



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY | PINOLE
PITTSBURG | PLEASANT HILL | RICHMOND | SAN PABLO | SAN RAMON | VALLEJO | WALNUT CREEK

Board of Directors Meeting Thursday, April 15, 2021 7:00 P.M.

The Board of Directors Meeting will be conducted pursuant to the provisions of the Governor's [Executive Order](#) N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Board of Director Members will be teleconferencing into the Board of Directors Meeting.

Members of the public who wish to observe the meeting may do so telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/84781591169?pwd=d2R4dFRqZzFaOFU3RGlhUDFBWUFuUT09>

Dial-in: (669) 900-9128
Webinar ID: 847 8159 1169
Meeting Passcode: 376527

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
 - C.1 Approval of 3.18.21 Meeting Minutes
 - C.2 Approved Contracts for Energy Update
6. Update on Prepayment of Certain MCE Renewable Energy Power Purchase Agreements to Reduce Cost (Discussion/Action)

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7. Resolution 2021-03 to Approve Formation of California Community Choice Financing Authority (Discussion)
8. Board Matters & Staff Matters (Discussion)
9. Adjourn

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation, or an alternative format, please contact the Clerk of the Board at (925) 378-6732 as soon as possible to ensure arrangements for accommodation.

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MCE BOARD MEETING MINUTES

Thursday, March 18, 2021

7:00 P.M.

The Board of Directors' Meeting was conducted pursuant to the provisions of the Governor's [Executive Order](#) N-29-20 (March 17, 2020) which suspends certain requirements of the Ralph M. Brown Act. Board Members, staff and members of the public were able to participate in the Board Meeting via teleconference.

Present: Denise Athas, City of Novato
Eli Beckman, Alternate, Town of Corte Madera
Tom Butt, City of Richmond, Board Chair
Tom Campbell, City of Benicia
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
David Fong, Town of Danville
Ford Greene, Town of San Anselmo
Maika Llorens Gulati, City of San Rafael
Kevin Haroff, City of Larkspur
Janelle Kellman, City of Sausalito and City of Mill Valley
Tim McGallian, Alternate, City of Concord
Katy Miessner, City of Vallejo
Devin Murphy, City of Pinole
Teresa Onoda, Town of Moraga
Patricia Ponce, City of San Pablo
Gabriel Quinto, City of El Cerrito
Scott Perkins, City of San Ramon

Matt Rinn, City of Pleasant Hill
Shanelle Scales-Preston, City of Pittsburg
Holli Thier, Town of Tiburon
Brad Wagenknecht, County of Napa
Sally Wilkinson, City of Belvedere
Brianne Zorn, City of Martinez

Absent: Gina Dawson, City of Lafayette
John Gioia, Contra Costa County
Katie Rice, County of Marin
C. William Kircher, Town of Ross
Aaron Meadows, City of Oakley
John Vasquez, County of Solano

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Staff

& Others: Michael Callahan, Senior Policy Counsel
Stephanie Chen, Senior Policy Counsel
Leanne Hoadley – Manager of Community and Customer Engagement
Darlene Jackson, Board Clerk
Vicken Kasarjian, Chief Operating Officer
Jana Kopyciok-Lande, Senior Policy Analyst
Justin Marquez, Community Equity Specialist
Zae Perrin, Manager of Customer Operations
Sol Phua, Administrative Services Assistant
Garth Salisbury, Director of Finance and Treasurer
Lindsay Saxby, Manager of Power Resources
Enyonam Senyo-Mensah, Administrative Services Associate
Heather Shepard, Director of Public Affairs
Maira Strauss, Finance Manager
Dawn Weisz, Chief Executive Officer

1. Roll Call

Chair Butt called the regular meeting to order at 7:02 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were no announcements made.

3. Public Open Time (Discussion)

Chair Butt opened the public comment period and there were comments by Members of the Public Doug Wilson and Robert Chatham.

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz, reported the following:

- City of Concord and Chamber of Commerce will be honoring MCE at the virtual City Council meeting on Tuesday, March 23rd for innovation in the Renewable Energy sector.
- MCE received official notice of certification from the CPUC approving the City of Fairfield Addendum. MCE will begin serving Fairfield in 2022.
- On the MCE website we continue to have a COVID-19 relief resources page to help folks who are struggling to pay bills or facing other challenges. We are adding to this page continually, so if you are aware of resources not showing up there, let us know.

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- Over 100 income-qualified customers have received rebates of \$3,500 to help them with the purchase of an EV. Great progress!

5. Consent Calendar (Discussion/Action)

- C.1 Approval of 2.18.21 Meeting Minutes
- C.2 Approved Contracts for Energy Update
- C.3 Master Services Agreement with Association for Energy Affordability
- C.4 Base Resource Contract with United States Department of Energy
Western Area Power Administration

Chair Butt opened the public comment period and there were no comments.

Action: It was M/S/C (Wagenknecht/Quinto) to **approve Consent Calendar items C.1 – C.4**. Motion carried by unanimous roll call vote. (Absent: Directors Dawson, Gioia, Kircher, Meadows, Rice, and Vasquez).

6. Charles F. McGlashan Award Recognition (Discussion)

Justin Marquez, Community Equity Specialist, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were comments by Members of the Public Robert Chatham and Susan Rotchy.

Action: No action required.

7. Fiscal Year 2021-22 Budget (Discussion/Action)

Garth Salisbury, Director of Finance and Treasurer and Maira Strauss, Finance Manager, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were comments by Members of the Public Ken Strong, Robert Chatham and David Kunhardt.

Action: It was M/S/C (Haroff/Perkins) to **approve the proposed FY 2021/22 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy and Program Development Fund, and Resiliency Fund Budgets**. Motion carried by unanimous roll call vote. (Absent: Directors Dawson, Gioia, Kircher, Meadows, Rice, and Vasquez).

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8. Targeted Customer Cost Relief (Discussion/Action)

Heather Shepard, Director of Public Affairs, introduced Zae Perrin, Manager of Customer Operations who presented this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were comments by Member of the Public Robert Chatham.

Action: It was M/S/C (Murphy/Athas) to **approve the Targeted Cost Relief Program Funding amount of \$10,000,000 as part of the fiscal year 2021-22 budget, and direct staff to provide an update on the Program to the Board 6 months after Program launch.** Motion carried by unanimous roll call vote. (Absent: Directors: Dawson, Gioia, Kircher, Meadows, Rice, and Vasquez).

9. Resolution 2021-01 Supporting Electric Vehicles (Discussion/Action)

Jana Kopyciok-Lande, Senior Policy Analyst, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were no comments.

Action: It was M/S/C (Perkins/Greene) to **adopt Resolution 2021-01 of Marin Clean Energy Supporting the Goal of Reaching 100% Zero Emission Vehicle Sales in California by 2030.** Motion carried by unanimous roll call vote. (Absent: Directors: Dawson, Gioia, Kircher, Meadows, Rice, and Vasquez).

10. Resolution 2021-02 Appointing Director of Finance as Treasurer (Discussion/Action)

COO Vicken Kasarjian, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were no comments.

Action: It was M/S/C (Haroff/Wagenknecht) to **adopt Resolution No. 2021-02 Appointing Director of Finance as Treasurer.** Motion carried by unanimous roll call vote. (Absent: Directors: Dawson, Gioia, Kircher, Meadows, Rice, and Vasquez).

11. Power Resources Overview (Discussion)

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Lindsay Saxby, Manager of Power Resources, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were no comments.

Action: No action required.

12. Customer Engagement Update (Discussion)

Zae Perrin, Manager of Customer Operations, and Leanne Hoadley, Manager of Community and Customer Engagement, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were no comments.

Action: No action required.

13. PCIA Overview and Update (Discussion)

Michael Callahan, and Stephanie Chen, Senior Policy Counsel, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were no comments.

Action: No action required.

14. Prepayment, Joint Procurement and Direct Debt (Discussion)

COO Kasarjian, Director of Finance and Treasurer, Garth Salisbury, and Senior Policy Counsel, Callahan, introduced this item and addressed questions from Board members.

Chair Butt opened the public comment period and there were no comments.

Action: No action required.

15. Board Matters & Staff Matters (Discussion)

There were no announcements or additional matters.

Action: No action required.

16. Adjournment (Discussion)

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Chair Butt adjourned the meeting at 10:13 p.m. to the next scheduled Board Meeting on April 15, 2021.

Tom Butt, Chair

Attest:

Dawn Weisz, Secretary



April 15, 2021

TO: MCE Board of Directors

FROM: Bill Pascoe, Power Procurement Manager

RE: Approved Contracts for Energy Update (Agenda Item #05 C.2)

Dear Board Members:

SUMMARY: This report summarizes contracts for energy procurement entered into by the Chief Executive Officer and if applicable, the Chair of the Technical Committee since the last regular Board meeting in March. This summary is provided to your Board for information purposes only, and no action is needed.

Review of Procurement Authorities

In March 2018, your Board adopted Resolution 2018-03 which included the following provisions:

The CEO and Technical Committee Chair, jointly, are hereby authorized, after consultation with the appropriate Committee of the Board of Directors, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board of Directors all such executed contracts.

The CEO is authorized to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors.

The Chief Executive Officer is required to report all such contracts and agreements to the MCE Board of Directors on a regular basis.

<i>Item Number</i>	<i>Month of Execution</i>	<i>Purpose</i>	<i>Average Annual Contract Amount</i>	<i>Contract Term</i>
1	March, 2021	Purchase of Renewable Energy	\$137,870	Over 5 Years
2	March, 2021	Sale of Resource Adequacy	\$167,404	Under 1 Year
3	March, 2021	Sale of Import Allocation Rights	\$22,470	Under 1 Year
4	March, 2021	Purchase of Renewable Energy	\$1,250,000	1-5 Years
5	March, 2021	Sale of Resource Adequacy	\$674,250	Under 1 Year
6	March, 2021	Purchase of Carbon Free Energy	\$833,333	Over 5 Years
7	March, 2021	Purchase of Carbon Free Energy	\$750,000	Under 1 Year
8	March, 2021	Purchase of System Energy (Hedge)	\$15,180,501	1-5 Years
9	March, 2021	Purchase of Carbon Free Energy	\$800,000	Under 1 Year
10	March, 2021	Purchase of Renewable Energy	\$760,000	1-5 Years
11	March, 2021	Purchase of Renewable Energy	\$1,510,909	1-5 Years

Contract Approval Process: Energy procurement is governed by MCE's Energy Risk Management Policy as well as Board Resolutions 2018-03, 2018-04, and 2018-08. The Energy Risk Management Policy (Policy) has been developed to help ensure that MCE achieves its mission and adheres to its procurement policies established by the MCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. The Board Resolutions direct the CEO to sign energy contracts up to and including 12 months in length.

The evaluation of every new energy contract is based upon how to best fill MCE's open position. Factors such as volume, notional value, type of product, price, term, collateral threshold and posting, and payment are all considered before execution of the agreement.

After evaluation and prior to finalizing any energy contract for execution, an approval matrix is implemented whereby the draft contract is routed to key support staff and consultants for review, input, and approval. Typically, contracts are routed for commercial, technical, legal and financial approval, and are then typically routed through the Chief Operating Officer for

approval prior to execution. The table below is an example of MCE staff and consultants who may be assigned to review and consider approval prior to the execution of a new energy contract or agreement.

<i>Review Owner</i>	<i>Review Category</i>
Lindsay Saxby (MCE Manager of Power Resources)	Procurement / Commercial
John Dalessi/Brian Goldstein (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Garth Salisbury (MCE Director of Finance)	Credit/Financial
Vicken Kasarjian (MCE, Chief Operating Officer)	Executive

Fiscal Impacts: Expenses and revenue associated with these Contracts and Agreements that are expected to occur during FY 2020/21 are within the FY 2020/21 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation: Information only. No action required.



April 15, 2021

TO: MCE Board of Directors

FROM: Garth Salisbury, Director of Finance & Treasurer
Mike Callahan, Senior Policy Counsel

RE: Update on Prepayment of Certain MCE Renewable Energy Power
Purchase Agreements to Reduce Cost (Agenda Item #06)

Dear Board Members:

SUMMARY: In February of 2020 the MCE Technical Committee discussed an opportunity presented by Staff to pursue a tax-exempt prepayment of certain renewable energy power purchase agreements (PPAs) in MCE's portfolio to reduce the cost of the renewable energy from the contracts. Staff sought feedback on 1) taking the steps to identify a prepaid supplier; 2) securing the necessary outside legal and financial expertise to assist in negotiations of a possible prepayment transaction, and 3) negotiating the terms of a prepayment transaction and returning to the Board for approval of a transaction once all terms and documentation were completed. During the discussion the Committee encouraged staff to continue working on transactions as proposed.

By utilizing MCE's tax-exempt municipal public agency status through a prepayment transaction, the cost of the energy from the selected PPAs could be reduced by 8-12% which could represent a savings of \$2-3 million annually. The amount of the savings would depend upon 1) market conditions at the time of the prepayment and 2) the size and number of the contracts included in the transaction. The projected savings to MCE from participating in a prepayment transaction would be after all transactional and professional costs are paid with proceeds from the sale of the bonds.

Prepayment Transactions Background: Municipal energy prepayment transactions have been utilized in the United States since the early 1990s. Tax-exempt entities such as municipal electric utilities and CCA's in California can prepay for a supply of electricity or natural gas and finance the prepayment with tax-exempt bonds.¹ The savings from the transactions are generated from

¹ Tax exempt prepayment transactions for electricity or natural gas are allowed under IRS Regulations (see Treasury Regulation § 1.148-1(e)(2)(iii)) and Congress enacted legislation specifically allowing the prepayment transactions

the difference in borrowing costs between the taxable corporation that “supplies” the commodity and the tax-exempt service provider that is pre-paying for the commodity. In MCE’s case the commodity being supplied is electricity through selected PPAs that MCE has entered into to supply our customers with renewable energy.² If the proposed MCE transaction is completed, it would be the first non-recourse prepayment transaction completed to supply 100% renewable energy.

MCE Prepayment Transaction Team Update:

Since early last year, Staff has assembled a team of legal and financial advisors with extensive experience structuring and advising on prepayment transactions and has been negotiating the terms of a possible prepayment of up to three PPAs in MCE’s portfolio.

Renewable PPAs: MCE has preliminarily identified three renewable solar PPAs that would be assigned or “novated” to the bank to facilitate the prepayment. The three PPAs represent less than 12% of MCE’s 2020 GWh retail sales and less than 8% of MCE’s energy and resource adequacy costs each year.

Underwriter/Prepaid Supplier: MCE has engaged Goldman Sachs/J Aron as the underwriter of the tax-exempt municipal bonds issued to finance the prepayment, the commodities provider/bank to accept the assignment of the PPAs and the prepayment proceeds. The bonds would be ultimately secured and guaranteed by the Goldman Sachs Group, the bank that would receive the prepayment. The bonds would be “non-recourse” to MCE and **would not** be guaranteed by MCE or affect MCE’s credit ratings or balance sheet.

MCE Prepayment Counsel: Chapman and Cutler, a pre-eminent firm in the energy prepayment field, is representing MCE on all legal and documentation matters. Chapman and Cutler is assisting with the negotiations of all of the contracts in the transaction consistent with minimizing financial risk to MCE and will also serve as Disclosure Counsel to MCE.

Bond/Tax Counsel: Orrick Herrington & Sutcliffe has been engaged to be Bond and Tax Counsel for the issuance of the debt. Orrick is the preeminent bond counsel firm in the US providing bond and tax opinions on prepayment transactions. Orrick has also been retained to set up a joint powers agency (JPA) conduit entity to potentially be the issuer of the bonds.

Contracts Counsel: MCE is using Hall Energy Law, our traditional energy contracts counsel, to assist in negotiations with our PPA counterparties and with Goldman Sachs related to the assignment of the PPAs into the prepayment transaction.

for natural gas (National Energy Policy Act of 2005; Section 1327, codified at Section 148(b)(4) of the Internal Revenue Code).

² Since the early 1990s over 90 municipal prepayment transactions have been completed totaling over \$50 billion. Most of the transactions have been to prepay for natural gas – both for supplying natural gas directly to end use customers and for generating electricity for end use customers – but there have been a number of electricity prepayment transactions as well.

Municipal Advisor: MCE has retained Municipal Capital Markets Group (MCM) as our financial advisor on the proposed prepayment transaction. MCM will assist with documentation, negotiations with the Prepaid Supplier and other counterparties, will be overseeing the quantitative analysis of the transaction and will assist on negotiations during the pricing of the bonds issued to finance the prepayment. Through its energy prepayment municipal advisor specialists, MCM has advised municipal utilities on over \$27 billion of prepayment transactions over a 31 year period.

JPA Conduit Issuer: As the tax-exempt bonds would not be issued by or debt of MCE, a public agency conduit issuer must be utilized or created to be the issuer of the tax-exempt bonds and to be a counterparty for a number of the required transactional contracts. It was proposed initially that MCE engage the California Statewide Communities Development Authority (CSCDA) to create the JPA conduit issuer of the bonds. The fees quoted by CSCDA resulted in MCE and three other CCAs engaging to create the California Community Choice Financing Authority (CCCFA) to be the conduit issuer of MCE's prepayment bonds as well as potentially other prepayment bonds that other CCAs may want to issue for their own prepayment projects. Creating our own CCA specific JPA conduit would save many millions of dollars for the CCAs that utilize the proposed conduit.

With the exception of MCE's Contracts Counsel, all of the transaction team professionals are working on a contingency basis; they are not paid unless the transaction closes and are compensated from the proceeds of the bonds at market rates for prepayment transactions.

Transaction Status and Structure Update: MCE has been working to prepare for prepayment transactions since early last year with regularly scheduled meetings and document/deal terms negotiating sessions. Staff estimates that the first transaction is about 2-3 months away from being fully negotiated and documented. Once documentation is complete, the bonds could be sold if the market allows a minimum savings threshold of 8% to 10% to be achieved. It is currently estimated that the size of the prepayment transaction would be approximately \$600 million which represents the discounted value of the current PPAs and future PPAs that would be assigned into the transaction over the 30-year maximum life of the prepayment. The initial term of the bonds would likely be 5-10 years structured to maximize the savings available from the market at that time. After the initial term of the bonds, they would be repriced (rolled over in the market) at a term to maximize the savings for the next reset period up to the end of the 30-year life of the prepayment. If directed, staff will be bringing the negotiated documents back to the Board once they are "near final form" and request that the Board adopt a "Parameters Resolution" allowing staff to execute the transaction once a minimum savings threshold can be achieved and all other critical deal terms are met.

Fiscal Impacts: Given variable market conditions, after all transactional costs are paid, MCE anticipates a net savings of \$2-3 million annually on its energy costs related to the PPAs novated into the prepayment transaction for the initial term of the transaction.

Recommendation: Direct Staff to finalize negotiations and bring back Renewable Energy PPA Prepayment documentation and a Parameters Resolution to the Board for consideration and approval.



April 15, 2021

TO: MCE Board of Directors

FROM: Garth Salisbury, Director of Finance & Treasurer
Michael Callahan, Senior Policy Counsel

RE: Resolution No. 2021-03 to Approve Formation of California
Community Choice Financing Authority (Agenda Item #07)

ATTACHMENT: A: California Community Choice Financing Authority Joint
Powers Agreement
B: Resolution 2021-03 to Approve Formation of California
Community Choice Financing Authority

Dear Board of Directors:

SUMMARY:

In February of 2020, MCE's Technical Committee authorized Staff to take the necessary steps to prepare for tax-exempt prepayment of certain existing renewable power purchase agreements (PPAs). The prepayment transactions would be structured to result in a reduction of 8-12% in the cost of the renewable energy from the PPAs. Once a prepayment transaction was structured, Staff would bring the transaction documents back to the Technical Committee and Board for review and approval. Staff has been working on a prepayment transaction since that time and it is anticipated that Staff will be coming back to the Board in May or June to request the requisite approvals of transaction documents to price and close an initial prepayment transaction.

Prepayment Transaction Summary: A prepayment transaction involves the issuance and sale of tax-exempt or tax-advantaged bonds to investors to finance the prepayment. The bonds are expected to be issued through a single purpose joint powers agency (JPA) conduit issuer. The bonds would be debt of the JPA and would be secured and guaranteed by the bank that receives the prepayment. The debt *would not* be guaranteed by MCE or affect MCE's credit ratings or balance sheet. Initially, there was consideration for the JPA to be established through the California Statewide Communities Development Authority

("CSCDA"), a municipal conduit set up specifically to facilitate the issuance of municipal bonds. CSCDA indicated that they would charge MCE \$300,000 up front and \$100,000/year to utilize the JPA conduit entity created to facilitate the transaction.

Since that time a number of other California CCAs have begun work on prepayment transactions including East Bay Community Energy, Silicon Valley Clean Energy and Central Coast Community Energy. Subject to approval by the respective boards, these three CCAs and MCE are considering establishment of a new conduit JPA to be the issuer of bonds to finance the prepayments. The proposed name of the JPA conduit would be **California Community Choice Financing Authority (CCCFA)**. CCCFA would only be allowed to undertake financings or refinancings in connection with prepayment transactions on behalf of its members. CCCFA would have no full-time staff and would require a limited commitment of CCA staff time to fulfill the role of a conduit issuer. However, so long as there are more than two JPA members, the debt issued to facilitate a prepayment transaction would not appear on the balance sheets of the respective CCAs.

JPA Act: Chapter 5 of Division 7 of Title 1 of the Government Code (the "JPA Act"), including Section 6500 and following, authorizes two or more public agencies, by entering into a joint exercise of powers agreement, to jointly exercise any power common to such agencies and to create an entity that is separate from such agencies to administer and execute such agreement. The JPA Act also grants JPAs additional powers, including the power to issue bonds to finance certain projects and purposes. If specified in a joint exercise of powers agreement, bonds issued by a JPA shall not be the debts, liabilities, or obligations of the JPA's public agency members.

JPA Agreement: The JPA Agreement would establish CCCFA and specifies its purpose, powers and governance processes and procedures. CCCFA's stated purpose is to assist its members by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds by, among other things, issuing or incurring bonds and entering into related contracts with members. Pursuant to the terms of the JPA Agreement, CCCFA may exercise the common powers of its members, and other powers provided under applicable law that are beneficial for the issuance or incurrence of such bonds, and to undertake certain projects and activities on members' behalf in connection with the financing or refinancing of energy prepayments. The JPA Agreement specifies that the bonds issued by CCCFA shall not constitute debts, liabilities or obligations of the members of the JPA.

The JPA Agreement provides that the Board of CCCFA will be comprised of one director representing each Founding Member (as defined in the JPA Agreement), which director shall be the Chief Executive Officer, General Manager, Executive

Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of the respective Founding Members.

Fiscal Impacts: Initial set-up costs to MCE as one of the four founding members of the JPA are estimated at \$20,000 for legal and filing fees. However, if MCE completes a prepayment transaction it is anticipated that MCE would save over \$250,000 initially and \$2,500,000 over the life of the transaction when compared to utilizing the CSCDA conduit.

Recommendation: Adopt Resolution 2021-03 to Approve Formation of California Community Choice Financing Authority.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT

This Joint Powers Agreement (this “Agreement”) is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to herein as the “Members” and those parties initially executing this Agreement are referred to as the “Founding Members”), creating a separate joint powers agency, which is named “California Community Choice Financing Authority” (“CCCFA”).

WITNESSETH

WHEREAS, each Member is a “community choice aggregator,” as that term is defined in Section 331.1 of the Public Utilities Code of the State of California (the “Public Utilities Code”), having duly adopted, established and implemented a community choice aggregation program pursuant to Section 366.2 of the Public Utilities Code, with the authority to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs; and

WHEREAS, each Member is a “public agency,” as that term is defined in Section 6500 of the Government Code of the State of California (the “Government Code”); and

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code, being Section 6500 and following (the “Act”), authorizes a joint exercise by two or more public agencies of any power which is common to each of them and the creation of an entity that is separate from the parties to the joint exercise of powers agreement; and

WHEREAS, it is to the mutual benefit of the Members and in the public interest that an agency by the name of the California Community Choice Financing Authority be created, by which the Members jointly exercise for their common benefit and for the purposes specified herein certain powers that they have in common or are otherwise provided for by applicable law, including but not limited to (i) the acquisition and operation of power supplies, resource adequacy and renewable attributes, and (ii) the provision of other energy services or programs which may be of benefit to one or more Members; and

WHEREAS, the Act conveys upon joint exercise of powers authorities certain additional powers, including but not limited to the power to issue revenue bonds and incur other evidences of indebtedness for such purposes as are specified in the Act; and

WHEREAS, CCCFA’s purpose is to assist Members by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined herein) and entering into related contracts with Members.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

Article I. DEFINITIONS

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

Section 1.01 “Act” means Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6500 *et seq.*), as supplemented and amended from time to time, including without limitation the Marks-Roos Local Bond Pooling Act of 1985.

Section 1.02 “Agreement” means this Joint Powers Agreement, as it may be supplemented and amended from time to time in accordance with the terms hereof.

Section 1.03 “Associate Member” means any Public CCA Agency that is a signatory to this Agreement and that has met the requirements of Section 3.02 below to become an Associate Member. The term “Associate Member” shall, however, exclude any Associate Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below.

Section 1.04 “Board” means the Board of Directors of CCCFA as established by this Agreement.

Section 1.05 “Bonds” means bonds, notes, commercial paper, installment purchase, lease purchase and similar agreements and certificates of participation therein, and any other evidences of indebtedness.

Section 1.06 “CCCFA” means the California Community Choice Financing Authority, the Joint Powers Authority established by this Agreement.

Section 1.07 “Government Code” means the Government Code of the State of California.

Section 1.08 “Member” means a Founding Member or an Associate Member.

Section 1.09 “Prepayment Project” means, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, subject to CCCFA’s approval of an application from one or more Members for support of such project, program, public capital improvement or authorized purpose and in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations.

Section 1.10 “Prepayment Project Agreement” means a contract among any Members and CCCFA in connection with the undertaking, financing or refinancing of a Prepayment Project by such Members and CCCFA in accordance with the terms of this Agreement.

Section 1.11 “Public CCA Agency” means any community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code, that is a public agency, as such term is defined in the Act, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code.

Section 1.12 “Founding Member” means each of the Public CCA Agencies initially executing this Agreement, and any Public CCA Agency that becomes a Founding Member pursuant to Section 3.01 below. The term “Founding Member” shall, however, exclude any Founding Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below. The initial Founding Members are Central Coast

Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.

Section 1.13 “Public Utilities Code” means the Public Utilities Code of the State of California.

Article II. FORMATION OF AUTHORITY

Section 2.01 Creation of CCCFA. Pursuant to the Act, there is hereby created a public entity, to be known as the “California Community Choice Financing Authority,” which shall be a public entity separate and apart from its Members. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.

Section 2.02 Purpose. This Agreement is made, and CCCFA is being established, pursuant to the Act to provide for the joint exercise of powers common to the parties hereto to assist the Members in financing or refinancing energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members, including by undertaking, financing or refinancing Prepayment Projects on behalf of one or more of the Members and/or CCCFA, all as further described in Section 2.03 hereof. CCCFA will fulfill the purposes of this Agreement by, among other things, undertaking the sale and issuance or incurrence of Bonds to finance or refinance Prepayment Projects on behalf of one or more of the Members and/or CCCFA in accordance with the Act. CCCFA is not being formed for the purposes of providing municipal services within the meaning of Section 6503.6 or Section 6503.8 of the Act.

Section 2.03 Powers. CCCFA, in its own name, shall have any and all power to undertake Prepayment Projects on behalf of one or more of the Members and/or CCCFA, and to finance or refinance such Prepayment Projects through the sale and issuance or incurring of Bonds for the purposes set forth in Section 2.02 hereof. CCCFA is empowered to exercise any and all common powers of the Members, and any other powers provided to it by any applicable laws, beneficial for the issuance or incurrence from time to time of such Bonds pursuant to Article VII hereof. Without limiting the generality of the foregoing, CCCFA, in its own name, shall have the power:

- (a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;
- (b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);
- (c) to employ agents and employees;
- (d) to acquire, manage, maintain or operate any building, works or improvements;
- (e) to acquire, hold, lease or dispose of property;
- (f) to incur debts (including without limitation through the issuance or incurrence of Bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);
- (g) to sue and be sued in its own name;
- (h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;
- (i) to receive, collect, invest and disburse moneys;
- (j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- (k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;
- (l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;
- (m) to exercise any other power and take any other action permitted by law to accomplish the purposes of this Agreement.

Such powers shall be exercised by CCCFA subject only to such restrictions upon the manner of exercising such power as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers, as provided in Section 6509 of the Act, and, should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy in the exercise of similar powers; *provided, however*, that nothing herein shall limit the powers of CCCFA under Article 4 of the Act.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred, as further described in Article VII hereof. Such Bonds shall not constitute debts, liabilities or obligations of the Members.

Any of the Prepayment Projects acquired, financed or refinanced by CCCFA shall be operated by a Member or CCCFA for and on behalf of CCCFA, either directly or pursuant to contract or agreement with a third party designated by the applicable Member or Members and approved by CCCFA. None of the Members or CCCFA shall have liability for the breach, negligence or willful misconduct of any such third party.

Article III. MEMBERSHIP

Section 3.01 Founding Members. A Public CCA Agency will be qualified to join as a Founding Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as parties to this Agreement and become Founding Members, and existing Associate Members may be elevated to Founding Members, upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as a Founding Member of CCCFA; (2) the approval at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as a Founding Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become a Founding Member for all purposes of this Agreement.

Section 3.02 Associate Members. A Public CCA Agency will be qualified to join as an Associate Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as Associate Members of CCCFA upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as an Associate Member of CCCFA; (2) the approval at a regular or special meeting of the Board by a majority vote of the Directors in attendance, provided a quorum is established and maintained, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as an Associate Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any.

Section 3.03 Cost Allocations.

- (a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one Member one share for general and administrative costs as determined

by the Board associated with all operations of CCCFA. General and administrative costs do not include any costs that relate solely to any specific Prepayment Project Agreement.

- (b) The costs of each Prepayment Project shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Agreement relating to such Prepayment Project.

Section 3.04 Withdrawal or Exclusion of Member.

- (a) Any Member may withdraw from CCCFA upon the following conditions:
 - (i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. If a Founding Member files a resolution to withdraw with the Board Secretary, that Founding Member no longer has any voting rights on the Board;
 - (ii) Members undertaking or participating in Prepayment Projects or on whose behalf CCCFA undertakes a Prepayment Project shall remain subject to the cost allocation, participation and withdrawal terms and conditions, as applicable, set forth in the applicable Prepayment Project Agreement; and
 - (iii) Prior to the Board accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of general and administrative costs then due. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations of CCCFA. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.
 - (iv) No such withdrawal shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.
- (b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Prepayment Project Agreement or other program agreement.
- (c) Any Member which has (i) defaulted under this Agreement, a Prepayment Project Agreement, or other program agreement, (ii) if such Member is a Founding Member, failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01, 3.02, and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CCCFA by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member, if such Member is a Founding Member). Prior to any vote to terminate participation of any Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Prepayment Project

Agreement or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director (if such Member is a Founding Member) or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Prepayment Project Agreement or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion. No such termination shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

- (d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.04 below.

Section 3.05 Contributions and Advances. Contributions or advances of public funds and of personnel, equipment or property may be made to CCCFA by any Member for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of such purpose. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by such Member and CCCFA at the time of making such advance. It is mutually understood and agreed that no Member is under any obligation to make advances or contributions to CCCFA to provide for the costs and expenses of administration of CCCFA, even though any Member, in its sole discretion, may do so. Any Founding Member may allow the use of personnel, equipment or property in lieu of other contributions or advances to CCCFA.

Article IV. POWERS OF BOARD & MANAGEMENT OF CCCFA

Section 4.01 Board. CCCFA shall be administered by a Board which shall consist of one Director representing each Founding Member. Such Board shall be the governing body of this CCCFA, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA.

Section 4.02 Appointment and Vacancies. Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents, and may be removed as Director by such Founding Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Founding Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Founding Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

Section 4.03 Notices. The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State, the State Controller, the applicable county clerk and local agency formation commissions.

Section 4.04 Committees. The Board may create committees to provide advice to the Board or conduct the business of CCCFA subject to delegation of authority from the Board as permitted in the bylaws and any applicable laws.

Section 4.05 Director Compensation. Compensation for work performed by Directors, including alternates, on behalf of CCCFA shall be borne by the Founding Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

Section 4.06 Board Officers. At its first meeting in each calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair, each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary, a Treasurer, and a Controller, each of whom may, but need not, be selected from among the Directors.

- (a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.
- (b) **Treasurer and Controller.** The Board shall appoint a qualified person to act as the Treasurer and Controller, neither of whom needs to be a Director. Except where a certified public accountant has been designated as Treasurer of CCCFA, the Board shall appoint the same qualified person to act as both the Treasurer and Controller. Where a certified public accountant has been designated as Treasurer of CCCFA, the auditor of one of the Founding Members or of a county in which one of the Founding Members is located shall be designated as auditor of CCCFA. Subject to the provisions of any resolution, indenture, trust agreement or other instrument providing for a trustee or other fiscal agent in connection with any Bonds, and, except as may otherwise be specified by resolution of CCCFA, the Treasurer shall be the depository of CCCFA to have custody of all the money of CCCFA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer is hereby designated as the public officer or person who has charge of, handles, or has access to any property of CCCFA, and such officer shall file an official bond in an amount determined from time to time by the Board as required by Section 6505.1 of the Government Code. The Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code. The Treasurer shall also create or caused to be created a report in writing on the first day of each fiscal quarter to CCCFA and each Founding Member, which report shall describe the amount of money held by the Treasurer, the amount of receipts since the last such report, and the amount paid out since the first such report.
- (c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CCCFA, and responding to public records requests of the JPA.

Section 4.07 Management of CCCFA. The Board shall appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. The General Manager shall be responsible for the day-to-day operation and management of CCCFA. The General Manager may enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

Section 4.08 Other Officers and Employees. The Board shall have the power to appoint such other officers and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Founding Members may contract with CCCFA to provide staff to perform services for CCCFA, but such

employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Founding Member only.

Section 4.09 Budget. The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CCCFA shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

Section 4.10 Fiscal Year. Unless changed by resolution of the Board, the fiscal year of CCCFA shall be the period from January 1 of each year to and including the following December 31.

Article V. MEETINGS OF THE BOARD

Section 5.01 Regular Meetings. The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

Section 5.02 Special Meetings. Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code Sections 54956 and 54956.5, as amended.

Section 5.03 Brown Act Compliance. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*), and as augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, to the extent permitted by law.

Section 5.04 Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 5.05 Quorum. A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

Section 5.06 Voting. Each Founding Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be required and sufficient to constitute action, provided a quorum is established and maintained.

(a) Special Voting Requirements as specified in this Agreement:

- (i)** Action of the Board on the matters set forth in Section 3.01 related to addition of Founding Members shall require the affirmative vote of at least two-thirds (2/3) of the Entire Board.
- (ii)** Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.
- (iii)** Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Founding Member's governing body.

- (iv) Action of the Board to amend any other provision of this Agreement shall be subject to the voting requirements set forth in Section 11.03 below.

Section 5.07 Rules and Regulations. CCCFA may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

Article VI. PREPAYMENT PROJECTS

Section 6.01 Prepayment Projects. The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to approve the application of any Member for the undertaking, financing, or refinancing of any Prepayment Projects within the purpose and power of CCCFA and to adopt guidelines for their implementation.

Section 6.02 Prepayment Project Agreement. The costs and other expenses of each Prepayment Project, including without limitation applicable administrative costs of CCCFA with respect to the Prepayment Project, shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Agreement relating to such Prepayment Project, which will be separate and distinct from this Agreement.

Article VII. BONDS AND OTHER INDEBTEDNESS

In addition to the other powers conferred on CCCFA by this Agreement, CCCFA shall have the power to issue, incur, sell and deliver Bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects. The terms and conditions of the issuance or incurrence of any such bonds or indebtedness shall be set forth in a resolution, indenture trust agreement, or other instrument pursuant to which the Bonds are issued or incurred, as required by law and as approved by the Board. CCCFA's debts, liabilities and obligations with respect to Bonds issued or incurred under this Agreement and contracts or obligations entered into to carry out the purposes for which Bonds are issued or incurred, shall not constitute a debt, liability or obligation of any of the Members.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

Article VIII. LIMITATION ON LIABILITY OF MEMBERS

Section 8.01 Pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of any Member. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Prepayment Project Agreement such Member enters into pursuant to this Agreement.

Section 8.02 Notwithstanding anything to the contrary in this Agreement or otherwise, CCCFA shall not have the power to and shall not enter into any retirement contract with any public retirement system (as defined in Section 6508.1 of the Government Code) for any reason. The provision in this paragraph is intended to benefit Members and to be a confirming, irrevocable obligation of CCCFA which may be enforced by Members individually or collectively.

Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION

Section 9.01 Term and Termination. This Agreement shall become effective when at least three Founding Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; *provided, however*, this Agreement cannot be terminated while either (a) any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds. This Agreement may be terminated by a two-thirds (2/3) vote of the entire Board that is approved by resolution of each Founding Member's governing body; *provided, however*, that this Agreement and CCCFA shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CCCFA. In any event, CCCFA shall cause all records regarding its formation, existence, the Prepayment Projects, any Bonds issued or incurred by it and proceedings pertaining to its termination to be retained for at least six years (or as otherwise required by law) following termination of CCCFA or final payment of any Bonds issued or incurred by CCCFA, whichever is later.

Section 9.02 Liquidation; Distribution. Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CCCFA as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CCCFA, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CCCFA for the purpose of concluding and dissolving the business affairs of CCCFA. Notwithstanding the foregoing, no dissolution of CCCFA shall be permitted while either (a) any Bonds of CCCFA remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds.

ARTICLE X. ACCOUNTS AND REPORTS

Section 10.01 Establishment and Administration of Funds. CCCFA is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, including without limitation Section 6505 of the Government Code. CCCFA shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CCCFA securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CCCFA shall be open to inspection at all reasonable times to each Member and its representatives.

Section 10.02 Annual Audits and Audit Reports. The Controller shall cause an annual independent audit of the accounts and records of CCCFA to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member not later than 270 days after the close of the fiscal year or fiscal years under examination. CCCFA will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

ARTICLE XI. GENERAL PROVISIONS

Section 11.01 Conflict of Interest Policy. CCCFA, unless otherwise exempt, shall adopt a conflict of interest policy as required under applicable laws of the State of California. Counsel to CCCFA for financing matters, including bond counsel, shall not be considered a consultant or other designated position for purposes of the conflict of interest policy.

Section 11.02 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither a Member nor CCCFA may assign any right or obligation under this Agreement without the consent of all other Members.

Section 11.03 Amendments. Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of the entire Board. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Founding Members pursuant to each Founding Member's applicable approval process, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of all Founding Members pursuant to each Founding Member's applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least thirty (30) days prior to the date upon which the Board votes on such amendments. Each Member hereby agrees to take any actions necessary on its part to approve any amendment adopted pursuant to this Section 11.03, and if any Member fails to perform any such actions, such Member shall be deemed to have submitted a resolution of withdrawal pursuant to the provisions of Section 3.04 hereof.

Notwithstanding the foregoing, this Agreement shall not terminate while any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

Section 11.04 Indemnification and Insurance. To the fullest extent permitted by law, CCCFA shall defend, indemnify, and hold harmless the Members and each Director, alternate, officer, employee and agent 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 CCCFA under this Agreement to the extent not otherwise provided under a Prepayment Project Agreement. CCCFA shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CCCFA and the Members.

Section 11.05 Waiver of Personal Liability. No member, director, commissioner, officer, agent or employee of CCCFA or the Members, respectively, past, present or future, shall be individually or personally liable for the observance or performance of any terms, conditions or provisions hereof or for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of CCCFA or the actions undertaken pursuant to this Agreement; provided, however, that nothing herein shall relieve any such person from the performance of any official duty provided hereby or by applicable provision of law.

Section 11.06 Limitation of Rights. All of the covenants, agreements, terms and conditions in this Agreement to be observed or performed by or on behalf of CCCFA or the Members shall be for the sole and exclusive benefit of CCCFA and the Members, whether so expressed or not, and nothing contained herein, express or implied, is intended to or shall give any other person other than CCCFA and the Members any legal or equitable right, remedy or claim hereunder.

Section 11.07 Notices. The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service of process on behalf of CCCFA. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member, and separately to the Director appointed by such Founding Member, to their respective addresses on file with CCCFA.

Section 11.08 Severability. Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

Section 11.09 Section Headings. The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

Section 11.10 Choice of Law. This Agreement will be governed and construed in accordance with the laws of the State of California.

Section 11.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

Section 11.12 Dispute Resolution. The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board. In the event such mediation fails to settle a dispute, the parties may pursue any remedies provided by law.

[Signature Page Follows]

IN WITNESS WHEREOF, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

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

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

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

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

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

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

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

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

RESOLUTION 2021-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY TO APPROVE FORMATION OF CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

WHEREAS, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of Pleasant Hill, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Vallejo, the City of Walnut Creek, and the Town of Yountville; and

WHEREAS, MCE, acting pursuant to Article I (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "JPA Law"), may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers; and

WHEREAS, MCE and Central Coast Community Energy, East Bay Community Energy, and Silicon Valley Clean Energy desire to create and establish a joint exercise of powers agency pursuant to the JPA Law, such joint exercise of powers agency to be known as the California Community Choice Financing Authority (the "CCCFA") or by such other name as specified in the JPA Agreement (defined below) as executed and delivered, for the purpose of establishing an entity to undertake the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members; and

WHEREAS, MCE is a community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code of the State of California (the "Public Utilities Code"), that is a public agency, as such term is defined in the JPA Law, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes; and

WHEREAS, there has been prepared and submitted to this meeting a form of Joint Powers Agreement (such Joint Powers Agreement, in the form presented to this

meeting, with such changes, insertions and omissions as are made pursuant to this Resolution, being referred to herein as the “JPA Agreement”), which JPA Agreement creates and establishes the CCCFA; and

WHEREAS, under California law and the JPA Agreement, the CCCFA will be a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of the CCCFA will not constitute debts, liabilities or obligations of MCE or any representative of MCE serving on the governing body of MCE; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of MCE as follows:

Section 1. The form of JPA Agreement on file with the Board Clerk of MCE is hereby approved. The Chief Executive Officer of MCE (an “Authorized Officer”) is hereby authorized and directed, on behalf of MCE, to execute and deliver the JPA Agreement substantially in the approved form, with such changes as the Authorized Officer executing such document may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The formation of the CCCFA pursuant to the JPA Agreement is hereby authorized and approved.

Section 3. The officers, employees and agents of MCE are hereby authorized and directed, jointly and severally, to execute and deliver any and all documents, agreements and instruments and to do any and all things which they may deem necessary or advisable in order to consummate the transactions herein authorized and otherwise to carry out, give effect to and comply with the terms and intent of the JPA Agreement and this Resolution.

Section 4. All actions heretofore taken by the officers, employees and agents of MCE with respect to the matters set forth above are hereby approved, confirmed and ratified.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of April, 2021, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				

City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE



April 15, 2021

TO: MCE Board of Directors

FROM: Michael Callahan, Senior Policy Counsel

RE: Policy Update of Regulatory and Legislative Items

Dear Board Members:

Below is a summary of the key activities at the state and federal legislatures and the California Public Utilities Commission (CPUC) impacting Community Choice Aggregation (CCA) and MCE.

I. Legislative Advocacy

a. Bills MCE has supported

i. SB 612 (Portantino)

CalCCA is sponsoring SB 612 (Portantino), which would reduce costs for MCE and our customers by reducing the Power Charge Indifference Adjustment (PCIA) exit fee. SB 612 would:

- Allow CCAs to access their fair share of the benefits of Investor-Owned Utility (IOU) legacy contracts that they are paying for through the PCIA. These benefits include renewable energy, hydroelectric energy, and resource adequacy. Currently, the IOUs retain these benefits.
- Require IOUs to better manage their legacy contracts, by selling excess energy on the California Independent System Operator (CAISO) wholesale market and engaging legacy contract holders to renegotiate or buyout the contracts to reduce costs to customers.
- Direct the CPUC to establish a market price benchmark for greenhouse gas (GHG)-free energy.

This is a consensus solution that was negotiated in 2019-2020 by CPUC stakeholders including IOUs, CCAs, and direct access providers, and presented to the CPUC in February 2020 as part of a regulatory process. While a Final Decision was expected in June 2020, the CPUC has yet to take action.

SB 612 currently has 20 co-authors, including MCE representatives Sen. McGuire, Asm. Levine, and Asm. Bauer-Kahan. Because this bill would reduce costs for all customers in your communities, including those that do not currently take service from MCE, MCE encourages your municipalities to consider supporting this legislation.

ii. AB 843 (Aguiar-Curry)

MCE and Pioneer Community Energy are co-sponsoring AB 843 (Aguiar-Curry). This is a narrow bill that would allow CCAs to access the CPUC Bioenergy Market Adjusting Tariff (BioMAT) program. Asm. Aguiar-Curry represents MCE communities in Napa and Solano counties. BioMAT is a market adjusting tariff that provides funding for renewable bioenergy projects from a variety of sources:

- Biogas from wastewater treatment, municipal composting, food processing, or co-digestion;
- Dairy and other agricultural bioenergy; and
- Generation from byproducts of sustainable forest management.

The BioMAT program is funded through a non-bypassable charge, paid for by CCA as well as bundled customers. However, the CPUC has declined to allow CCAs to procure and recover costs from the BioMAT program because SB 1122 (2012), which created the program, does not expressly include CCAs. AB 843 would simply allow CCAs to access funds and recover costs. It would not expand the program, change the size or type of eligible facilities, or expand CPUC oversight over CCA procurement. Access to these funds would allow MCE to better partner with municipal wastewater, sanitary, forest management, and composting agencies in our service area, if the Board chooses to do so.

iii. SB 18 (Skinner)

SB 18 would integrate green hydrogen into planning processes at the CPUC and would allow green hydrogen to be considered a zero-carbon resource. Both of these steps would help MCE incorporate clean, emissions-free green hydrogen resources into our portfolio as

quickly as possible, furthering both our agency's mission and California's clean energy and emissions reduction goals.

iv. AB 21 (Bauer-Kahan)

This bill would create the Utility Accountability and Wildfire Prevention Fund (UAWPF) and civil penalties for entities that own and operate the electric grid for failure to properly maintain the vegetation surrounding their transmission and distribution lines. AB 21 will empower our local governments with additional tools to hold grid operators accountable for the safety of their communities. Additionally, the funds AB 21 would generate will help to support California's fire prevention and planning efforts, which will further reduce the risk our communities face from catastrophic wildfires.

v. AB 427 (Bauer-Kahan)

This bill would allow demand response programs and resources to meet Resource Adequacy (RA) requirements regardless of whether the program is integrated into the CAISO market. While California load serving entities (LSE) need to increase their RA procurement, this is too often done with fossil fuels. MCE has a goal to reduce by 50% the GHG emissions associated with its RA purchases. With this bill, CCAs like MCE would be able to receive RA credit for demand response programs, furthering our green goals while increasing reliability on California's grid.

vi. AB 525 (Chiu)

This bill would set an offshore wind goal for the state of 10,000 MW by 2040 and direct state agencies to plan for and address barriers to the development of a large-scale offshore wind industry for California. Offshore wind has immense potential to not only provide renewable energy to Californians, but can also provide the energy when it is needed most for reliability purposes—in the evening hours when other renewable energy sources are declining. The robust planning and development of offshore wind would allow MCE to incorporate more clean, emissions-free wind energy into our portfolio, furthering both our agency's mission and California's reliability, clean energy, and emissions reduction goals.

vii. AB 1395 (Muratsuchi)

This bill would take several critical steps toward ensuring that California achieves statewide carbon neutrality by no later than 2045, and maintains net negative GHG emissions thereafter. This would

include creating targets and accounting for GHG emissions, as well planning for specific goals to be set by the Air Resources Board. These measures will mitigate the worsening impacts of climate change across California and across the globe.

viii. SB 30 (Cortese)

This bill would take several steps to move state agency buildings to a state of operational carbon-neutrality by 2035, including a requirement that newly constructed state buildings be all-electric. SB 30 would also ensure that state funding, wherever possible, prioritizes supporting construction of all-electric buildings. SB 30 also leaves state agencies the flexibility to pursue carbon neutrality in the manner that best meets their needs, including by partnering with their local CCAs.

ix. SB 99 (Dodd)

This bill would require the California Energy Commission (CEC) to develop and implement a grant program for local governments to design community energy resilience plans. By providing for funding to support local governments in developing community energy resilience plans, SB 99 would help to ensure that local governments are able to respond to the resilience challenge without taking resources away from other critical local efforts. As a CCA that is committed to addressing climate change through renewable energy, MCE is optimistic that the additional support SB 99 would provide will help CCA communities design resilience plans that leverage their CCAs' expertise and maximize the use of clean resilience solutions such as solar paired with storage.

x. SB 345 (Becker)

This bill would require the CPUC to define "non-energy benefits" resulting from distributed energy resource (DER) programs, and to consider non-energy benefits to prioritize public purpose funding to maximize total benefits. This recommendation was raised in the CEC's Low-Income Barriers Study, which was published in 2016 as required by SB 350 (de León). However, the CPUC has been slow to act on the recommendation. SB 345 will help MCE ensure that our programs can maximize the wide range of non-energy benefits clean DERs can provide to our customers and our communities.

b. Bills MCE is watching

i. AB 1087 (Chiu)

This bill would create an Environmental Justice Community Resilience Hubs Program to award competitive grants to fund holistic community-driven building upgrade projects for critical community institutions and qualified housing properties. MCE is waiting to support this bill until after its first policy committee, during which it is expected that the author's office will be able to address some concerns from CCAs. Primarily, MCE has raised that CCAs should be able to administer programs related to the public purpose funding and not restrict that opportunity to the IOUs.

ii. AB 1161 (Garcia)

This bill would require all state buildings to be served with 100% carbon-free energy provided through contracts purchased by the Department of Water Resources. MCE is likely to oppose this bill unless the author is able to take amendments indicating that state buildings that are located within CCA service areas are able to continue service with their CCA's carbon-free energy product.

iii. AB 354 (Cooper)

This bill would require the CPUC to create a rebate program for low-income residential customers to purchase new appliances that meet energy efficiency standards. MCE is watching this bill and may oppose if only bundled customers of IOUs are able to access the incentives. MCE will advocate for CCA customers to also be able to access these incentives.

II. California Public Utilities Commission

a. Summer 2021 Emergency Procurement

On March 25, 2021, the CPUC adopted a Final Decision regarding near-term actions to ensure grid reliability in Summer 2021. The CPUC increased the Planning Reserve Margin (PRM), or RA procurement buffer, for the summer months, from 15% to 17.5%. Although the Final Decision increases the amount of summer RA procurement, the CPUC's decision reflects CCA advocacy to not increase individual LSEs' procurement requirements for Summer 2021. Instead, the Final Decision directs the IOUs to procure the additional summer capacity to meet the 2.5% PRM increase, the costs for which will be recovered through the Cost Allocation Mechanism.

The Final Decision also adopted a number of IOU demand-side programs designed to reduce load in the event of resource shortages

similar to those experienced in Summer 2020, and urged CCAs to explore and adopt load-reduction programs for Summer 2021 and beyond.