skill in negotiation and consensus building. In addition, the consultant must effectively manage recruitment, retention, training, and development of staff, as well as contractual arrangements with consultants and contractors.

The Consultant must:

1. quickly build trust with the Board, the public, investors and other stakeholders;
2. articulate the vision of SCPA as a vital enterprise for achieving economic and environmental health and sustainability;
3. understand energy economics and current issues in renewable energy, climate change, distributed and behind-the-meter technologies, and state and federal energy policy;
4. understand IOU, CEC, and CPUC-authorized energy efficiency and renewable energy programs;
5. hire expert staff and negotiate contracts with contractors to form a core team, and manage all aspects of this team;

6. work closely with private and public partners to develop local renewable energy systems, energy efficiency programs and related work;
7. provide concise and informative reports to the Board and SCPA committees, funders, and the public, assuring that all reports are accurate, comprehensive, timely, well-documented and credible;
8. plan, schedule, budget and allocate program resources effectively;
9. administer program budgets to meet contractual and statutory requirements, and control and monitor program-related expenditures;
10. handle multiple projects simultaneously within stringent time constraints;
11. lead long-range strategic and fiscal planning for program development;
12. lead a program development and design process, including needs assessments, project design, proposal development, marketing material preparation and evaluation components;
13. write grant proposals and negotiate contracts;
14. monitor, evaluate, and assure compliance with program goals, policies and procedures;
15. exercise discretion and independent judgment;
16. use excellent communication, management, and personal skills, and maintain a good working

relationship with staff, contractors, stakeholders and clients;

17. understand and work within the Brown Act and all other laws applicable to public agencies.

In addition to these general tasks, the Consultant shall take actions necessary to implement service under the Sonoma Clean Power community choice aggregation program in early 2014, as generally set forth in the "Summary Operations Plan" dated July 2, 2013, attached hereto as Exhibit B.

Exhibit B

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance

- a.** Required if Consultant has employees.
- b.** Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c.** Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d.** *Required Evidence of Insurance:* Certificate of Insurance.

If Consultant currently has no employees, Consultant agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance

- a.** Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b.** Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Umbrella Liability Insurance. If Consultant maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Consultant.
- c.** Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Consultant is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Consultant has a claim against the insurance or is named as a party in any action involving the County.
- d.** Sonoma Clean Power Authority shall be an additional insured for liability arising out of operations by or on behalf of the Consultant in the performance of this agreement.
- e.** The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f.** The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- g.** The policy shall cover inter-insured suits between County and Consultant and include a "separation of insureds" or "severability" clause which treats each insured separately.
- h.** *Required Evidence of Insurance:*
 - i.** Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii.** Certificate of Insurance.

3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident.
- b. Insurance shall apply to all owned autos.
- c. Insurance shall apply to hired and non-owned autos.
- d. *Required Evidence of Insurance:*
 - i. Copy of Auto Policy Declarations Page; or
 - ii. Certificate of Insurance.

4. Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

5. Documentation

- a. The Certificate of Insurance must include the following reference: Sonoma Clean Power Authority.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1, 2 or 3 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma Clean Power Authority, c/o Sonoma County Water Agency, 404 Aviation Boulevard, Santa Rosa, CA 95403, attn: Cordel Stillman.
- d. Required Evidence of Coverage shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Consultant shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

6. Policy Obligations

Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

7. Material Breach

If Consultant fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Consultant, County may deduct from sums due to Consultant any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.



Staff Report

To: Sonoma Clean Power Authority Board of Directors

From: Geof Syphers and Steven S. Shupe

Item: Proposed Amendments to Joint Powers Agreement

Date: July 25, 2013

Requested Action: Approve Second Amended and Restated Joint Powers Agreement Relating to and Creating the Sonoma Clean Power Authority

Background:

As a condition to joining the Sonoma Clean Power program, the City of Santa Rosa has requested certain amendments to the Joint Powers Agreement and Cotati had previously circulated changes, both of which are described below and shown in detail in the attached redline.

Cotati's amendments would allow any director to call for an optional "weighted vote" on any matter before the Board, including matters requiring a super-majority vote. As currently drafted, an optional "weighted vote" may be called by any director on any item requiring a simple majority vote. If a "weighted vote" is called for, approval of the item requires the affirmative vote of both a majority of directors present at the meeting *and* a majority vote of the "weighted vote" (which is based upon load served in each director's jurisdiction). Cotati's amendment would allow for an option "weighted vote" to be called for in all situations, including those requiring a super-majority. Thus, for example, approval of amendments to the Joint Powers Agreement would require the vote of two-thirds of directors *and* the vote of directors holding two-thirds of the "weighted vote."

Santa Rosa requests a number of amendments. The most significant would give Santa Rosa the same number of directors on the Board as the County and the Sonoma County Water Agency. Other proposed amendments would:

- Require a vote of 75% of the directors for any eminent domain action, other than an action to acquire an easement, right-of-way, or temporary construction easement
- Require a vote of 75% of the directors to impose any requirement on a Party or Participant to make contributions or pledge assets as a condition of continuing participation in the SCP program; a vote of the governing board of the Party or Participant whose contribution is being sought would also be required
- Require a two-thirds vote for removal of a member of the Ratepayer Advisory Committee
- Specify that the Ratepayer Advisory Committee, the Business Operations Committee, and other specified committees are subject to the Brown Act
- Specify notification requirements for Parties or Participants who wish to withdraw from the SCP program, and require the Authority to specify a minimum waiting period after which the Party or Participant could withdraw without incurring liability to the Authority
- Require the Ratepayer Advisory Committee to make a recommendation on proposed rates to the Board of Directors
- Allow the Board of Directors to increase the expenditure limits of the Ratepayer Advisory Committee above \$50,000 per year if the Board determines it reasonable and necessary to do so
- Require the Board to approve contracts with a Party or Participant if the total amount of contracts with that Party or Participant exceeds \$50,000 in any fiscal year

Staff recommends Board approval of these amendments. The Cotati amendments provide consistency in voting method among different types of votes. The Santa Rosa amendments will increase public confidence in the operation and governance of the Authority, while having minimal operational or fiscal impact.

The most significant amendment is Santa Rosa's proposal to give Santa Rosa an equal number of members on the Board of Directors. Smaller cities have expressed a concern about not having a sufficient voice on the Authority Board, and increasing the representation of the largest city on the Board may increase that concern. If Santa Rosa's amendment is approved, and no other city elects to withdraw, Windsor, Cotati, Sebastopol, and Sonoma would have one director each, while the County and Santa Rosa would have two each. (Under the JPA, if one additional city joins SCP, then the County and Santa Rosa each lose one director.)

Santa Rosa argues that it should have the same number of directors because its load is about the same as the County's. However, this ignores the fact that the County and Water Agency provided significant financial support to the SCP program that Santa Rosa did not. This includes the over \$1 million spent by the Water Agency to investigate the feasibility of and incubate the program, and the County's guaranty of the \$2.5 million line of credit for the Authority from First Community Bank. The County and Water Agency have an interest in protecting these investments.

However, the inclusion of residents and businesses within Santa Rosa is financially beneficial for the program. By allowing SCP to spread its fixed costs out over a larger rate base, the inclusion of Santa Rosa will allow SCP to reach positive cash flow much more quickly. Having a larger number of customers served by power with a greener, lower-carbon content, the inclusion of Santa Rosa increases the environmental benefits of the program. For these reasons, staff recommends adoption of Santa Rosa’s proposal to give it an equal number of directors as the County.

Requested Action: Approve Second Amended and Restated Joint Powers Agreement Relating to and Creating the Sonoma Clean Power Authority

Vote:

Director	Aye	No	Absent/Abstain
Rabbitt			
Gorin			
Zane			
McGuire			
Okrepkie			

FirstSecond Amended and Restated Joint Powers Agreement

**Relating to and Creating the
Sonoma Clean Power Authority**

By and Among

The County of Sonoma and
The Sonoma County Water Agency

This FirstSecond Amended and Restated Joint Powers Agreement (“Agreement”), effective as of ~~June~~July 25, 2013, 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 (“Parties”), and ~~amends~~supersedes the original Joint Powers Agreement dated December 4, 2012 and the First Amended and Restated Joint Powers Agreement dated June 25, 2013.

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 the entering into this Agreement include
 - a. Reducing greenhouse gas emissions related to the use of power in Sonoma County and neighboring regions;
 - 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 use of renewable energy credits is intended only as a transitional method to decrease regional greenhouse gas emissions; local renewable projects are the preferred method.

- E. The Parties desire to establish a separate public agency, known as the Sonoma Clean Power Authority (“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 program, an electric service enterprise available to cities, counties, and the Sonoma County Water Agency pursuant to California Public Utilities Code Sections 331.1(c) and 366.2 (“CCA Program”). 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 and Participants
- Exhibit C: Annual Energy Use
- Exhibit D: Voting Shares

ARTICLE 2: FORMATION OF SONOMA CLEAN POWER AUTHORITY

- 2.1 Effective Date and Term. This Agreement shall become effective and Sonoma Clean Power Authority shall exist as a separate public agency on the date this Agreement is executed by the Parties. 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 7.4, 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 Sonoma Clean Power 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 8.4 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 and Participants are authorized to participate in the CCA Program, as further described in Section 5.1. 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 4.7 through 4.7.6:

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;

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 rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“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.

2.5 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 the Sonoma County Water Agency.

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: AUTHORITY PARTICIPATION

3.1 Participation in CCA Program. The Parties may participate in the CCA Program upon the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12). Other incorporated municipalities and counties (“Participants”) may participate in the CCA Program 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 participant in the CCA Program, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.7.3 (or, if demanded by any Director, 4.7.4), of a resolution authorizing the participation of the additional incorporated municipality or county, specifying the participation 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 participation, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of any necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board.

3.2 Continuing Participation. The Parties acknowledge that participation in the CCA Program may change by the addition or withdrawal or termination of Participants. The Parties agree to participate with such other Participants as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Participant shall not affect this Agreement or the remaining Parties’ or Participants’ continuing obligations under this Agreement.

3.3 Participants Not Liable for Authority Debts. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Participants unless the

governing board of a Participant agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Participant 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 and Participants agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 3.3 may not be amended unless such amendment is approved by the governing board of each Participant.

ARTICLE 4: GOVERNANCE AND INTERNAL ORGANIZATION

4.1 Board of Directors. The governing body of the Authority shall be a Board of Directors (“Board”). The Board shall initially consist of five directors appointed by the Sonoma County Board of Supervisors, and shall upon the addition of additional Participants be comprised as set forth in Section 4.7. Each Director shall serve at the pleasure of the governing board of the Party or Participant 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 may be (but need not be) members of the Board of Supervisors or members of the governing board of any municipality or county electing to participate in the CCA Program.

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

4.3 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. The Board shall be required to approve any of the following actions:

- a. The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.
- b. The hiring of a Chief Executive Officer and General Counsel.
- c. The appointment or removal of an officer.
- d. The adoption of the Annual Budget.
- e. The adoption of an ordinance.
- f. The initiation of litigation where the Authority will be the plaintiff, petitioner, cross complainant or cross petitioner, or intervenor; provided, however, that the Chief Executive Officer or General Counsel, 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.
- g. 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.
- h. Termination of the CCA Program.

4.4 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, except the powers specifically set forth in Section 4.3 or those powers which by law must be exercised by the Board of Directors. The Board of Directors shall approve any agreement between the Authority and any Party or Participant if the total amount payable under the agreement and other agreements with the Party or Participant is more than \$50,000 in any fiscal year.

4.5 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, including the Ratepayer Advisory Committee and the Business Operations Committee, and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

4.5.1 Ratepayer Advisory Committee. The Board shall establish a Ratepayer Advisory Committee consisting of seven members, none of whom may be members of the Board. Three members of the Ratepayer Advisory Committee shall be commercial or industrial customers and four members shall be residential customers (one of whom shall be a tenant). Committee members shall represent the interests of ~~their respective customer class~~ the ratepayers. The Board shall publicize the opportunity to serve on the Ratepayer Advisory Committee, and shall appoint members of the Ratepayer Advisory Committee from those individuals expressing interest in serving. Members of the Ratepayer Advisory Committee shall serve staggered four-year terms (the first term of three of the members [one commercial/business, two residential] shall be two years, and four years thereafter), which may be renewed. A member of the Ratepayer Advisory Committee may only be removed by the Board of Directors by ~~majority~~ a two-thirds vote as provided in Section 4.7.5. Each member of the Ratepayer Advisory Committee shall have one vote; a majority of members shall constitute a quorum; and a majority of a quorum is sufficient for committee action.

4.5.2 Duties and Powers of Ratepayer Advisory Committee. The Ratepayer Advisory Committee shall have the following duties and powers:

4.5.2.1 Review of Budget and Rates. The proposed annual budget of the CCA Program and any rates or charges proposed to be imposed by the Authority for CCA Program power or services shall be submitted to the Ratepayer Advisory Committee for review and comment. Following review by the Ratepayer Advisory Committee of any such matter, the committee ~~may~~ shall recommend to the Board that the matter be approved, approved as amended, or disapproved by the Board, ~~or the committee may decline or fail to make a recommendation.~~ The recommendation of the Ratepayer Advisory Committee, ~~or its refusal or failure to make a recommendation,~~ shall be communicated to the Board and noted on the agenda for the meeting at which the Board considers the matter. The Board may impose a reasonable deadline for action on the Ratepayer Advisory Committee as

necessary to ensure the timely setting of rates by the Authority.

4.5.2.2 Reports to the Board. The Ratepayer Advisory Committee may prepare or cause to be prepared for presentation to the Board any reports, investigations, studies, or analyses relating to the Authority or the CCA Program.

4.5.2.3 Placing Matters on Board's Agenda. The Ratepayer Advisory Committee may place any matter relating to the Authority or the CCA Program on the Board's agenda for consideration and possible action.

4.5.2.4 Support for Ratepayer Advisory Board. The Board shall provide reasonable and necessary administrative assistance to the Ratepayer Advisory Committee. The Ratepayer Advisory Committee may enter into contracts as reasonably necessary to carry out its duties and powers; provided, however, that (a) the amount payable under any contract cannot exceed \$20,000 per year, (b) the total amount payable under all contracts cannot exceed \$50,000 per year, and (c) the contracts are in a form acceptable to the Authority's Chief Executive Officer and General Counsel. The Board of Directors may authorize an amount in excess of these expenditure limits if it finds and determines that it is reasonable and necessary to do so for the Ratepayer Advisory Committee to perform its obligations.

4.5.3 Business Operations Committee. The Board shall establish a Business Operations Committee to oversee and assist the Chief Executive Officer in implementing the CCA Program. The Business Operations Committee shall consist of five members appointed by the Board of Directors, having expertise in one or more of the areas of management, administration, finance, public contracts, infrastructure development, renewable power generation, power sales and marketing, or energy conservation. The Business Operations Committee shall meet no less frequently than bi-monthly. Committee members shall be appointed to staggered four-year terms (the first term of two of the members shall be two years, and four years thereafter), which may be renewed. A member of the Business Operations Committee may be removed by the Board of Directors by majority vote. Each member of the Business Operations Committee shall have one vote; a majority of members shall constitute a quorum; and a majority of a quorum is sufficient for committee action. The Board of Directors shall determine whether the Committee members shall be compensated or entitled to reimbursement for expenses.

4.5.3.1 Duties of Business Operations Committee. The Business Operations Committee shall review the operations of the CCA Program. The Business Operations Committee may request that the Chief Executive Officer provide information reasonably necessary to such review. The Business Operations Committee may make recommendations with respect to the operations of the Authority to the Chief Executive Officer or to the Chair of the Board of Directors.

4.5.3.2 Chief Executive Officer Reports to Business Operations Committee. The Chief Executive Officer shall prepare, no later than the 20th day of each first month of each fiscal quarter, a report to the Business Operations Committee on the operations of the Authority during the preceding fiscal quarter. The report

shall contain information regarding the financial performance of the Authority during the preceding quarter, the number of accounts served, the amount of power delivered, and a narrative description of energy efficiency, energy conservation, renewable power generation, and other programs carried out by the Authority.

4.5.3.3 Review of Major Contracts and Capital Projects. The Chief Executive Officer shall submit all proposed contracts and capital projects having a value in excess of \$250,000 to the Business Operations Committee for review and comment- prior to submission to the Board for approval. This requirement shall not apply if the Chief Executive Officer determines, following consultation with the General Counsel, that an unforeseen or emergency situation exists such that execution of a major contract is required before it is feasible to hold a meeting of the Business Operations Committee to consider the contract.

4.5.3.4 Other Delegated Powers. The Board of Directors may delegate such other and further powers and duties to the Business Operations Committee as it shall determine in its sole discretion.

4.6 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.

4.7 Board of Directors Composition upon Participation by Cities or Counties in CCA Program Under Section 3.1. ~~Upon~~Except as provided in Section 4.7.6, upon the approval of the Board of the participation of any other incorporated municipality or county (the “Participant” or “Additional Participant”) in the CCA Program pursuant to Section 3.1, the Additional Participant shall be entitled to appoint one additional member to the Board of Directors.- Each Party or Participant may appoint an alternate(s) to serve in the absence of its Director(s). Upon such appointment, the voting shares of Directors and approval requirements for actions of the Board shall be as follows:

4.7.1. 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 or Participant’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’ and Participants’ Annual Energy Use. The initial values for Annual Energy use are 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.

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

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

4.7.2. Exhibit Showing Voting Shares. The initial voting shares are 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 or Participants and changes in the Parties' and Participants' Annual Energy Use.

4.7.3. Approval Requirements Relating to CCA Program. Except as provided in Sections 4.7.4 and 4.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

4.7.4. Option for Approval by Voting Shares. Notwithstanding Section 4.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of 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, as determined by Section 4.7.1 except as provided in Section 4.7.5.

4.7.5. Special Voting Requirements for Certain Matters.

A. Two-Thirds and Weighted Voting Approval Requirements Relating to Sections 4.5.1, 7.2, and 8.4. Action of the Board on the matters set forth in Section 4.5.1 (removal of member of Ratepayer Advisory Committee), Section 7.2 (involuntary termination of a Party or Participant), or Section 8.4 (amendment of this Agreement) shall require the affirmative vote ~~as described in those sections~~ of at least two-thirds of Directors holding at least 67 voting shares; provided, however, that (a) notwithstanding the foregoing, any Director present at the meeting may demand that the vote 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 the affirmative vote of at least two-thirds of Directors and the affirmative vote of Directors having at least two-thirds of the voting shares, as determined by Section 4.7.1; (b) when a Director has demanded that the vote be determined on the basis of voting shares and by the affirmative vote of Directors, if any individual Director's Party or Participant's voting share exceeds 33 and that the Director(s) for that Party or Participant votes in the negative or abstains or is absent from the meeting, then at least one other Director representing a different Party or Participant shall be required to vote in the negative, or the matter shall be deemed approved; and (c) for votes to involuntarily terminate a Party or Participant under Section 7.2, the Director(s) for the Party or Participant subject to involuntary termination may not vote, and the number of Directors constituting two-thirds of all Directors, and weighted vote of each Party or Participant, shall be recalculated as if the Party or Participant

subject to possible termination were not a Party or Participant.

B. Seventy Five Percent Special Voting Requirements for Eminent Domain and Participant 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 or Participant 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 and Participants 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 the affirmative vote of at least 75% of Directors and the affirmative vote of Directors having at least 75% of the voting shares, as determined by Section 4.7.1, and when a Director has demanded that the vote be determined on the basis of voting shares and by the affirmative vote of Directors, if any individual Party or Participant's voting share exceeds 25% and the Director(s) for that Party or Participant votes in the negative or abstains or is absent from the meeting, then at least one other Director representing a different Party or Participant shall be required to vote in the negative, or the matter shall be deemed approved. For purposes of this section, "imposition on any Party or Participant of any obligation to make contributions or pledge assets as a condition of continued participation in the CCA Program" does not include any liabilities or obligations of a withdrawing or terminated party imposed under Section 7.3.

4.7.6. Reduction in Number of Members Appointed by County of Sonoma and Sonoma County Water Agency. Upon the approval of the Board of Directors of Additional Participants in the CCA Program pursuant to Section 3.1, the number of members of the Board of Directors appointed to represent the County of Sonoma and the Sonoma County Water Agency shall be reduced as set forth below:

Total Number of Additional Participants	Number of Sonoma County/SCWA Directors
1	4
2	3
3-5	2
6 or more	1

Notwithstanding anything in Section 4.7 or Section 4.7.6 to the contrary, however, in the event that the City of Santa Rosa is one of the Additional Participants ~~and the total number of Additional Participants is two or less~~, then the City of Santa Rosa shall be entitled to ~~appoint two members to the same number of Directors on~~ the Board ~~of Directors, and~~ the County of Sonoma and the Sonoma County Water Agency ~~shall be jointly entitled to appoint to the Board of Directors the number of members equal to five minus the number appointed by the City of Santa Rosa and any other Additional Participant.~~

4.8 Meetings and Special Meetings of the Board. The Board shall hold at least four 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 meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. ~~All meetings of the Board~~ All meetings of the Board, the Ratepayer Advisory Committee, the Business Operations Committee, or the governing body of any subsidiary entity or independent corporation established by the Authority shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

4.9 Selection of Board Officers.

4.9.1 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. 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 ~~form~~ from the Authority pursuant to the provisions of this Agreement.

4.9.2 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.

4.9.3 Treasurer and Auditor. The Sonoma County Auditor-Controller-Treasurer-Tax Collector shall act as the Treasurer and the Auditor 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 depositary 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 6.

4.10 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 a written agreement between the Authority and the appointed administrative services provider or providers (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 5 IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

5.1.1 Enabling Ordinance. Except as otherwise provided by Section 3.1, each Party shall 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.

5.1.2 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 4.7.3.

5.1.3 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.

5.2 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 7.

ARTICLE 6 FINANCIAL PROVISIONS

6.1 Fiscal Year. The Authority's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

6.2 Depository.

6.2.1 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 Participant or any other person

or entity.

6.2.2 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 and Participants 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.

6.2.3 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.

6.3 Budget and Recovery of Costs.

6.3.1 Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document 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.

6.3.2 Funding of Initial Costs. The Sonoma County Water Agency has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these initial costs paid by the Sonoma County Water Agency shall be included in the customer charges for electric services as provided by Section 6.3.3 to the extent permitted by law, and the Sonoma County Water Agency shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such reimbursement, the Sonoma County Water Agency 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 Sonoma County Water Agency shall not be entitled to any reimbursement of the initial costs it has paid from the Authority or any Party.

6.3.3 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 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 7: WITHDRAWAL AND TERMINATION

7.1 Withdrawal.

7.1.1 Right to Withdraw. A Party or Participant 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 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party and Participant. Withdrawal of a Party or Participant shall require an affirmative vote of its governing board.

7.1.2 Right to Withdraw After Amendment. Notwithstanding Section 7.1.1, a Party or Participant may withdraw its membership in the Authority following an amendment to this Agreement ~~in the manner provided by Section 8.4. adopted by the Board which the Party or Participant'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 or Participant shall require an affirmative vote of its governing board and shall not be subject to the six month advance notice provided in Section 7.1.1. In the event of such withdrawal, the Party or Participant shall be subject to the provisions of Section 7.3.~~

7.1.3 Continuing Liability; Further Assurances. A Party or Participant that withdraws its participation in the CCA Program may be subject to certain continuing liabilities, as described in Section 7.3. The withdrawing Party or Participant 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 or Participant from participation in the CCA Program.

7.2 Involuntary Termination of a Party or Participant. Participation of a Party or Participant 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 or Additional Participant's participation in the CCA Program upon a vote of Board members as provided in Section 4.7.5. Prior to any vote to terminate participation with respect to a Party or Participant, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party or Participant 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 or Participant has allegedly violated. The Party or Participant 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 or Participant that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 7.3.

7.3 Continuing Liability; Refund. Upon a withdrawal or involuntary termination of a Party or Participant, the Party or Participant shall remain responsible for any claims, demands, damages, or liabilities arising from the Party or Participant's membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Party or Participant shall not be responsible for any liabilities arising after the date of the Party or Participant's withdrawal or involuntary termination. Claims, demands, damages, or liabilities for which a withdrawing or terminated Party or Participant may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Party or Participant's load. With respect to such liability, upon notice by a Participant that it wishes to withdraw from the program, the Authority shall notify the Party or Participant of the minimum waiting period under which the Participant would have no costs for withdrawal if the Participant 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 or Participant 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 or

Participant also shall be responsible for any costs or obligations associated with the Party or Participant'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 or Participant. The Authority may withhold funds otherwise owing to the Party or Participant or may require the Party or Participant 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 or Participant's liability for the costs described above. Any amount of the Party's or Participant's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party or Participant. The liability of any Party or Participant under this section 7.3 is subject and subordinate to the provisions of Sections 2.2 and 3.3, and nothing in this section 7.3 shall reduce, impair, or eliminate any immunity from liability provided by Sections 2.2 or 3.3.

7.4 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 Participant to withdraw its participation in the CCA Program, as described in Section 7.1.

7.5 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 and Participants in proportion to the contributions made by each.

7.6 Negotiations with Participants. If the Parties wish to terminate this Agreement, or if the Parties elect to withdraw from the CCA Program following an amendment to this Agreement as provided in Section 8-47.1.2, but two or more Participants wish to continue to participate in the CCA Program, the Parties will negotiate in good faith with such Participants to allow the Participants to become parties to this Agreement or to effect a transfer of CCA Program operations to another entity.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 Dispute Resolution. The Parties, Participants, and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.

8.2 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 Participants, the Authority, or its Directors, officers, or employees.

8.3 Indemnification of Parties and Participants. The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties, the Participants, and the public. The Authority shall defend, indemnify, and hold harmless the Parties and Participants, 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.

8.4 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 4.7.5. The Authority shall provide written notice to all Parties and Participants of amendments to this Agreement, including the effective date of such amendments. ~~A Party or Participant shall be deemed to have withdrawn its participation in the CCA Program effective immediately upon the vote of the Board approving an amendment to this Agreement if (a) the Director representing such Party or Participant has provided notice to the other Directors immediately preceding the Board's vote of the Party or Participant's intention to withdraw its participation in the CCA Program should the amendment be approved by the Board and (b) such notice of intent to withdraw is authorized or ratified by an affirmative vote of the governing board of the Party or Participant. As described in Section 7.3, a Party or Participant that withdraws its participation in the CCA Program in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's or Participant's withdrawal., at least 30 days prior to the date upon which the Board votes on such amendments.~~

8.5 Assignment. Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties or Participants may not be assigned or delegated without the advance written consent of all of the other Parties and Participants, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties and Participants. This Section 8.5 does not prohibit a Party or Participant from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's or Participant's contributions to the Authority, or the disposition of proceeds which that Party or Participant 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 or Participants under this Agreement.

8.6 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.

8.7 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.

8.8 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.

8.9 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 and Participants.

8.10 Commitment to Consider Amendments. At one of its first three meetings after July 9, 2013, the Board of Directors shall consider all amendments to this Agreement that have been requested by any city that adopts, by July 9, 2013, the resolution and ordinance required by Section 3.1 to become a Participant in the CCA Program. Any such amendments shall be subject to the voting requirements of Section 8.4. Nothing in this Section 8.10 requires the Board of Directors to approve any specific amendment to this Agreement.

Exhibit A

Definitions

“AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.

“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 4.7.2.

“Authority” means the Sonoma Clean Power 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, counties, and the Sonoma County Water Agency 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 5.1.

“Director” means a member of the Board of Directors representing a Party or an Additional Participant.

“Effective Date” means the date on which this Agreement shall become effective and the Sonoma Clean Power Authority shall exist as a separate public agency, as further described in Section 2.1.

“Implementation Plan” means the plan generally described in Section 5.1.2 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 Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, 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 Provider Agreements and Program Agreement 1. Administrative and operational costs incurred after the approval of Program Agreement 1 shall not be considered Initial Costs.

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

“Participant” or “Additional Participant” means any incorporate municipality or county electing to participate in the CCA Program.

“Parties” means, collectively, the County of Sonoma and the Sonoma County Water Agency.

“Party” means the County of Sonoma or the Sonoma County Water Agency.

“Total Annual Energy” has the meaning given in Section 4.7.2.



Staff Report

To: Sonoma Clean Power Authority Board of Directors

From: Geof Syphers and Steven S. Shupe

Item: Approval of New City Participants in SCP Program

Date: July 25, 2013

Requested Action: Approve the cities of Cotati, Sebastopol, and Sonoma as participants in the Sonoma Clean Power community choice aggregation program, and approve the City of Santa Rosa as a participant in the SCP program, contingent upon the final adoption by Santa Rosa of the required ordinance by July 31, 2013.

Background:

The Cities of Cotati, Sebastopol, and Sonoma have elected to join the Sonoma Clean Power community choice aggregation program, and have each adopted the required resolution and ordinance. The City of Santa Rosa has adopted the required resolution and expects to adopt the required ordinance at its July 30 City Council meeting.

Under the Joint Powers Agreement governing the Sonoma Clean Power Authority, the Board of Directors must approve the participation of any new city in the program. As noted above, Cotati, Sebastopol, and Sonoma have fully completed the process to become participants in the SCP program, and Santa Rosa expects to do so on July 30. Staff recommends that the Authority Board approve the participation of Cotati, Sebastopol, and Sonoma in the Sonoma Clean Power program, and approve Santa Rosa's participation contingent upon Santa Rosa's adoption of the required ordinance by July 31, 2013.

Approval of these four cities will bring the total number of city participants in the SCP program to five. Under the Joint Powers Agreement, the Authority Board of Directors will be comprised of two appointees from the County of Sonoma, two appointees from the City of Santa Rosa, and one appointee each from Windsor, Cotati, Sebastopol, and Sonoma. The appointees from

Cotati, Sebastopol, Sonoma, and Santa Rosa will be seated at the next meeting of the Authority's Board of Directors.

Requested Action: Approve the cities of Cotati, Sebastopol, and Sonoma as participants in the Sonoma Clean Power community choice aggregation program, and approve the City of Santa Rosa as a participant in the SCP program, contingent upon the final adoption by Santa Rosa of the required ordinance by July 31, 2013.

Vote:

Director	Aye	No	Absent/Abstain
Rabbitt			
Gorin			
Zane			
McGuire			
Okrepkie			



MEETING MINUTES

**SONOMA CLEAN POWER AUTHORITY
BOARD OF DIRECTORS
TUESDAY, JUNE 25, 2013
575 ADMINISTRATION DRIVE, ROOM 102A,
SANTA ROSA, CALIFORNIA**

The Board of Directors of the Sonoma Clean Power Authority met this date in adjourned session with the following members present: Susan Gorin, David Rabbitt, Shirlee Zane, Mike McGuire, Efren Carrillo

Staff Present: Veronica A. Ferguson, County Administrative Officer and Sheryl Bratton, Assistant County Counsel

Note: The Sonoma Clean Power Authority action item #81 of the meeting of June 25, 2013 was a joint item between the Sonoma County Board of Supervisors and the Sonoma Clean Power Authority Board of Directors. The following action summary is an excerpt from the Board of Supervisors June 25, 2013 meeting minutes.

8:34 A.M. Chairman Rabbitt called the meeting to order.

REGULAR CALENDAR

81. Sonoma Clean Power Authority Financing and Implementation

Action for the Sonoma Clean Power Authority:

- (A) Approve the Town of Windsor as a participant in the Sonoma Clean Power community choice aggregation program, and seat Town of Windsor's representative on the Board of Directors.
- (B) Approve an extension of the June 30, 2013 deadline for cities to vote to participate in the Sonoma Clean Power program to July 9, 2013.
- (C) Authorize the Chief Executive Officer to execute agreements as necessary to implement the Sonoma Clean Power program, provided that the amount payable under each agreement is \$50,000 or less and the agreements are reported to the Board at the Board's next meeting.
- (D) Adopt a Resolution approving and authorizing the Chair to execute loan documents, in substantially the form presented to the board, for a line of credit to the Authority from First Community Bank in the maximum amount of \$2,500,000 for start-up financing, authorizing the Chief Executive Officer to execute such further documents and take such

further actions as are necessary to close the line of credit transaction, and authorizing Chief Executive Officer to execute draws on the line of credit.

- (E) Authorize the General Manager of the Sonoma County Water Agency to carry out the actions described in c) and d) above until such time as an Executive Director is appointed.
- (F) Authorize the Chair to execute a Legal Services Agreement with the Sonoma County Counsel for interim legal services and the related conflict waiver (\$100,000, contract terminates June 30, 2014).
- (G) Approve the First Amended Joint Powers Agreement Relating to and Creating the Sonoma Clean Power Authority, to incorporate changes suggested by cities wishing to participate in the Sonoma Clean Power program, and authorize and direct staff to analyze and draft additional amendments for the consideration of the Authority Board during its first several meetings, as described in this agenda item.

Action for the Board of Supervisors:

- (A) Adopt a Resolution approving and authorizing the Chair to execute a Guaranty in favor of First Community Bank, in substantially the form presented to the Board, to secure payment by the Sonoma Clean Power Authority of amounts due under a \$2,500,000 line of credit provided by First Community Bank.
- (B) Authorize the Sonoma County Counsel to execute the Legal Services Agreement with the Sonoma Clean Power Authority for interim legal services, and authorize the Chair to execute the related conflict waiver.
- (C) Ratify Chair appointments of four Board members to the Board of Directors of the Sonoma Clean Power Authority, and name one Board member as an alternate.

11:10 A.M.

Present: Grant Davis, General Manager, Sonoma County Water Agency; Cordel Stillman, Water Agency Deputy Chief Engineer; Steve Shupe, Deputy County Counsel

11:11 A.M. Director Zane left the meeting

11:12 A.M. Director Zane rejoined the meeting

The Board agreed to consider and vote on the recommended actions in the order as follows:

- 1) Action G under "Action of the Sonoma Clean Power Authority"
- 2) Action A under "Action of the Sonoma Clean Power Authority"
- 3) Actions B-F under "Action of the Sonoma Clean Power Authority"
- 4) Action A-C under "Action for the Board of Supervisors"

Town of Windsor Councilmember Bruce Okrepkie joined the Board at the dais.

Sonoma Clean Power Authority Board of Directors Susan Gorin, David Rabbitt, Shirlee Zane, Mike McGuire, and Efren Carrillo considered Action G followed by Action A:

- (G) Approve the First Amended Joint Powers Agreement Relating to and Creating the Sonoma Clean Power Authority, to incorporate changes suggested by cities wishing to participate in the Sonoma Clean Power program, and authorize and direct staff to analyze and draft

additional amendments for the consideration of the Authority Board during its first several meetings, as described in this agenda item.

Speakers:

Geof Syphers
Anne Seeley
Gine Cuclis
Ann Hancock

The Board made a recommendation to postpone the final decision on the amendments proposed to Section 4.7.5 under Article 4: Governance and Internal Organization of the First and Restated Amended Joint Powers Agreement until city representatives formally join the Sonoma Clean Power Authority.

Motion: Mike McGuire

Second: Efren Carrillo

AYES: Susan Gorin, Shirlee Zane, Mike McGuire, Efren Carrillo

NOES: David Rabbitt

Board Action: Approve the First Amended Joint Powers Agreement relating to and creating the Sonoma Clean Power Authority, with the exception of amendments proposed to Section 4.7.5 under Article 4 of the First Amended and Restated Agreement, to incorporate changes suggested by cities wishing to participate in the Sonoma Clean Power program, and authorize and direct staff to analyze and draft additional amendments for the consideration of the Authority Board during its first several meetings, as described in this agenda item. Consideration of amendments to Section 4.7.5 under Article 4 of the First Amended and Restated Agreement will be postponed until city representatives join the Authority.

AYES: Susan Gorin, Shirlee Zane, Mike McGuire, Efren Carrillo

NOES: David Rabbitt

Note: Chairman Rabbitt's "NO" vote only pertains to the motion to postpone the final decision of Section 4.7.5 of the First Amended and Restated Agreement.

(A) Approve the Town of Windsor as a participant in the Sonoma Clean Power community choice aggregation program, and seat Town of Windsor's representative on the Board of Directors, and appoint Bruce Okrepkie to the Authority.

Board Action: Approved as Recommended

UNANIMOUS VOTE

12:30 P.M. Supervisor Gorin exited the meeting

Sonoma Clean Power Authority Board of Directors Bruce Okrepkie, David Rabbitt, Shirlee Zane, Mike McGuire, and Efren Carrillo considered Actions B-F:

- (B) Approve an extension of the June 30, 2013 deadline for cities to vote to participate in the Sonoma Clean Power program to July 9, 2013.
- (C) Authorize the Chief Executive Officer to execute agreements as necessary to implement the Sonoma Clean Power program, provided that the amount payable under each agreement is \$50,000 or less and the agreements are reported to the Board at the Board's next meeting.
- (D) Adopt a Resolution approving and authorizing the Chair to execute loan documents, in substantially the form presented to the board, for a line of credit to the Authority from First Community Bank in the maximum amount of \$2,500,000 for start-up financing, authorizing the Chief Executive Officer to execute such further documents and take such further actions as are necessary to close the line of credit transaction, and authorizing Chief Executive Officer to execute draws on the line of credit.
- (E) Authorize the General Manager of the Sonoma County Water Agency to carry out the actions described in c) and d) above until such time as an Executive Director is appointed.
- (F) Authorize the Chair to execute a Legal Services Agreement with the Sonoma County Counsel for interim legal services and the related conflict waiver (\$100,000, contract terminates June 30, 2014).

Speaker:

Jake Mackenzie

Board Action: Approve as Recommended

UNANIMOUS VOTE

Action D Approved by Resolution No. 13-0279

1:02 P.M. Director Okrepkie stepped down from the dais.

The Board of Supervisors considered and acted on Actions A through C under "Action for the Board of Supervisors."

5:11 P.M. The Board adjourned sine die



MEETING MINUTES

SONOMA CLEAN POWER AUTHORITY BOARD OF DIRECTORS TUESDAY, JULY 2, 2013 575 ADMINISTRATION DRIVE, ROOM 102A, SANTA ROSA, CALIFORNIA

The Board of Directors of the Sonoma Clean Power Authority met this date in adjourned session with the following members present: David Rabbitt, Shirlee Zane, Mike McGuire, Efren Carrillo, and Bruce Okrepkie.

Chairman David Rabbitt presiding.

Staff Present: Veronica A. Ferguson, County Administrative Officer and Steve Shupe, County Counsel.

I. CALL TO ORDER AND WELCOME

1:50 P.M. Chairman Rabbitt called the meeting to order.

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA

(Comments are restricted to matters within the Board jurisdiction. The Board will hear public comments at this time for up to thirty minutes. Please be brief and limit your comments to three minutes. Any additional public comments will be heard at the conclusion of the meeting.)

1:51 P.M. Public Comment Opened

Thomas Cooper
Gina Brooks
Pamela Bugbee
Maureen De Voe
John Jenkel
Richard Hannan
Colleen Fernald

2:09 P.M. Public Comment Closed

IV. CLOSED SESSION CALENDAR

1. The Board of Directors of the Sonoma Clean Power Authority will consider the following in closed session: Public Employee Appointment: Sonoma Clean Power Authority Interim Chief Executive Officer (Govt. Code Section 54957); Labor Negotiations – Chief Executive Officer Position (Govt. Code Section 54957.6)

2:10 P.M. Recessed into Closed Session.

V. REPORT ON CLOSED SESSION

6:30 P.M. Chairman Rabbitt reported out from Closed Session that the Board met to interview candidates for the Interim CEO for the Sonoma Clean Power Authority and to discuss the appointment to that position, compensation and other terms of employment.

Board Action: The Board appointed Geof Syphers as Interim CEO and directed staff in negotiating a Professional Services Agreement with him for consideration by the Board.

UNANIMOUS VOTE

VI. REGULAR CALENDAR

2. Consider setting Tuesday July 30, 2013 at 5:00 p.m. in the County Board Chambers, as the time and place for the next Sonoma Clean Power Authority Board Meeting.

6:31 P.M.

Board Action: The Board set the next meeting date of the Sonoma Clean Power Authority to July 25, 2013 at 1:30 P.M. location to be determined while retaining the date of July 30, 2013 at 5:00 P.M. as needed.

VII. ADJOURNMENT

6:32 P.M. The Board adjourned the meeting to July 25, 2013 at 1:30 P.M. location to be determined.