



DATE: February 8, 2016

AGENDA ITEM #2

TO: Environmental Commission

FROM: J. Logan, Staff Liaison

SUBJECT: Community Choice Energy

RECOMMENDATION:

Receive report on Community Choice Energy

BACKGROUND

State and Local Mandates

State Assembly Bill 32, the Global Warming Solutions Act, was signed into law in 2006 and directed public agencies in California to support the state-wide target of reducing greenhouse gas (GHG) emissions to 1990 levels by 2020. In addition, California adopted ambitious energy and environmental policies to reduce state-wide greenhouse gas (GHG) emissions to 20% of 1990 levels by 2050 and, to provide 33% of electricity demands in 2020 from renewable resources utilizing clean energy technologies and environmental benefits.

To address the reduction of GHG emissions at the local level, the City Council adopted a Los Altos Climate Action Plan (CAP) on December 10, 2013. The CAP is a comprehensive strategy with goals and measurements to reduce GHG emissions within five focus areas: Transportation, Energy, Resource Conservation, Green Community and Municipal Operations. The CAP was adopted with a target of reducing the community's GHG emissions by at least 15% by 2020 and with an overarching plan for how the City can achieve up to a stretch-goal of 17% reduction in the GHG emissions by 2020.

Community Choice Energy

One method that has the potential to reduce the GHG emission associated with energy consumption is the establishment of Community Choice Energy (CCE), a system that allows cities, counties and Joint Power Authorities (JPA) to aggregate the purchasing power of an identified customer base within a defined area to secure alternative energy supply contracts with the goal of increasing the percentage of energy from renewable sources. The purchase of alternative energy supplies includes renewable sources such as hydroelectric, wind and geothermal as opposed to non-renewable fossil fuels such as coal, oil and natural gas. The consequences inherent in the use of fossil fuels to generate energy are particularly high carbon dioxide equivalents or GHG emissions which contribute to global warming. The ability to form CCEs has been adopted into law in California and a few other states.

In the 2005 Los Altos GHG Community Inventory baseline, residential and commercial electricity account for 18% of Los Altos community-wide GHG emissions. Reducing the GHG intensity of the electricity currently flowing through the PG&E grid by incorporating more energy from renewable sources is an effective way to directly reduce community GHG emissions. If by establishment of a CCE, Los Altos purchased electricity that was 25% cleaner than PG&E-provided grid electricity, the use of renewal-source energy could potentially reduce overall city emissions by up to 4.5%. If 100% renewable/clean energy were purchased, Los Altos emissions could be reduced by up to 18% and could attain the 2020 stretch goal of 17% reduction in GHG. As such, implementing a CCE has the potential to rapidly reduce community GHGs more so than any other measure currently identified in the Climate Action Plan.

It is noted that the GHG reductions by 2020 are only the first step in the State's GHG reduction goals. The state is proposing additional targets for 2030 and 2050. The initiative of establishing community choices to purchase energy produced by renewal sources is quickly becoming a viable option to achieve GHG reductions. Currently operating Community Choice Energy Programs can demonstrate savings to residents on energy bills and the attainment of sufficient GHG reductions to propel communities to reach short and long-term state goals for clean energy.

In July 2013, the City of Los Altos Environmental Commission explored the concept of GHG reductions that could be achieved by Community Choice Energy and is continuing to hear presentations on the topic and take action for recommendations to Council.

Council Actions

City Council convened a study session on Community Choice Aggregation (Energy) on March 10, 2015 and directed the following action:

Action: Council members directed staff to submit an energy load data request to PG&E and directed the Environmental Commission to further investigate Community Choice Aggregation (Energy) business models and specific goals to be achieved for the City through a Community Choice Aggregation alternative.

The energy load data request to PG&E along with the required and executed Non-Disclosure Agreement was emailed on March 11, 2015. Copies of the communications and documents were provided to City Council on April 8, 2015.

The full staff report and video of the Council CCE study session is posted on the City Website at http://los-altos.granicus.com/GeneratedAgendaViewer.php?view_id=4&clip_id=911

DISCUSSION

South Bay CCE Informational Session

On April 3, 2015 the City of Sunnyvale sent invitations to Santa Clara County cities to participate in the South Bay Technical Feasibility Study currently composed of and partnered by the Cities of Sunnyvale, Mountain View, Cupertino and Unincorporated Santa Clara County. This partnership is investigating the feasibility of a Community Choice Energy program for the South Bay which is planned to initiate this summer. Three staff members from the City of Los Altos attended the information session held on April 9, 2015 in the City of Sunnyvale. Also in attendance via phone webinar were Mayor Jan Pepper, and Environmental Commission CCE Subcommittee members Chair Gary Hedden and Commissioner Don Bray. The CCE Subcommittee provided an update on the CCE informational session they attended to the Environmental Commission.

CCE Subcommittee Activities

In accordance with direction given to the Environmental Commission by Council at the March 10, 2015 Study Session, the CCE Subcommittee convened meetings on March 12 and April 7, 2015 with Mayor Pepper and Staff Liaison J. Logan to formulate next steps to recommend at the April 13, 2015 Environmental Commission meeting and create a discussion document for the Environmental Commission to consider goals and the approach recommended by the CCE Subcommittee. The CCE Subcommittee recommended: 1) joining the South Bay Technical Feasibility Study; 2) convening a community stakeholder committee to guide the recommended study and to frame the CCE Goals and Options; and 3) formulating recommendations to Council for its April 28, 2015 meeting. The CCE Subcommittee lead this discussion at the April 13, 2015 Environmental Commission meeting and the Environmental Commission concurred with the recommendations.

At its April 28, 2015 meeting, Council received a staff report proposing CCE Goals and an Approach Plan to formulate and recommend a CCE business model. The April 13, 2015 Environmental Commission's direction and recommendations were incorporated into the staff report to Council. It was also recommended for the City to join the South Bay Technical Feasibility Study and a letter was sent on April 29, 2015 authorizing the use of electrical load data for the Study.

The Subcommittee met to review direction from the April 28, 2015 Council meeting and then presented a report to the Environmental Commission at its May 7, 2015 meeting. The Subcommittee received direction to move forward with the Study Approach Plan and report back to the Commission at its June 8, 2015 meeting.

Subcommittee activities in May and June

Between the May and July Environmental Commission meetings, the Subcommittee met weekly and convened phone conferences to discuss a list of predetermined questions and discussion points with: 1) the Mayor and the City Manager of Windsor, CA; 2) Peter Rumble, CEO California Clean Power; 3) Geof Syphers, CEO Sonoma Clean Power; Former Mayor of Cotati; and 4) met with two PG&E representatives regarding its green power and solar options. In addition, the Subcommittee convened many phone calls and sent emails to CCE resources and experts in order to better understand and define discussion points for interaction with speakers at its June 8, 2015 meeting. Peter Rumble, CEO California Clean Power, delivered a presentation at the June 8, 2015 Environmental Commission meeting. Members of the Subcommittee and the Staff Liaison attended the 2015 Energy Summit at Stanford University on June 25, 2015.

A Regular meeting of the Environmental Commission was held on July 13, 2015 and was immediately followed by a Study Session on CCE. Melody Tovar, Regulatory Programs Divisions Manager, City of Sunnyvale Environmental Services Department delivered a presentation on the Silicon Valley CCE Partnership (SVCCEP). Members of the community provided comments and discussion followed. Subsequently the Subcommittee met on July 24, 2015 to review the results of the Study Session and plan its report on CCE Goals, the Study Approach Plan and progress updates for the August 10, 2015 Environmental Commission meeting and for the CCE Interim Report to Council on August 25, 2015.

On August 25, 2015 the Environmental Commission presented a CCE Interim Report to Council and included an update on the progress of the Silicon Valley CCE Partnership. The CCE subcommittee held a phone conference with Melody Tovar, Regulatory Programs Divisions

Manager, City of Sunnyvale Environmental Services Department, on the current time-lines and status of the community outreach efforts, JPA formation and use of media and social networks to engage the community in CCE formation efforts. Time-lines are established for the formation of the JPA. Yet to be determine are the final JPA agreement language and the fees to the initial participant cities for joining the JPA.

SVCCEP formation timelines:

1. Business webinar – Nov. 4, 2015
2. Key stakeholder meeting – Nov. 17, 2015; Sunnyvale Community Center; 6-8:30 pm
3. Executive committee and elected officials meeting – Nov. 19, 2015
4. CCE formation packets to initial participant cities – received on Dec. 9, 2015
5. Los Altos time-line
 - a. CCE subcommittee final CCE report to the Commission – Jan. 11, 2016
 - b. West county community CCE meeting in Los Altos LAYC center – Jan. 13, 2016
 - c. Commission final CCE report to Council – Jan. 26, 2016

At its December 14, 2015 meeting, the Commission discussed and provided edits to the CCE subcommittee for the CCE Final Report to Council on January 26, 2016. The CCE subcommittee met in January to finalize the input from the Commission. The CCE Final Report will again be presented to the Commission for a final review and approval at its January 11, 2016 meeting (Attachment A).

The Environmental Commission took action on December 14, 2015, to approve, with edits, the CCE Informational Sheet titled, *Los Altos Among Local Communities Evaluating 'Community Choice Energy'* for use in community outreach and education and to encourage community participation at the January 13, 2016, CCE Community meeting.

The Environmental Commission assisted with outreach efforts to promote the CCE Community meeting held at LAYC (Los Altos Youth Center) on January 13, 2016. The presentation provided information about SVCCEP's efforts to form a group of agencies under a Joint Powers Authority to establish a CCE Program within Santa Clara County.

On January 26, 2016, the Environmental Commission presented its Final CCE Report to Council. Council expressed appreciation to the Commission and directed staff to move forward with the necessary steps for membership in Silicon Valley Clean Energy Authority (SVCEA) and the establishment of a CCA program for Los Altos at its February 9,, 2016 meeting.

ATTACHMENT:

- A. February 9, 2016, CCE agenda report to Council



**CITY OF LOS ALTOS
CITY COUNCIL MEETING
February 9, 2016**

DISCUSSION ITEMS

Agenda Item # 7

SUBJECT: Introduce and waive further reading of Ordinance No. 2016-419, authorizing the implementation a Community Choice Aggregation program; adopt Resolution No. 2016-06, approving the Joint Powers Authority Agreement establishing and authorizing participation in the Silicon Valley Clean Energy Authority; appropriate \$150,000 from the General Fund for the initial costs of the Authority; authorize the City Manager to remit up to \$150,000 to the Silicon Valley Clean Energy Authority to support initial costs of the Authority; and appoint a regular and alternate Director to the Authority's Board of Directors

BACKGROUND

Authorized by California law, Community Choice Energy (CCE) enables city and county governments to pool the electricity demand within their jurisdictions to directly procure or generate electrical power supplies on behalf of the residents and businesses in their communities. The main driver for interest in CCE programs in California is the opportunity to accelerate the shift to renewable and low greenhouse gas (GHG) emitting energy sources in support of climate action objectives. While electric supply is handled by the CCE program, the electricity grid and customer service remain with the incumbent utility, or PG&E in Santa Clara County. Three CCE programs now operate in California - Marin Clean Energy, Sonoma Clean Power and Lancaster Choice Energy.

Interest in the CCE model in California includes more than 20 communities now evaluating and/or pursuing CCEs, including San Mateo County, Alameda County, San Francisco and a collaboration among Monterey, Santa Cruz, and San Benito Counties.

In March 2015, City Council convened a study session on CCE and a subsequent report was presented by the Environmental Commission to Council on April 28, 2015 proposing CCE Goals and an Approach Plan. Council authorized the City to join the South Bay Technical Feasibility Study and authorized the use of City of Los Altos electrical load data for the Feasibility Study

On August 25, 2015, the Environmental Commission presented a CCE Interim Report to Council and included an update on the progress of Silicon Valley CCE Partnership, an initial partnership of agencies sponsored by the cities of Sunnyvale, Cupertino, Mountain View and Santa Clara County unincorporated areas.

On January 26, 2016, the Environmental Commission presented its Final CCE Report to Council. Council directed staff to prepare the necessary documents for joining Silicon Valley Clean Energy Authority (SVCEA).

EXISTING POLICY

None

PREVIOUS COUNCIL CONSIDERATION

March 10, 2015; March 17, 2015; March 24, 2015; April 28, 2015; August 25, 2015; December 8, 2015 and January 26, 2016

DISCUSSION

Adoption of Ordinance No. 2016-419 (Attachment 1) by Council is required to authorize the implementation of a Community Choice Aggregation program. The project is exempt from the California Environmental Quality Act (CEQA).

Membership in SVCEA Joint Powers Authority requires Council to adopt Resolution No. 2016-06 approving the Joint Powers Agreement (Attachment 2). The project is exempt from CEQA.

Council will need to authorize payment of \$150,000 to the Silicon Valley Clean Energy Authority to support the initial costs of the Authority. Once the Authority is successfully operational, it is anticipated that this initial payment will be reimbursed to the City.

In addition, Council needs to consider appointment of a member of Council to serve as regular Director and also appoint an alternate Director to the Authority's Board of Directors.

These actions must be completed and submitted to SVCEA no later than March 31, 2016.

PUBLIC CONTACT

The City of Los Altos Environmental Commission and City Council held study sessions and meetings related to the concepts and formation of CCEs during the period of July 2013 to January 2016.

An informational community meeting on CCE was hosted by the City on January 13, 2016 at the Los Altos Youth Center.

Posting of the meeting agenda serves as notice to the general public.

FISCAL/RESOURCE IMPACT

Funds for membership and initial cost to join SVCEA are \$150,000 and will be appropriated from the General Fund

ENVIRONMENTAL REVIEW

The Ordinance to authorize participation in a Community Choice Aggregation program is exempt from the requirements of CEQA pursuant to the State CEQA Guidelines, as it is not a "project" and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a).) Further, the ordinance is exempt from CEQA as

Introduce and waive further reading of Ordinance No. 2016-419, authorizing the implementation a Community Choice Aggregation program; adopt Resolution No. 2016-06, approving the Joint Powers Authority Agreement establishing and authorizing participation in the Silicon Valley Clean Energy Authority; appropriate \$150,000 from the General Fund for the initial costs of the Authority; authorize the City Manager to remit up to \$150,000 to the Silicon Valley Clean Energy Authority to support initial costs of the Authority; and appoint a regular and alternate Director to the Authority's Board of Directors

there is no possibility that the ordinance or its implementation would have a significant effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308.)

The Council Resolution and the establishment of the Silicon Valley Clean Energy Authority is exempt from the requirements of CEQA pursuant to the State CEQA Guidelines, as it is not a “project” since this action involves organizational and administrative activities of government that will not result in direct or indirect physical changes in the environment. (14 Cal. Code Regs. § 15378(b)(5)). Further, the resolution is exempt from CEQA as there is no possibility that the resolution or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3)).

RECOMMENDATION

1. Introduce and waive further reading of Ordinance No. 2016-419, authorizing the implementation of a Community Choice Aggregation program
2. Adopt Resolution No. 2016-06, approving the Joint Powers Authority Agreement establishing and authorizing participation in the Silicon Valley Clean Energy Authority
3. Appropriate \$150,000 from the General Fund for the initial costs of the Authority
4. Authorize the City Manager to remit up to \$150,000 to the Silicon Valley Clean Energy Authority to support the initial costs of the Authority
5. Appoint a regular and alternate Director to the Authority’s Board of Directors

ALTERNATIVES

1. Do not approve membership in SVCEA, and direct staff accordingly

Prepared by: J. Logan, Assistant City Manager

Approved by: Marcia Somers, City Manager

ATTACHMENTS:

1. Ordinance No. 2016-419
2. Resolution No. 2016-06

Introduce and waive further reading of Ordinance No. 2016-419, authorizing the implementation a Community Choice Aggregation program; adopt Resolution No. 2016-06, approving the Joint Powers Authority Agreement establishing and authorizing participation in the Silicon Valley Clean Energy Authority; appropriate \$150,000 from the General Fund for the initial costs of the Authority; authorize the City Manager to remit up to \$150,000 to the Silicon Valley Clean Energy Authority to support initial costs of the Authority; and appoint a regular and alternate Director to the Authority’s Board of Directors

ORDINANCE NO. 2016-419

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LOS ALTOS AUTHORIZING THE IMPLEMENTATION OF A
COMMUNITY CHOICE AGGREGATION (CCA) PROGRAM**

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. FINDINGS. The City Council finds as follows:

1. The Cities of Cupertino, Mountain View and Sunnyvale and the County of Santa Clara formed and sponsored the Silicon Valley Community Choice Energy Partnership (SVCCEP) to investigate options to provide electric service to customers within the City of Los Altos and surrounding municipalities with the intent of achieving greater local control and involvement over the provision of electric services, competitive electric rates, the development of local renewable energy projects, reduced greenhouse gas emissions, and the implementation of energy conservation and efficiency projects and programs.
2. The City of Los Altos, through its participation in SVCCEP, has prepared a Technical Feasibility Study for a Community Choice Aggregation (“CCA”) program under the provisions of Public Utilities Code Section 366.2. The Technical Feasibility Study shows that implementing a community choice aggregation program would likely provide multiple benefits, including the following:
 - a. Providing customers a choice of power providers;
 - b. Increasing local control over energy rates and other energy-related matters;
 - c. Providing electric rates that are competitive with those provided by the incumbent utility;
 - d. Reducing greenhouse gas emissions arising from electricity use in the City;
 - e. Increasing local and regional renewable generation capacity;
 - f. Increasing energy conservation and efficiency projects and programs;
 - g. Increasing regional energy self-sufficiency; and
 - h. Improving the local economy by implementing new local renewable and energy conservation and efficiency projects.
3. The Joint Powers Agreement creating the Silicon Valley Clean Energy Authority (“Authority”) will govern and operate the CCA program on behalf of its member jurisdictions. The Initial Participants within the County of Santa Clara, as defined by the Joint Powers Agreement, may participate in the Authority by adoption of a resolution approving the execution of the Joint Powers Agreement and adoption of the CCA ordinance required by Public Utilities Code Section 366.2(c)(12) by March 31, 2016. Municipalities choosing to participate in the Authority will have membership on the Board of Directors of the Authority as provided in the Joint Powers Agreement.

4. The Authority will enter into agreements with electric power suppliers and other service providers and, based upon those agreements, the Authority plans to provide electrical power to residents and businesses at rates that are competitive with those of the incumbent utility. Once the California Public Utilities Commission approves the implementation plan prepared by the Authority, the Authority may provide service to customers within the City of Los Altos and those cities that choose to participate in the Silicon Valley Clean Energy Authority; and
5. Under Public Utilities Code Section 366.2, customers have the right to opt-out of a CCA program and continue to receive service from the incumbent utility. Customers who wish to continue to receive service from the incumbent utility will be able to do so at any time; and
6. On February 9, 2016, the Los Altos City Council held a public hearing at which time interested persons had an opportunity to testify either in support or in opposition to implementation of the Silicon Valley Clean Energy CCA program in the City of Los Altos; and
7. This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, as it is not a “project” and has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a).) Further, the ordinance is exempt from CEQA as there is no possibility that the ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3).) The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assure the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308.) The Director of Community Development shall cause a Notice of Exemption to be filed as authorized by CEQA and the State CEQA Guidelines.

SECTION 2. The above findings are true and correct.

SECTION 3. AUTHORIZATION TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM. Based upon the foregoing, and in order to provide businesses and residents within the City of Los Altos with a choice of power providers, the City of Los Altos hereby elects to implement a community choice aggregation program within the jurisdiction of the City by participating in the Community Choice Aggregation program of the Silicon Valley Clean Energy Authority, as described in its Joint Powers Agreement.

SECTION 4. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 5. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 6. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2016 and was thereafter, at a regular meeting held on _____, 2016 passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jeannie Bruins, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

RESOLUTION NO. 2016-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS APPROVING THE JOINT POWERS AGREEMENT ESTABLISHING THE SILICON VALLEY CLEAN ENERGY AUTHORITY

WHEREAS, the Cities of Cupertino, Mountain View and Sunnyvale and the County of Santa Clara formed and sponsored the Silicon Valley Community Choice Energy Partnership (SVCCEP) to investigate options to provide electric service to customers within the City of Los Altos and surrounding municipalities with the intent of achieving greater local control and involvement over the provision of electric services, competitive electric rates, the development of local, renewable energy projects, reduced greenhouse gas emissions, and the implementation of energy conservation and efficiency projects and programs; and

WHEREAS, the City of Los Altos through its participation in SVCCEP has participated in the preparation of a Technical Feasibility Study for a community choice aggregation (“CCA”) program under the provisions of Public Utilities Code Section 366.2, with the Technical Feasibility Study concluding that implementing a community choice aggregation program would likely achieve the goals and benefits described above; and

WHEREAS, the City of Los Altos desires to enter into the Joint Powers Agreement establishing the Silicon Valley Clean Energy Authority in order to implement a community choice aggregation program pursuant to Public Utilities Code Section 366.2(c)(12) within the jurisdiction of the City along with the other municipalities that become a member of the Authority.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS ALTOS HEREBY RESOLVES:

1. The Silicon Valley Clean Energy Authority Joint Powers Agreement, attached hereto, is hereby approved and the Mayor is authorized to execute this Agreement upon the effective date of this resolution.
2. This resolution and the establishment of the Silicon Valley Clean Energy Authority is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, as it is not a “project” since this action involves organizational and administrative activities of government that will not result in direct or indirect physical changes in the environment. (14 Cal. Code Regs. § 15378(b)(5)). Further, the resolution is exempt from CEQA as there is no possibility that the resolution or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3)). A Notice of Exemption shall be filed as authorized by CEQA and the State CEQA guidelines.
3. This resolution shall be effective upon the adoption of Ordinance No. 2016-419, AN ORDINANCE OF THE CITY OF LOS ALTOS AUTHORIZING THE

IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION (CCA)
PROGRAM.

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 9th day of February, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jeannie Bruins, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

Final Draft (11/25/15)

Silicon Valley Clean Energy Authority

- Joint Powers Agreement –

Effective _____

Among The Following Parties:

City of Campbell

City of Cupertino

City of Gilroy

City of Los Altos

Town of Los Altos Hills

Town of Los Gatos

City of Monte Sereno

City of Morgan Hill

City of Mountain View

County of Santa Clara (Unincorporated Area)

City of Saratoga

City of Sunnyvale

SILICON VALLEY CLEAN ENERGY AUTHORITY

JOINT POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”), effective as of _____, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B (“Parties”). The term “Parties” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. 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 and wind energy production.
3. The Parties desire to establish a separate public agency, known as the Silicon Valley Clean Energy 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.
4. The Initial Participants have each adopted an ordinance electing to implement through the Authority a Community Choice Aggregation program pursuant to California Public Utilities Code Section 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 **CONTRACT DOCUMENTS**

1.1 Definitions. Capitalized terms used in the Agreement shall have the meanings specified in Exhibit A, unless the context requires otherwise.

1.2 Documents Included. This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

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

1.3 Revision of Exhibits. The Parties agree that Exhibits B, C and D to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

ARTICLE 2 **FORMATION OF SILICON VALLEY CLEAN ENERGY AUTHORITY**

2.1 Effective Date and Term. This Agreement shall become effective and Silicon Valley Clean Energy Authority shall exist as a separate public agency on March 31, 2016 provided that this Agreement is executed on or prior to such date by at least three Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). 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 Initial Participants. Until March 31, 2016, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(12) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party that is not an Initial Participant

and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

2.3 Formation. There is formed as of the Effective Date a public agency named the Silicon Valley Clean Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. 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 2.3 may not be amended unless such amendment is approved by the governing boards of all Parties.

2.4 Purpose. The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party and any other powers granted to the Authority under state law to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program pursuant to Public Utilities Code Section 366.2(c)(12). The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program.

2.5 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:

- 2.5.1** make and enter into contracts;
- 2.5.2** employ agents and employees, including but not limited to an Executive Director;
- 2.5.3** acquire, contract, manage, maintain, and operate any buildings, works or improvements;
- 2.5.4** acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
- 2.5.5** lease any property;
- 2.5.6** sue and be sued in its own name;
- 2.5.7** 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 Section 53850 et seq. and authority under the Act;

- 2.5.8 issue revenue bonds and other forms of indebtedness;
- 2.5.9 apply for, accept, and receive all licenses, permits, grants, loans or other assistance from any federal, state or local public agency;
- 2.5.10 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;
- 2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“Operating Rules and Regulations”); and
- 2.5.12 make and enter into service, energy and any other agreements 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.

2.6 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 City of Cupertino and any other restrictions on exercising the powers of the Authority that may be adopted by the Board.

2.7 Compliance with Local Zoning and Building Laws. Notwithstanding any other provisions of this Agreement or state law, 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.

ARTICLE 3 **AUTHORITY PARTICIPATION**

3.1 Addition of Parties. Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption by a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.9, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership fee, if any, and (e) satisfaction of any conditions established by the Board.

3.2 Continuing Participation. The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1.

The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

ARTICLE 4

GOVERNANCE AND INTERNAL ORGANIZATION

4.1 Board of Directors. The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.

4.2 Appointment and Removal of Directors. The Directors shall be appointed and may be removed as follows:

4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director shall be a member of the governing body of the Party. The person appointed and designated as the alternate Director may be a member of the governing body of the Party, a staff member of the Party, or a member of the public.

4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director has been removed may appoint a replacement.

4.3 Terms of Office. Each regular and alternate Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body 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 in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.

4.4 Quorum. A majority of the Directors of the entire Board shall constitute a quorum.

4.5 Powers and Function of the Board. The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.

4.6 Executive Committee. The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the

Board's authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.

4.7 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.

4.8 Director Compensation. Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

4.9 Board Voting.

4.9.1 Percentage Vote. Except when a supermajority vote is expressly required by this Agreement or the Operating Rules and Regulations, action of the Board on all matters shall require an affirmative vote of a majority of all Directors on the entire Board. A supermajority vote is required by this Agreement for the matters addressed by Sections 3.1, 6.4, 7.1.1, 7.1.2, 7.2, and 8.4. When a supermajority vote is required by this Agreement or the Operating Rules and Regulations, action of the Board shall require an affirmative vote of the specified supermajority of all Directors on the entire Board. All votes taken pursuant to this Section 4.9.1 shall be referred to as a percentage vote. No action can be taken by the Board without an affirmative percentage vote.

4.9.2 Voting Shares Vote. In addition to and immediately after an affirmative percentage vote, two or more Directors may request that, a vote of the voting shares shall be held. In such event, the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly required by this Agreement or the Operating Rules and Regulations, of all Directors on the entire Board. All votes taken pursuant to this Section 4.9.2 shall be referred to as a voting shares vote. In the event that any one Director has a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter. When a voting shares vote is held, action by the Board requires both an affirmative percentage vote and an affirmative voting shares vote.

4.9.3 Voting Shares Formula. When a voting shares vote is requested by two or more Directors, voting shares of the Directors shall be 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 two years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWh”), within the Party’s respective jurisdiction and (ii) with respect to the period after the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within a Party’s respective jurisdiction that are served by the Authority and (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C and the initial voting shares are designated in Exhibit D. Both Exhibits C and D shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year subject to the approval of the Board.

4.10 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 shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.).

4.11 Selection of Board Officers.

4.11.1 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 from the Authority pursuant to the provisions of this Agreement.

4.11.2 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.

4.11.3 Treasurer and Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the

Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to file with the Authority an official bond in an amount to be fixed by the Board, and if so requested, the Authority shall pay the cost of premiums associated with the bond. 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.

ARTICLE 5

IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

- 5.1.1 Enabling Ordinance.** Prior to the execution of this Agreement, 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 4.9.
- 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 or minute action, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority 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 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 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 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 prepared and approved by the Board in accordance with the Operating Rules and Regulations.

6.3.2 Funding of Initial Costs. The Initial Participants shall fund the Initial Costs of the Authority in establishing the Authority and implementing the CCA Program as described in Exhibit E to this Agreement. The Initial Participants shall remit to the Authority their respective shares of Phase 2 and 3 Initial Costs as described in Exhibit E within 30 days after the Effective Date. In the event that the CCA Program becomes operational, these Initial Costs paid by the Initial Participants 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 Initial Participants shall be reimbursed by the Authority within four years of the Effective Date. 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 Initial Participants shall not be entitled to any reimbursement of the Initial Costs they have paid from the Authority or any Party.

6.3.3 CCA Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation and energy efficiency services under the CCA Program shall be recovered through charges to CCA customers receiving such electric services or from revenues received from grants or other third-party sources.

6.3.4 Additional Contributions and Advances. Pursuant to Government Code Section 6504, the Parties may in their discretion make financial contributions, loans or advances to the Authority for the purposes of the Authority set forth in this Agreement. The repayment of such contributions, loans or advances will be on the written terms agreed to by the Party making the contribution, loan or advance and the Authority.

6.4 Debt. The Authority shall not incur any debts, including but not limited to loans and the issuance of bonds, unless approved by a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.9.

ARTICLE 7

WITHDRAWAL AND TERMINATION

7.1 Withdrawal.

7.1.1 General Right to Withdraw. A Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 180 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. By a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.9, the Board may shorten the 180 day period for a withdrawal under this Section 7.1.1 to become effective.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement provided that the requirements of this Section 7.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in the Authority effective 180 days after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board. By a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.9, the Board may shorten the 180 day period for a withdrawal under this Section 7.1.2 to become effective.

7.1.3 Liabilities; Further Assurances. A Party that withdraws its membership in the Authority under either Section 7.1.1 or 7.1.2 may be subject to certain liabilities, as described in Section 7.3. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Operating Rules and Regulations shall prescribe the rights, if any, of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party.

7.2 Involuntary Termination of a Party. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or the Authority Documents upon a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.9, including the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain liabilities, as described in Section 7.3.

7.3 Continuing Liability; Refund. Subject to the provisions of Section 2.3, upon a withdrawal or involuntary termination of a Party pursuant to Sections 7.1 or 7.2, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in the Authority through the date of its withdrawal or involuntary termination. Notwithstanding Section 2.3, thereafter, the withdrawing or terminated Party shall be responsible for any damages, losses or costs incurred by the Authority resulting from the Party's withdrawal, including but not limited to losses from the resale of power contracted for by the Authority to serve the Party's load. In addition, such Party also shall be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

7.4 The Right to Withdraw Prior to Program Launch. After receiving bids from power suppliers for the CCA Program, the Authority must provide to the Parties a report from the electrical utility consultant retained by the Authority comparing the Authority's total estimated electrical rates, the estimated greenhouse gas emissions rate and the amount of

estimated renewable energy to be used with that of the incumbent utility. Within 15 days after receiving this report, any Party may immediately withdraw its membership in the Authority by providing written notice of withdrawal to the Authority if the report determines that any one of the following conditions exists: (1) the Authority is unable to provide total electrical rates, as part of its baseline offering to customers, that are equal to or lower than the incumbent utility, (2) the Authority is unable to provide electricity in a manner that has a lower greenhouse gas emissions rate than the incumbent utility, or (3) the Authority will use less renewable energy than the incumbent utility. Any Party who withdraws from the Authority pursuant to this Section 7.4 shall not be entitled to any refund of the Initial Costs it has paid to the Authority prior to the date of withdrawal unless the Authority is later terminated pursuant to Section 7.5. In such event, any Initial Costs not expended by the Authority shall be returned to all Parties, including any Party that has withdrawn pursuant to this section, in proportion to the contribution that each made. Notwithstanding anything to the contrary in this Agreement, any Party who withdraws pursuant to this section shall not be responsible for any liabilities or obligations of the Authority after the date of withdrawal, including without limitation any liability arising from power purchase agreements entered into by the Authority.

7.5 Mutual Termination. This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.

7.6 Disposition of Property upon Termination of Authority. Upon termination of this Agreement as to all Parties, 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 Authority Documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 Dispute Resolution. The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and the Authority shall engage in nonbinding mediation or arbitration in the manner agreed upon by the Party or Parties and the Authority. In the event that nonbinding mediation or arbitration is not initiated or does not result in the settlement of a dispute within 120 days after the demand for mediation or arbitration is made, any Party and the Authority may pursue any remedies provided by law.

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 Section 995 et

seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

8.3 Indemnification of Parties. The Authority shall acquire such insurance coverage as the Board deems necessary to protect the interests of the Authority, the Parties and the public but shall obtain no less than \$2 million dollars in coverage. Such insurance coverage shall name the Parties and their respective Board or Council members, officers, agents and employees as additional insureds. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

8.4 Amendment of this Agreement. This Agreement may be amended in writing by a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.9. The Authority shall provide written notice to the Parties at least 30 days in advance of any proposed amendment being considered by the Board. If the proposed amendment is adopted by the Board, the Authority shall provide prompt written notice to all Parties of the effective date of such amendment along with a copy of the amendment.

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

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 72 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. In addition, a duplicate copy of all notices provided pursuant to this section shall be provided to the Director and Alternate Director for each Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

ARTICLE 9 **SIGNATURE**

IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the Silicon Valley Clean Energy Authority.

By: _____

Name: _____

Title: _____

Date: _____

Party: _____

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.)

“Agreement” means this Joint Powers Agreement.

“Annual Energy Use” has the meaning given in Section 4.9.2.

“Authority” means the Silicon Valley Clean Energy Authority.

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

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

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

“CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.4 and 5.1.

“Days” shall mean calendar days unless otherwise specified by this Agreement.

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

“Effective Date” means the date on which this Agreement shall become effective and the Silicon Valley Clean Energy 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 an Executive Director and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority’s initial activities or in support of the negotiation, preparation and approval of power purchase agreements. The Board shall determine the termination date for Initial Costs.

“Initial Participants” means, for the purpose of this Agreement the County of Santa Clara, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Monte Sereno, Morgan Hill, Mountain View, Saratoga, and Sunnyvale, and the Towns of Los Altos Hills and Los Gatos.

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

“Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.

“Party” means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.

“Percentage vote” means a vote taken by the Board pursuant to Section 4.9.1 that is based on each Party having one equal vote.

“Total Annual Energy” has the meaning given in Section 4.9.2.

“Voting shares vote” means a vote taken by the Board pursuant to Section 4.9.2 that is based on the voting shares of each Party described in Section 4.9.3 and set forth in Exhibit D to this Agreement. A voting shares vote cannot take place on a matter unless the matter first receives an affirmative percentage vote in the manner required by Section 4.9.1 and two or more Directors immediately thereafter request such vote.

DRAFT EXHIBIT B

LIST OF THE PARTIES

(This draft exhibit is based on the assumption that all of the Initial Participants will become Parties. On the Effective Date, this exhibit will be revised to reflect the Parties to this Agreement at that time.)

City of Campbell

City of Cupertino

City of Gilroy

City of Los Altos

Town of Los Altos Hills

Town of Los Gatos

City of Monte Sereno

City of Morgan Hill

City of Mountain View

County of Santa Clara (Unincorporated Area)

City of Saratoga

City of Sunnyvale

DRAFT EXHIBIT C

ANNUAL ENERGY USE

(This draft exhibit is based on the assumption that all of the Initial Participants will become Parties. On the Effective Date, this exhibit will be revised to reflect the Parties to this Agreement at that time.)

This Exhibit C is effective as of March 31, 2016.

Party	kWh (2014*)
Campbell	208,827,224
Cupertino	243,359,722
Gilroy	296,992,863
Los Altos	142,219,276
Los Altos Hills	42,576,999
Los Gatos	196,007,285
Monte Sereno	7,939,338
Morgan Hill	232,520,509
Mountain View	664,209,464
Santa Clara County (Unincorporated)	397,902,304
Saratoga	131,604,010
Sunnyvale	1,407,826,241

*Data provided by PG&E

DRAFT EXHIBIT D

VOTING SHARES

(This draft exhibit is based on the assumption that all of the Initial Participants will become Parties. On the Effective Date, this exhibit will be revised to reflect the Parties to this Agreement at that time.)

This Exhibit D is effective as of March 31, 2016.

Party	kWh (2014*)	Voting Share Section 4.9.2
Campbell	208,827,224	5.3%
Cupertino	243,359,722	6.1%
Gilroy	296,992,863	7.5%
Los Altos	142,219,276	3.6%
Los Altos Hills	42,576,999	1.1%
Los Gatos	196,007,285	4.9%
Monte Sereno	7,939,338	0.2%
Morgan Hill	232,520,509	5.9%
Mountain View	664,209,464	16.7%
Santa Clara County (Unincorporated)	397,902,304	10.0%
Saratoga	131,604,010	3.3%
Sunnyvale	1,407,826,241	35.4%
Total	3,971,985,235	100.0%

*Data provided by PG&E

DRAFT EXHIBIT E

FUNDING OF INITIAL COSTS

(This draft exhibit is based on the assumption that all of the Initial Participants will become Parties. On the Effective Date, this exhibit will be revised to reflect the Parties to this Agreement at that time.)

Party	Phase 1(*)	Phase 2 and 3 (**)	Phase 2 & 3 w/Contingency (***)
Campbell	--	\$100,000	\$150,000
Cupertino	\$170,000	\$350,000	\$450,000
Gilroy	--	\$100,000	\$150,000
Los Altos	--	\$100,000	\$150,000
Los Altos Hills	--	\$25,000	\$25,000
Los Gatos	--	\$100,000	\$150,000
Monte Sereno	--	\$25,000	\$25,000
Morgan Hill	--	\$100,000	\$150,000
Mountain View	\$170,000	\$350,000	\$450,000
Santa Clara County (Unincorporated)	\$170,000	\$350,000	\$450,000
Saratoga	--	\$100,000	\$150,000
Sunnyvale	\$170,000	\$350,000	\$450,000
Total	\$680,000	\$2,050,000	N/A

- (*) Certain Parties have contributed funding prior to the Effective Date of this Agreement, as shown above under Phase 1, to conduct initial legal, technical, and administrative activities in support of the establishment of the Authority. Such activities are part of the Initial Costs described in Section 6.3 of this Agreement.
- (**) Additional costs associated with program launch will be financed and thus are not covered by the Initial Cost Contributions shown here.
- (***) Initial Participants are required to commit up to this amount at the time of executing the Agreement; this amount includes contingency funding should multiple Initial Participants

not execute the Agreement by 3/31/16, so that the final Parties are providing sufficient contribution for Initial Costs. The Parties will be notified promptly after the Effective Date of the final Parties and contribution to Initial Costs.