

**California Community Power**

# Regular Meeting of the Board of Directors of CC Power

**1:00 P.M.**

**Wednesday, May 19, 2021**

**Telephonic Meeting Only**

# California Community Power

## NOTICE OF REGULAR MEETING AND AGENDA

Notice is hereby given that a regular meeting of the Board of Directors of California Community Power will be held on **May 19, 2021 at 1:00 p.m. The meeting will be telephonic only.**

The following information is being provided as the forum by which members of the public may observe the meeting and offer public comment:

**Phone number:** 1-669-900-9128 or 1-346-248-7799

**Webinar ID:** 930 6883 5167

**Meeting Link:** <https://zoom.us/j/93068835167>

### AGENDA

- 1 Call to Order.**
- 2 Verification of Meeting Quorum.**
- 3 Matters subsequent to posting the Agenda.**
- 4 Public Comment** – any member of the public may address the Board of Directors concerning any matter not on the agenda.
- 5 Consent Agenda.**
  - A. Minutes of the Regular Board Meeting held on April 21, 2021.
- 6 Regular Agenda Items – Discussion and Possible Action.**
  - A. *Ad hoc* Committee Report – Selection of General Manager.
    - i. Consider and Possibly Approve Resolution 21-05-11 *Extension of Contract with Adirondack Power Consulting, LLC for Interim General Manager Services.*
  - B. *Ad hoc* Committee Report – Selection of General Counsel.
    - i. Consider and Possibly Approve Resolution 21-05-12 *Approval of Agreement with Braun Blaising Smith Wynne, PC for General Counsel Services.*
  - C. *Ad hoc* Committee Report – Policy Development.
  - D. Consider and Possibly Approve Resolution 21-05-13 *Approval of Long Duration Storage Phase 2 Cost Sharing Agreement and Authorization for Interim General Manager to Execute with Participants.*
  - E. Interim General Manager's Report.
  - F. Discussion of Any Individual Member Items.
    - i. Input on Future Project Ideas.
- 7 Adjournment.**

**California Community Power**

**Consent Agenda Items**

- A. Minutes of the April 21, 2021 CC Power Board of Directors Regular Meeting.**

MINUTES OF THE REGULAR MEETING OF THE DIRECTORS OF  
CALIFORNIA COMMUNITY POWER (CC POWER)

April 21, 2021

On this date, a Regular Meeting of the Directors of CC Power was held telephonically.

Representatives Present:

<b>Member Agency</b>	<b>Director</b>
Central Coast Community Energy (3CE)	Tom Habashi
East Bay Community Energy (EBCE)	Nick Chaset
Marin Clean Energy (MCE)	Dawn Weisz, Vice-chair
Peninsula Clean Energy (PCE)	Jan Pepper
Redwood Coast Energy Authority (RCEA)	Matthew Marshall
San José Clean Energy (SJCE)	Lori Mitchell
Silicon Valley Clean Energy (SVCE)	Girish Balachandran, Chair
Sonoma Clean Power Authority (SCP)	Geof Syphers

1. Call to Order: Chair Balachandran called the meeting to order at 1:03 p.m.
2. Verification of Meeting Quorum: Mr. Tony Braun of Braun Blasing Smith Wynne, P.C. verified the quorum to proceed. Roll call was taken and attendance is noted above. All present Board members participated via teleconference.
3. Matters Subsequent to Posting the Agenda: None.
4. Public Comment: Chair Balachandran invited comments from the public on matters not on the agenda. No additional public comment was offered.
5. Consent Agenda. Chair Balachandran asked if any Board member wanted to pull any item off of the consent calendar for discussion. Director Pepper requested a correction to the Minutes of the Regular Board Meeting held on March 17, 2021 to correct the spelling of Deputy Mayor Rick Bonilla's name. The correction was noted by Chair Balachandran. Director Syphers moved for consent; Director Weisz seconded. Chair Balachandran invited comments from the public and none were offered. A roll call vote was taken by Mr. Tony Braun, and all Directors unanimously approved the Consent Agenda.
6. Regular Agenda Items – Discussion and Possible Action:
  - A. Chair Balachandran reported on the General Manager selection process. The *ad hoc* Subcommittee is in the process of shortlisting, and the Subcommittee is on track to bring a GM selection to the June Board meeting. No questions or comments were received from the Board.
  - B. Chair Balachandran reported on the selection of General Counsel. CC Power issued a Request for Proposals on March 24, 2021, and responses were received on April 12. Greg Stepanicich, General Counsel for Silicon Valley Clean Energy, has been assisting

## MINUTES OF THE REGULAR MEETING OF THE DIRECTORS OF CALIFORNIA COMMUNITY POWER (CC POWER)

with the process. The Subcommittee is on track to bring a GC recommendation to the May 19 Board meeting. Chair Balachandran invited comments from the public on the Selection of GM and GC and none were offered.

- C. The *ad hoc* committee for Policy Development provided an update. Mr. Shetler also noted that the committee had the opportunity to meet with representatives from the unions and the environmental community. It was a very productive meeting with a lot of dialogue and input, and it is the intent of the committee to review that input as they consider policy development going forward.

With regard to the LDS procurement efforts, the intent is to have a shortlist of recommended projects by the end of April. This will be done by the *ad hoc* Project Oversight Committee, who will provide a recommendation to the GM.

Mr. Shetler noted that the Board Packet included a suggestion for language for the LDS Project procurement conditions. CC Power is in a unique situation in that it has inherited the results of the RFO, and the proposals that have been provided, in the middle of evaluation. CC Power and the participants in the LDS Project are sensitive to the issues that have been raised during public comment and want to address as much as possible, recognizing where CC Power is in the process, and consider these issues as part of the evaluation. He stated that the Project Oversight Committee (POC) was recommending that the Board consider the language in the packet regarding workforce, environment, and environmental justice and that they would be asking for Board approval on a set of language to be used in the evaluation and, to the extent appropriate, incorporated into any agreements negotiated for the LDS project. Chair Balachandran invited discussion and clarification questions from the Board.

Director Weisz asked whether, if the language was going to incorporate Project Labor Agreement (PLA) related language, it would also include a no disparagement clause. Director Weisz noted some concerns with disparagement issues that were currently happening related to IBEW 1245 and Stockton specifically naming MCE. Director Weisz questioned whether this had come up in discussion with the committee. Mr. Shetler noted the issue had been raised at a high level but not specifically related to the LDS Project. Director Weisz requested that, if PLA language was going to be included for the LDS Project, a no disparagement clause also be included.

Director Habashi asked whether it was the plan to take this language and share it with the parties that CC Power would be negotiating with. Mr. Shetler noted that the POC had sent some surveying questions to the proposers around different aspects of the proposals. Chair Balachandran then invited comments from the public.

Public comment was received by James Ruigomez on behalf of the Federation of Bay Area Building and Construction Trades Councils. Mr. Ruigomez spoke to the recommendations for the LDS project enhanced conditions from staff and noted it was a good start. Mr. Ruigomez, however, noted that it was important that CC Power policies go further to ensure quality craftsmanship, apprenticeship standards, and local hiring opportunities. He suggested that one way to improve the language and ensure apprentices were used on the project was to insert language complying with California labor code.

Public Comment was received by Brett Garrett from Santa Cruz. Mr. Garrett supported the proposed enhanced conditions and proposed two additions. First, under the environmental considerations, he requested inclusion of a strong preference for using

## MINUTES OF THE REGULAR MEETING OF THE DIRECTORS OF CALIFORNIA COMMUNITY POWER (CC POWER)

environmentally friendly materials that could be easily recycled. Second, he asked that there be a very strong preference for local projects within the service territories or distributed throughout the service territories. Mr. Garrett further advocated for local projects that employ local workers, reducing dependence on transmission infrastructure, and providing local resiliency in case the transmission network goes down. Finally, he asked that CC Power support microgrids and virtual power plants.

Public Comment was received by Thomas Enslow representing IBEW 617/IBEW Local 6. Mr. Enslow thanked Mr. Shetler and the members of the policy subcommittee for meeting with stakeholders to discuss the adoption of formal CC Power labor and environmental policies. He indicated support for the recommendations with some suggested changes. Rather than generally saying there was a requirement to pay prevailing wage, Mr. Enslow suggested it would be more useful to cite the specific standards and provided language to Mr. Shetler which included labor code provisions setting forth prevailing wage requirements and prevailing wage apprenticeship requirements.

Public Comment was received by Melissa Yu representing the Sierra Club. Ms. Yu thanked the committee for the policy work that has been done so far, and voiced appreciation for the ongoing discussions. She asked that the environmental policy section be more explicit. Specifically, Ms. Yu requested that CC Power implement suggestions that Sierra Club sent to the Board in a letter on February 22. Regarding the workforce development section, Sierra Club agrees with the suggestions of the labor advocates.

Public Comment was received by Deputy Mayor Rick Bonilla. Deputy Mayor Bonilla applauded the committee and the Board for moving forward with a policy for the LDS Project.

After confirming there were no further public comments, Chair Balachandran invited comments from the Board.

Director Syphers requested that Mr. Shetler review the requests that were received after preparation of the Board Packet. Mr. Shetler noted that he'd had additional dialogue with representatives from the unions and with CC Power and member counsel.

Director Habashi indicated concern with including a large number of codes in the policy statement, preferring that the policy statement stand on its own.

Director Weisz proposed that additional language be considered in the policy to indicate that union representatives to an agreement agree to not make any verbal or written comments about CC Power or its Members that are untrue or inaccurate, and doing so would cause the agreement to be void.

Mr. Stepanicich noted that, with regard to the no disparagement clause proposed by Director Weisz, to the extent there is a PLA, language can be inserted, but if there is no PLA, the unions would not be a party so the clause would not be enforceable. One possibility would be to have a separate side letter agreement.

The following language was proposed and added to Resolution 21-04-14: "WHEREAS, CC Power shall include additional provisions such as non-disparagement clauses to support specific projects."

Director Pepper moved to approve Resolution 21-04-14 as amended, Director Habashi seconded, and a roll call vote was taken. All Directors voted unanimously in favor of Resolution 21-04-14 *Recommendation of Long Duration Storage Project Conditions*.

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CALIFORNIA COMMUNITY POWER (CC POWER)

- D. Mr. Shetler introduced the next Resolution related to the approval of CleanPowerSF and Valley Clean Energy as Members of CC Power. Mr. Shetler shared that CleanPowerSF and Valley Clean Energy had expressed interest in joining CC Power and have submitted the required documentation to become Members, as indicated by the Joint Powers Agreement. Mr. Shetler recommended that the Board approve CleanPowerSF and Valley Clean Energy as new Members.

Chair Balachandran invited comments from the Board but none were offered. Chair Balachandran then invited comments from the public and none were offered.

Mr. Mitch Sears of Valley Clean Energy and Ms. Barbara Hale of CleanPowerSF voiced their appreciation for the consideration of Valley Clean Energy and CleanPowerSF, respectively, as Members.

Director Habashi moved to approve Resolution 21-04-09, Director Chaset seconded, and a roll call vote was taken. All Directors voted unanimously in favor of Resolution 21-04-09 *Approval of Clean Power San Francisco and Valley Clean Energy to Become Members of California Community Power.*

- E. Mr. Shetler provided an update on the Revised 2021 Annual Budget for CC Power and noted that the revised budget reflected adjustments related to two primary issues: 1) at the previous Board Meeting, the Board concurred with the recommendation to adjust the hours for the GM to roughly 60 hours a month, so this version reflects that change; 2) the two new members approved by the Board in the previous discussion also require that the budget be updated to reflect the addition of those members and any additional participation in the LDS Project. Budget allocations were also revised to reflect these changes. Mr. Shetler requested that the Board approve the revised budget and allocations.

Chair Balachandran invited comments from the Board, and none were offered, so he invited comments from the public. No public comment was offered.

Director Syphers moved to approve Resolution 21-04-12, Director Weisz seconded, and a roll call vote was taken. All Directors voted unanimously in favor of Resolution 21-04-12 *Approval of Revised 2021 Annual Budget for CC Power to Reflect Addition of New Members and Consequent Allocation of Certain Costs.*

- F. Mr. Shetler indicated that the update on the LDS Project, which was the next agenda item, had already been covered in the previous policy discussion and recommended moving to the following agenda item.
- G. Mr. Shetler presented the proposed CC Power Project Development Process to the Board and noted that there had been discussions with the *ad hoc* Project Oversight Committee regarding how CC Power would manage projects. During the course of formation, there had been discussions regarding a phased approach. Mr. Shetler then presented the White Paper contained in the Board Packet. The White Paper lists phases 0-3 as (0) project conceptualization, (1) project exploration, (2) subscription/negotiations, and (3) project commitment. The intent would be to develop an initial budget for a project as well as an initial participation agreement. Mr. Shetler recommended that any projects to be considered by CC Power should have a Member sponsoring the project. Assuming there was a project of interest, CC Power would then explore the details of that project in Phase 1. Depending on the project and the outcome of Phase 1, a set of proposals would go forward into negotiations. Phase 2 would then include the initial identification of Member subscription.

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Mr. Shetler noted that the LDS Project is in a slightly different situation, as CC Power has been handed the project in mid-stream; the conceptualization was done in the RFO as well as part of the project exploration. Mr. Shetler anticipated that, by May, the POC would be determining initial Member subscription and finalizing agreements that need to be executed. Chair Balachandran invited comments from the Board.

Director Habashi clarified that the Board would be briefed on how negotiations were going. Mr. Shetler indicated that the Board would be kept apprised of the process, either through the Member's representative on the POC or via GM updates.

Chair Balachandran invited comments from the public and none were offered. Mr. Shetler recommended that the Board accept the general project development process, approve delegations to the Interim GM for the LDS project, and establish an *ad hoc* committee of the Board.

Director Habashi moved to approve Resolution 21-04-13, Director Pepper seconded, and a roll call vote was taken. All Directors voted unanimously in favor of Resolution 21-04-13 *Acceptance of CC Power Proposed Project Development Process and Approval of Delegations to Interim General Manager.*

- H. Mr. Shetler then introduced a Resolution requesting approval of CC Power Non-disclosure and Exclusivity Agreements for ESSA Negotiation. Mr. Shetler reiterated that the POC was getting close to finalizing the LDS Project round 2 evaluations and shortlisting. He noted that there were agreements that were needed to move forward with those selected on the shortlist, including a non-disclosure agreement and an exclusivity agreement, and that these agreements had been developed by the negotiating team. Mr. Shetler then requested that the Board approve the agreements and delegate authority to the GM to execute the agreements once the shortlisting process was complete. Mr. Braun noted that the agreements had been reviewed and revised by the GM and GC and circulated to the POC for comment. Director Syphers indicated that CC Power should develop a policy to delegate authority for Staff to be able to move forward with these types of contracts without bringing them to the Board.

Director Syphers then moved to approve Resolution 21-04-15, Director Habashi seconded, and a roll call vote was taken. All Directors voted unanimously in favor of Resolution 21-04-15 *Approval of CC Power Non-disclosure Agreement and Exclusivity Agreement for ESSA Negotiation.*

- I. Chair Balachandran invited discussion of any individual member items and requested Board input on what CC Power may do in the future to start off the discussion.

Director Habashi raised a few options that could be discussed, including consideration of small scale distributed storage development.

Director Chaset shared two ideas. One was a joint effort around demand response, as one of the challenges the Members have with DR is that Member service territories are smaller than the broader PG&E TAC area, for instance, which limits some opportunities for load modifying DR currently under CPUC rules. He also raised the possibility of considering back office efficiencies to be pursued through CC Power, either through data management services, customer services, or scheduling. Each Member is individually paying vendors, and there are real cost efficiencies that could be gained.

Director Syphers offered two ideas. First, having CC Power consider, in one or two years, becoming a central administrator for all CPUC funded programs could be very effective

MINUTES OF THE REGULAR MEETING OF THE DIRECTORS OF  
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and allow the CCAs to focus on the delivery of those programs and the administration rather than the paperwork and the processing. Additionally, in the near term, the Diablo Canyon replacement proceeding at the CPUC is closing in on what the ordered procurement is going to be.

Director Marshall also brought up offshore wind as a topic of interest.

There was no additional discussion of individual member items.

Chair Balanchandran adjourned the meeting at 2:45 p.m.

Minutes approved on May 19, 2021.

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C. Anthony Braun, Secretary

## California Community Power

# Agenda Item 6A

1. **Resolution 21-05-11 *Extension of Interim General Manager Contract with Adirondack Power Consulting, LLC.***
2. **Attachment A to Resolution 21-05-11: Adirondack Power Consulting, LLC Amended Engagement Letter – Interim General Manager Services for CC Power.**

# California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

5/14/21

**To:** CC Power Board of Directors

**From:** Girish Balachandran, Board Chair and *ad hoc* Committee Chair

**RE:** Request to Extend Letter of Engagement with Adirondack Power Consulting, LLC for General Manager Services for One Month

The Board directed the *ad hoc* Committee for GM/GC Selection to post the job for Interim General Manager and select a candidate to succeed the existing Interim General Manager, Jim Shetler. The *ad hoc* Committee has developed a position description and posted the position seeking candidates. The *ad hoc* Committee has selected a short list of candidates to interview and expects to be able to bring a finalist for Board approval at the June Board meeting. The current Engagement Letter for Interim General Manager Services with Adirondack Power Consulting, LLC (APC) contemplated providing services through the end of May with a transition period during the month of June. Due to the status of the selection process, it is requested that the Letter of Engagement with APC be extended to allow Mr. Shetler to provide services through the end of June with a transition period during the month of July – a one month extension. APC is amenable to the one-month extension for an increase of the not to exceed amount from \$50,000 to \$60,000 – a \$10,000 increase.

The *ad hoc* Committee is requesting that the Board approve the attached Amended Letter of Engagement and authorize the Board Chair to execute the agreement.

**California Community Power  
Resolution 21-05-11**

**EXTENSION OF CONTRACT WITH ADIRONDACK POWER CONSULTING, LLC  
FOR INTERIM GENERAL COUNSEL SERVICES**

WHEREAS, California Community Power (“CC Power”) was created by a Joint Powers Agreement (“JPA”); and

WHEREAS, JPA Section 4.07 provides that the CC Power Board of Directors shall appoint a part-time or full-time General Manager, to serve at the pleasure of the Board; and

WHEREAS, the members of CC Power engaged Adirondack Power Consulting, LLC to assist in CC Power formation efforts, and then to provide Interim General Manager services through May 31 and transition to a new Interim General Manager by June 30, 2021; and

WHEREAS, the CC Power Board previously appointed Jim Shetler of Adirondack Power Consulting, LLC as Interim General Manager until June 30, 2021 or until a replacement is selected; and

WHEREAS, the CC Power Board finds it appropriate to make interim appointments of key positions to allow continuity of operations during the initial start-up period, and further that the *ad hoc* Committee for Selection of General Manager (“Committee”) is currently in an evaluation process for a replacement Interim General Manager and will be making recommendations on how to fill key positions after the initial interim period; and

WHEREAS, the Committee has reported that the selection process is anticipated to take approximately one month longer than initially expected;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby approve the Amended Letter of Engagement, attached hereto as Attachment A to this resolution, and authorize the Board Chair to execute the agreement.

**California Community Power  
Resolution 21-05-11**

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19<sup>th</sup> day of May, 2021, by the following vote:

	Aye	No	Abstain	Absent
Central Coast Community Energy				
Clean Power San Francisco				
East Bay Community Energy				
Marin Clean Energy				
Peninsula Clean Energy				
Redwood Coast Energy Authority				
San José Clean Energy				
Silicon Valley Clean Energy				
Sonoma Clean Power Authority				
Valley Clean Energy				

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Attest by: Secretary



May 10, 2021

Mr. Girish Balachandran - Chair, Board of Directors  
CA Community Power  
70 Garden Court, Suite 300  
Monterey, CA 93940

**RE: Amended Engagement Letter – Interim General Manager Services for CC Power**

Dear Mr. Balachandran:

Adirondack Power Consulting, LLC (“APC”) is pleased to provide, at your request, a one-month extension to the existing interim General Manager services engagement letter to CA Community Power (“CC Power”) as further detailed in Exhibit A – Scope of Work. This amended letter agreement sets forth the terms of this engagement. Once executed, this amended letter agreement will supersede the original agreement and cover services performed hereunder. Except as modified or expressed by any new agreement, all consulting services we perform will be on the terms described in this letter and the Scope of Work.

We request that you designate someone as the authorized representative to direct us and to be the primary person to communicate with us regarding the services to be provided during the engagement as described in this letter agreement. Unless and until we hear from you to the contrary, we will consider you to be the authorized representative with whom we communicate. The service will be billed as a time and materials project unless otherwise noted in the Scope of Work. The current hourly charges for this engagement are based upon the experience and knowledge of the firm’s Principal, James Shetler. At present, the firm’s hourly rates are set forth on Exhibit B.

If our hourly rates are changed, you will be notified on the monthly billing statement. If you have any questions concerning any new rates, please contact us immediately. We will bill monthly for all the services provided APC. In addition to hourly fees for services rendered, expenses incurred by us on your behalf will be billed to you at cost.

Our billings are due and payable in accordance with the payment terms identified in Exhibit B. If you have any questions about any items on your statement, please contact us promptly. Interest will accrue on any unpaid, undisputed balance beginning the sixty-first day following the invoice date. The simple annual interest rate is ten percent (10%). Upon receipt, amounts paid will be applied first to any accrued interest and then to the unpaid balance of expenses and fees. You agree to pay any collection costs, including court and/or arbitration costs, filing fees and reasonable attorneys’ fees. You agree to pay for services provided in connection with any subpoena, legal proceedings, including discover requests that may arise after the conclusion of

Adirondack Power Consulting, LLC - 687 Summit Lakes Ct., Galt, CA 95632 - (916)870-3774  
jimshetler@adirondackpowerconsulting.com

Attachment A to Resolution 21-05-11

the services or termination of this letter agreement, as such actions relate to the services rendered in connection with this Engagement Letter and any applicable Scope of Work.

We agree to not use the confidential information you provide (“**Confidential Information**”) in any manner or for any purpose other than in furtherance of the consulting services and will hold such confidential information in confidence and protect it from unauthorized use and disclosure. Confidential Information does not include information that (a) is or becomes a part of the public domain through no act or omission of us, (b) is disclosed to us by a third party without restrictions on disclosure, or (c) was in our lawful possession prior to the disclosure and was not obtained by us either directly or indirectly from you. In addition, this section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority. We shall promptly notify you of any such request, to the extent practicable, so that you may seek an appropriate protective order at your discretion.

The relationship created hereby is solely that of independent contractor. Nothing herein or in the services performed shall create a relationship of partners, principal, and agent, or joint-venture or any fiduciary relationships between us. Liability for any services hereunder shall be capped at the funds received hereunder. Under no circumstance will we be liable for consequential, punitive, incidental, or special damages or claims of lost profits, revenue, or opportunity cost. The terms of this paragraph shall survive termination or expiration of this letter agreement.

This engagement may be terminated by either party for any reason on 30 days’ written notice. If any provision of this letter agreement is held to be unenforceable for any reason, the remainder of the letter agreement will be severable and will remain in effect. Any dispute arising out of or relating to the services or this letter shall be determined by binding arbitration. This letter agreement shall be governed by California law without regards to conflicts of law.

We look forward to our engagement in this matter and appreciate the opportunity to provide these services.

Sincerely,

James R. Shetler, Principal, Adirondack Power Consulting, LLC

**The terms of the engagement are acknowledged and approved.**

Dated as of \_\_\_\_\_

**CA Community Power**

By: \_\_\_\_\_

Girish Balachandran - Chair, Board of Directors  
Adirondack Power Consulting, LLC - 687 Summit Lakes Ct., Galt, CA 95632 - (916)870-3774  
jimshetler@adirondackpowerconsulting.com

**Exhibit A – Scope of Work – Interim General Manager**

**Scope**

We shall provide the following services as estimated:

1. Task 1: General Overhead Support – Not to exceed 15 hours/month
  - a. Preparation of Board agendas and packets
  - b. Consultation with Board Chair and Interim General Counsel
  - c. Consultation with, and support to, Board committees
  - d. Stakeholder outreach
  - e. Preparation of monthly reports
2. Task 2: LDS Project Oversight – Not to exceed 45 hours/month
  - a. Oversee and support the participant LDS Project Oversight Committee(s)
  - b. Coordinate and oversee the project negotiation team, made up of support from Gridwell Consultants, Keyes & Fox, and BBSW
  - c. Prepare update reports
3. Task 3: Transition Support – not to exceed 10 hours
  - a. Provide assistance to the selected next Interim General Manager in transitioning to her/his new position once appointed by the Board

**Schedule**

The engagement for Tasks 1 and 2 above shall commence on March 1, 2021 and run through June 30, 2021.

The engagement for Task 3 shall be from July 1-31, 2021.

**Exhibit B – Fees and Reimbursement**

A. 2021 Discounted Hourly Rate  
Principal      \$250

B. Contract not to exceed: \$60,000 (An increase of \$10,000 over original Engagement Letter dated March 8, 2021).

C. Reimbursement for outside administrative services, direct charges, and travel and subsistence will all be charged at cost.

We will invoice you monthly for services and expenses and shall provide such reasonable receipts or other documentation of expenses as you might request, including copies of time records.

Payment terms: You will be invoiced as of the first day of each month for services rendered and expenses incurred during the previous month. Payable net 30 days.

## California Community Power

# Agenda Item 6B

1. **Resolution 21-05-12 *Approval of Agreement with Braun Blaising Smith Wynne, PC for General Counsel Services.***
2. **Attachment A to Resolution 21-05-12: Agreement between the California Community Power Agency and Braun Blaising Smith Wynne, P.C. for General Counsel Services.**

# California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

5/14/21

**To:** CC Power Board of Directors

**From:** Girish Balachandran, Board Chair and *ad hoc* Committee Chair

**RE:** Recommendation to Approve Contract with Braun Blaising Smith Wynne (BBSW) for General Counsel Services

The Board directed the *ad hoc* Committee for GM/GC Selection to conduct a competitive process for the selection of a legal firm to provide General Counsel services for CC Power. The *ad hoc* Committee issued requests for proposals to several firms to provide the subject services. Two law firms responded to this request and provided detailed proposals on the services they could provide and the fee structure they would charge. After review of the proposals, the *ad hoc* Committee, assisted by the Interim General Manager, Jim Shetler, and the General Counsel for SVCE, Greg Stepanicich, conducted webinar interviews with the two firms. Based upon the review of the proposals and the results of the interviews, the *ad hoc* Committee unanimously agreed that the best qualified firm to provide General Counsel services for CC Power is BBSW.

The *ad hoc* Committee is recommending to the Board that it approve the attached contract with BBSW to provide these services effective May – December 2021 in the amounts shown in the contract and to authorize the Board Chair to execute this contract.

**California Community Power  
Resolution 21-05-12**

**APPROVAL OF AGREEMENT WITH BRAUN BLAISING SMITH WYNNE, P.C.  
FOR GENERAL COUNSEL SERVICES**

WHEREAS, California Community Power ("CC Power") was created by a Joint Powers Agreement ("JPA"); and

WHEREAS, JPA Section 4.08 provides that the CC Power Board of Directors shall have the power to appoint 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; and

WHEREAS, the members of CC Power previously engaged Braun Blaising Smith Wynne, P.C., as Interim General Counsel; and

WHEREAS, at the direction of the CC Power Board of Directors, the *Ad hoc* General Counsel Selection Committee ("Committee") developed and issued a Request for Proposals for General Counsel Services for the California Community Power Authority; and

WHEREAS the Committee, advised by member counsel, commenced an evaluation of submitted proposals and conducted interviews; and

WHEREAS, the Committee previously agreed to bring back a recommendation and an agreement for consideration and possible approval at a subsequent CC Power Board meeting; and

WHEREAS, the Committee recommends that the CC Power Board of Directors select Braun Blaising Smith Wynne, P.C. as General Counsel for the period effective May 1, 2021 through December 31, 2021;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby approve the agreement with Braun Blaising Smith Wynne, P.C. for General Counsel Services, attached hereto as Attachment A in substantially final form, and direct the Interim General Manager to execute the agreement.

**California Community Power  
Resolution 21-05-12**

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19<sup>th</sup> day of May, 2021, by the following vote:

	Aye	No	Abstain	Absent
Central Coast Community Energy				
Clean Power San Francisco				
East Bay Community Energy				
Marin Clean Energy				
Peninsula Clean Energy				
Redwood Coast Energy Authority				
San José Clean Energy				
Silicon Valley Clean Energy				
Sonoma Clean Power Authority				
Valley Clean Energy				

\_\_\_\_\_

Chair

\_\_\_\_\_

Attest by: Secretary

**AGREEMENT BETWEEN THE CALIFORNIA COMMUNITY POWER AGENCY AND  
BRAUN BLAISING SMITH WYNNE, P.C.  
FOR  
GENERAL COUNSEL SERVICES**

THIS AGREEMENT is entered into this first day of May, 2021, by and between the CALIFORNIA COMMUNITY POWER AGENCY, a California Joint Powers Authority ("Agency"), and Braun, Blaising Smith Wynne, a professional corporation (hereinafter referred to as "Attorney") (collectively referred to as the "Parties" and individually as a "Party").

**RECITALS:**

A. Agency is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) with the power to conduct its business and enter into agreements.

B. Agency desires to retain Attorney to serve as General Counsel to the Agency.

C. Agency and Attorney desire to enter into an agreement for General Counsel Services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on May 1, 2021, and shall terminate on December 31, 2021, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Attorney shall perform the services set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference. C. Anthon Braun will be the attorney with the primary responsibility for the services provided by Attorney under this Agreement and shall be designated as General Counsel. Attorney shall identify the other attorneys who also will be providing legal services. Agency retains the right to approve or disapprove any and all attorney assignments.

3. **COMPENSATION TO ATTORNEY**

Attorney shall be compensated for all services performed pursuant to this Agreement in the manner described in Exhibit "B" which is attached hereto and incorporated herein by this reference.

4. **INDEPENDENT PARTIES**

Agency and Attorney intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Attorney, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Attorney's services. None of the benefits provided by Agency to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from Agency to Attorney, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Attorney. Payments of the above items, if required, are the responsibility of Attorney. Attorney shall indemnify and hold harmless Agency and its elected officials, officers, employees, servants, designated volunteers, and agents from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Attorney's personnel practices. Agency shall have the right to offset against the amount of any fees due to Attorney under this Agreement any amount due to Agency from Attorney as a result of Attorney's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.

5. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AGENCY**

Agency is organized as a Joint Powers Agency in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated January 29, 2021, and is a public entity separate from its constituent members. Agency shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Attorney shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Agency's constituent members in connection with this Agreement.

6. **NON-DISCRIMINATION**

In the performance of this Agreement, Attorney shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation, military or veteran status, or other basis prohibited by law.

7. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. To the fullest extent permitted by law, Attorney shall, at its sole cost and expense, defend, hold harmless and indemnify Agency and its elected officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities") which arise

out of or relate to the negligent acts or omissions or willful misconduct of Attorney in its performance of this Agreement, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees. Attorney shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Attorney shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

B. The acceptance of the services by Agency shall not operate as a waiver of these rights of indemnification. The hold harmless and indemnification provisions of this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability.

C. Attorney's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

## 8. INSURANCE

A. General Requirements. On or before the commencement of the term of this Agreement, Attorney shall furnish Agency with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "C," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Attorney's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to the Agency by certified mail, Attention: General Manager." Attorney shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Agency and licensed to do insurance business in the State of California. Endorsements naming the Agency as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Attorney agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Attorney shall look solely to its insurance for recovery. Attorney hereby grants to Agency, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Attorney or Agency with respect to the services of Attorney herein, a waiver of any right to subrogation which any such insurer of Attorney may acquire against Agency by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Attorney at any time during the term hereof should fail to secure or maintain the foregoing insurance, Agency shall be permitted to obtain such insurance in the Attorney's name or as an agent of the Attorney and shall be compensated by the Attorney for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Agency, its members, officers, employees, agents and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

## 9. REPORTS

A. All reports, drafts, work product, and other documents reproduced, prepared or caused to be prepared by Attorney pursuant to or in connection with this Agreement, shall be the exclusive property of Agency.

B. Attorney shall, at such time and in such form as Agency may require, furnish reports concerning the status of services required under this Agreement.

C. No report, information or other data given to or prepared or assembled by Attorney pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Attorney without prior approval by Agency.

## 10. RECORDS

Attorney shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Agency that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Attorney shall provide free access to such books and records to the representatives of Agency or its designees at all proper times, and give Agency the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Attorney receives final payment from Agency for all services required under this agreement

## 11. PARTY REPRESENTATIVES

The Chief Executive Officer (“Agency Representative”) shall represent Agency in all matters pertaining to the services to be performed under this Agreement. C. Anthony Braun (Attorney Representative”) shall represent Attorney in all matters pertaining to the services to be

performed under this Agreement.

12. **NOTICES**

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Attorney's and Agency's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO AGENCY:

Attention: General Manager

TO ATTORNEY:

C. Anthony Braun  
Braun Blaising Smith Wynne P.C.  
555 Capitol Mall, Suite 570  
Sacramento, CA 95814

13. **TERMINATION**

Agency may terminate this Agreement at any time. Agency shall be responsible for payment of those legal services rendered by Attorneys prior to notice of termination. All files, written material, and documents will be transferred to Agency upon request after such termination. Attorneys will be available to consult with Agency or with Agency's new attorneys with respect to facts and circumstances of any legal matter for a reasonable time following such period of termination.

Attorney may terminate this Agreement upon sixty (60) days notice to Agency consistent with its obligations under the California Rules of Professional Conduct. All files, written material, and documents will be transferred to Agency upon request after such termination. Attorneys will be available to consult with Agency or with Agency's new attorneys with respect to facts and circumstances of any legal matter for a reasonable time following such period of termination.

14. **APPLICABLE LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Monterey, State of California.

15. **WAIVER**

A waiver by Agency of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term,

covenant, or condition contained herein, whether of the same or a different character.

16. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Agency and Attorney.

17. **AUTHORITY TO EXECUTE**

The individual(s) executing this Agreement represent and warrant that they have the legal authority to do so on behalf of their respective legal entities.

18. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

19. **EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Attorney's proposal, the provisions of this Agreement shall control.

20. **SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. **SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

22. **NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

23. **COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the date set forth above.

BRAUN BLAISING SMITH WYNNE, P.C.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CALIFORNIA COMMUNITY POWER AGENCY  
A Joint Powers Agency

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: General Manager  
Date: \_\_\_\_\_

**Exhibit A**  
**Scope of Services**

Perform the legal services of General Counsel to the Agency, including the following:

1. Review the agendas and related documents for Board of Director (“Board”) meetings.
2. Attend all Board meetings and the meetings of committees as requested.
3. Provide on-going advice on Brown Act, Public Records Act and conflict of interest laws.
4. Provide advice on any legal requirements specifically applicable to joint powers authorities.
5. Prepare and review contracts.
6. Provide advice on contracting and procurement.
7. Research and provide advice on legal questions asked by the Board or General Manager.
8. Provide advice on regulatory requirements applicable to Agency projects and programs.
9. Supervise and coordinate with other legal counsel retained by Agency.
10. Provide any other legal services requested by the Board or General Manager.

**Exhibit B**  
**Billing Rates and Reimbursable Expenses**

Agency shall compensate Attorney for professional services in accordance with the terms and conditions of this Agreement.

Except for those services described as Special Services below, the compensation paid to Attorney for all other legal services under this Agreement shall be at a fixed fee of \$4,625.00 per month plus any expenses that are reimbursable under this Agreement.

Special Services shall be limited to those legal services provided by Attorney that are directly related to the LDS project and any other projects approved by the Board of Directors, including but not limited to project agreements. Attorney shall be compensated for Special Services on an hourly fee basis at the hourly rates provided below. The maximum compensation paid for Special Services for term of this Agreement shall not exceed \$75,000, including reimbursable expenses.

Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Agency unless previously approved in writing by Agency.

**Billing Rates**

<b>Name of Personnel</b>	<b>Title</b>	<b>Hourly Rate</b>
C. Anthony Braun	President and Shareholder	\$420
Scott T. Blaising	Shareholder	\$420
Justin Wynne	Shareholder	\$420
Brittany Iles	Associate	\$275
Professional Support		\$165

**Monthly Invoicing:** In order to request payment, Attorney shall submit monthly invoices to the Agency describing the services performed and the applicable charges (including a summary of the work performed during that period, personnel who performed the services, and hours worked). Agency shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth herein.

**Reimbursable Expenses**

Agency shall reimburse Attorneys for all usual and customary costs and expenses incurred by Attorneys in providing services under this Agreement, including but not limited to, photocopying, long distance telephone calls, messenger and other delivery fees, administrative filing fees and court costs . All such expenses shall be billed to the Agency at actual cost.

Administrative, overhead, secretarial time or overtime, and word processing costs are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Agency.

**Exhibit C**  
**Insurance Requirements and Proof of Insurance**

Attorney shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**  
Statutory coverage as required by the State of California.
- (2) **Liability:**  
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**  
Comprehensive automotive liability coverage for hired and non-owned vehicles with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**  
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Attorney in the amount of at least \$1,000,000.

## California Community Power

# Agenda Item 6D

- 1. Resolution 21-05-13 *Approval of Long Duration Storage Project Phase 2 Cost Sharing Agreement and Authorization for Interim General Manager to Execute with Participants.***
- 2. Attachment A to Resolution 21-05-13: Long Duration Storage Phase 2 Cost Sharing Agreement.**

# Braun Blaising Smith Wynne, P.C.

Attorneys at Law

5/14/21

**To:** CC Power Board of Directors  
**From:** Tony Braun, Interim General Counsel  
**RE:** Long Duration Storage Phase 2 Cost Sharing Agreement

The CC Power *ad hoc* Project Oversight Committee (“POC”) is currently in the process of evaluating and shortlisting developers who responded to the Joint Long Duration Storage (“LDS”) Request for Offers. Once the developers have been shortlisted, the POC will move to Phase 2 of CC Power’s project development process. Phase 2 includes, in part, the development and negotiation of project agreements with the shortlisted developers, participation agreements with the member participants, and potentially certain operations agreements. CC Power and the Members participating in the LDS project will use the services from consultants and legal counsel retained by CC Power to develop the necessary agreements and evaluations for Phase 2.

In order to move forward with Phase 2 of the LDS project, Members who are participating in the LDS project have agreed to reimburse CC Power for costs incurred in connection with Phase 2. Pursuant to the attached Phase 2 Cost Sharing Agreement, CC Power, as the Responsible Party, will enter into contracts for Services, and participating Members will reimburse CC Power for the costs associated with those contracts. The costs for Phase 2 were approved by the Board at the Regular Board meeting on April 21, 2021 and are detailed in the agreement.

The Phase 2 Cost Sharing Agreement further establishes the terms for the treatment of Confidential Information that is received as part of the LDS project consideration and negotiation process.

The attached Phase 2 Cost Sharing Agreement has been reviewed by the POC and we have also received comments and incorporated edits from several member counsel. Staff is recommending to the Board that it approve the attached Phase 2 Cost Sharing Agreement and authorize the General Manager to execute this agreement.

**California Community Power  
Resolution 21-05-13**

**APPROVAL OF LONG DURATION STORAGE PHASE 2 COST SHARING AGREEMENT AND  
AUTHORIZATION FOR INTERIM GENERAL MANAGER TO EXECUTE WITH PARTICIPANTS**

WHEREAS, California Community Power ("CC Power") was created by a Joint Powers Agreement ("JPA") to, develop, acquire, construct, own, manage, contract for, engage in, finance and/or provide energy related programs for the use of and by its Members; and

WHEREAS, the Members of CC Power are engaged in an ongoing solicitation for Long Duration Energy Storage (LDS) projects, currently contemplated to be procured through CC Power through an Energy Storage Service Agreement (ESSA); and

WHEREAS, JPA Section 4.01 provides that CC Power shall be administered by a Board of Directors, which shall be vested with the powers set forth in the JPA, and shall have the authority to provide for the general management and oversight of the affairs, property and business of CC Power; and

WHEREAS, as CC Power has assumed responsibility for supervise and administer the LDS solicitation and manage the use of professional services contracts to fulfill the objections of the LDS solicitation and consider LDS projects;

WHEREAS, an agreement is needed to set forth the obligations of CC Power to administer the project and the obligation of participating members to assist and fund this effort, and for other purposes;

WHEREAS, the General Manager and General Counsel have worked with the Project Oversight Committee and individual members to develop a Long Duration Storage Phase 2 Cost Sharing Agreement to accomplish these purposes.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of CC Power hereby:

1. Approve the Long Duration Storage Phase 2 Cost Sharing Agreement, in substantially final form, attached hereto as Attachment A.
2. Delegate the authority to the Interim General Manager to execute this Agreement on behalf of CC Power.

**California Community Power  
Resolution 21-05-13**

PASSED AND ADOPTED by the Board of Directors of California Community Power this 19<sup>th</sup> day of May, 2021, by the following vote:

	Aye	No	Abstain	Absent
Central Coast Community Energy				
Clean Power San Francisco				
East Bay Community Energy				
Marin Clean Energy				
Peninsula Clean Energy				
Redwood Coast Energy Authority				
San José Clean Energy				
Silicon Valley Clean Energy				
Sonoma Clean Power Authority				
Valley Clean Energy				

\_\_\_\_\_

Chair

\_\_\_\_\_

Attest by: Secretary

**PHASE 2 COST SHARING AGREEMENT  
CALIFORNIA COMMUNITY POWER AND INDICATED  
MEMBERS TO CONSIDER, NEGOTIATE, AND  
DEVELOP AGREEMENTS FOR LONG DURATION  
STORAGE RESOURCES**

This Phase 2 Cost Sharing Agreement (“Agreement”) is made between and among the California Community Power (“CC Power”) and certain Members (“Indicated Members”), effective upon execution by CC Power and all Indicated Members, whom have chosen to participate in ongoing activities to evaluate offers for long duration storage resources and to negotiate, and develop potential agreements for long duration storage resources. Indicated Members have agreed to reimburse CC Power for costs incurred in this process, and to otherwise participate and assume other obligations in connection with the consideration, negotiation, and development of Long Duration Storage (“LDS”) resource agreements. In this Agreement, CC Power and each Indicated Member are referred to individually as “Party” and collectively as “the Parties.”

**RECITALS**

- A. The Parties seek to jointly procure LDS resources to cost effectively enhance the integration of each Party’s respective renewable energy portfolios into the California Independent System Operator (“CAISO”) grid and to aid in meeting California’s greenhouse gas reduction targets by 2030 as outlined in the California Public Utilities Commission’s (“CPUC”) 2021-2030 Integrated Resource Plan Reference System Plan for the 38 and 46 million metric tonnes (“MMT”) reduction targets.
- B. CC Power, a Joint Powers Authority, was formed for the purpose of developing, acquiring, constructing, owning, managing, contracting for, engaging in, or financing electric energy generation and storage projects, and for other purposes.
- C. Before the formation of CC Power, several CC Power members and other Community Choice Aggregators (“CCA”) issued a joint Request for Offer (the “Joint LDS RFO”) and received offers for LDS resources. The Parties intend to consider the offers for potential procurement of one or more such LDS resources through CC Power, in accordance with the CC Power Agency Joint Powers Agreement dated January 29, 2021 (“JPA Agreement”).
- D. The Parties desire to use the services from consultants and legal counsel (“Professionals”) retained by Parties to consider the offers received from the Joint LDS RFO, and to negotiate and develop potential agreements necessary to procure LDS resources, including but not limited to, operation agreements, and project participation agreements with CC Power Member Parties. (“Services”).
- E. The Parties have agreed to share the costs of Professionals, whose Services will benefit the Parties as provided in this Agreement.
- F. The Parties seek to establish ground rules for the use of Confidential Information and related matters, as that term is defined herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties mutually agree to the following:

1. Recitals. The Recitals stated above are true and correct and are incorporated by this reference into this Agreement.
2. Cost Sharing Arrangements. The cost-sharing arrangement associated with those Services as set forth in Recital D above, and which are the subject of this Agreement, are set forth in the final Phase 2 budget approved by the CC Power Board on April 21, 2021, and incorporated herein as Exhibit A.
3. Aggregated Not to Exceed. The Parties agree that the aggregate cost of Services shall not exceed the amounts set for in Exhibit A, without the express written consent of the Parties. The Parties further agree that each Party's individual amount shall not exceed the amount set forth in Exhibit A, without the express written consent of the Parties.
4. Responsible Party and Non-Contracting Parties. Each of the Parties that will be participating in the cost-sharing arrangement for the various contracts for Services are the "Participating Parties." CC Power is the administrator of the various contracts for Services and is referred to herein as the "Responsible Party." The remaining Participating Parties are the "Non-Contracting Parties," for whom Professionals will perform Services under contract with the Responsible Party and are third party beneficiaries of the various contracts for Services for the purposes of this Agreement. As third-party beneficiaries, each Non-Contracting Party, will be given reasonable access to the results of the Services, such as the relevant advice, information and analysis, and will be bound as to that information by the confidentiality requirements of this Agreement.
5. Responsibilities of the Parties.
  - a. CC Power, as the Responsible Party for the contracts for Service, (each a "Contract") will do all of the following:
    - i. Enter into a Contract with Professionals to perform all Services, to the extent the Contract is not already executed.
    - ii. Manage the provision of Services contracted to ensure the cost of Services shall not exceed the Aggregate Not to Exceed limit provided in Section 3 above.
    - iii. Make timely payments to Professionals under the terms of the Contract and administer and manage the Contract.
    - iv. In the event that the Responsible Party determines that it is in the best interests of the Parties to terminate the Contract, the Responsible Party will consult with the Non-Contracting Parties before making any

recommendations to the CC Power Board.

- v. Subject to the confidentiality provisions described below in Section 6, the Responsible Party will maintain and make available to the Non-Contracting Parties, during regular business hours, accurate books and accounting records relating to this Agreement. The Responsible Party will permit the Non-Contracting Parties to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Responsible Party shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later.
- b. The Non-Contracting Party/Parties for the Contract will do all of the following:
  - i. Reimburse, the Responsible Party for the cost of the payments made by the Responsible Party to Professionals pursuant to the Contract. With regard to San Jose Clean Energy only, (1) obligations under this Agreement are special limited obligations payable solely from the Designated Fund (being the San José Energy Operating Fund established pursuant to City of San José Municipal Code, Title 4, Part 63, Section 4.80.4050 et. seq.), and shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the City of San José or its Community Energy Department, and (2) cannot exceed the limitations on the contract authority of the City of San José's City Manager (established pursuant to City of San José Municipal Code, Title 4, Chapter, Section 4.04.020) without the prior approval of the City Council. With regard to CleanPowerSF only, (1) obligations under this Agreement are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF, and shall not be a charge upon the revenues or general fund of the San Francisco Public Utilities Commission or the City and County of San Francisco or upon any non-CleanPowerSF moneys or other property of the San Francisco Public Utilities Commission or the City and County of San Francisco, (2) cannot exceed the amount certified by the San Francisco City Controller for the purpose and period stated in such certification, and (3) absent an authorized emergency per the San Francisco City Charter or Code, no San Francisco City representative is authorized to offer or promise, nor is San Francisco required to honor, any offered or promised payments under this Agreement for work beyond the agreed upon scope or in excess of the certified maximum amount without the San Francisco City Controller having first certified the additional promised amount. Each Non-Contracting Party must pay its share within thirty (30) days of receiving an invoice or invoices from the Responsible Party.

- ii. Work cooperatively with the Responsible Party in the Responsible Party's (1) negotiation, administration and management of the Contract and (2) supervision of the Services provided by Professionals.

6. Confidential Treatment of Information.

As part of the LDS project consideration and negotiation process, CC Power shall enter into a Non-Disclosure Agreement ("NDA") approved by the CC Power Board with each project developer. The terms of which shall apply to all Parties to this Agreement.

The Parties understand and agree that all materials, documents and information (including meetings and discussions) received subject to the NDA or received in relation to the LDS negotiation process shall be confidential ("Confidential Information").

a. Limited Use of Confidential Information

The Parties understand and agree that the Confidential Information will be used exclusively for the purposes of negotiating potential agreements for one or more LDS projects. The Parties understand and agree that they may receive analysis or other work product from Professionals for the limited purposes of considering and negotiating potential agreements associated with the LDS projects. Parties agree to keep any such analysis or work product marked "Proprietary" or "Confidential" by the Professionals or other Parties, in the strictest confidence and treat confidentially and in accordance with Section 7 below any analysis or work product marked "Proprietary" or "Confidential."

The Parties expressly acknowledge and agree that they will not use Confidential Information to negotiate or facilitate any commercial agreements with any Joint LDS RFO respondents prior to CC Power's release of the Joint LDS RFO project.

Each Party to this Agreement is responsible for maintaining the confidentiality and appropriate use of the Confidential Information to at least the same degree of care that the Party would protect its own confidential information.

b. Obligations of Parties

The Confidential Information will be kept confidential and not disclosed by any Party to any other person, except that Confidential Information may be disclosed to any of the Parties' affiliates, directors, officers, board members, employees, attorneys and consultants (collectively, its "Representatives") who require access to such information in connection with each of the Party's participation in the Joint LDS RFO.

Each of the Parties agrees that any of its Representatives to whom Confidential Information is disclosed will be informed of the confidential or proprietary nature thereof and of the Party's obligations under this Agreement. Each Party shall be responsible for any use of Confidential Information by any of its Representatives. Indicated Members recognize that the relative

positions on commercial terms of other individual Indicated Members are particularly sensitive and shall not be shared with third-party consultants.

c. Requests for Confidential Information

Upon any receipt of any request for Confidential Information the Party receiving the request (the "Receiving Party") shall notify the other Parties of the request and take reasonable steps to assert all privileges or exemptions that might apply to prevent disclosure of such Confidential Information.

Prior to any disclosure of Confidential Information, the Receiving Party shall provide a reasonable opportunity to all other Parties to seek a court order preventing disclosure of the Confidential Information at the sole cost and expense of the Parties seeking such order.

The Parties to this Agreement are subject to the requirements of the California Public Records Act as set forth at California Government Code sections 6250 et seq.

7. Specific Party Provisions. Terms of this agreement specific to individual Parties are incorporated herein as Exhibit B.
8. Term. The term of this Agreement will commence on the effective date above and terminate after the Parties have determined the Joint LDS RFO to be completed and all required reimbursements to the Responsible Party for Services have been made. For clarity, completion of the Joint LDS RFO shall mean the procurement, through executed power purchase agreements, or release of all Joint LDS RFO projects.
9. Hold Harmless and Indemnification. Each Party shall defend, save harmless, and indemnify the other Party or Parties, and their directors, officers, agents, and employees, from any and all claims for injuries or damage to persons and/or property which arise out of the conditions of this Agreement which are caused by the sole negligent acts or omissions or other wrongful conduct of the other Party, its directors, officers, agents and/or employees; provided that, with regard to SJCE, such duty to defend, save harmless, and indemnify extends only to, and in no circumstances will exceed, the Designated Fund for SJCE, and shall not be a charge upon the revenues or general fund of the City of San José or upon any non-SJCE moneys or other property of the City of San José or its Community Energy Department..
10. Amendment and Waiver. No change or modification of this Agreement shall be valid unless the same is in writing and signed by all Parties, and no verbal understanding or agreement not incorporated herein shall be binding on any Party hereto.
11. Governing Law. This Agreement shall be construed and governed by the laws of the State of California, and any suit or action initiated by any Party shall be brought in the Superior Court for the County of Santa Clara, California, or the United States District Court for the Northern District of California.
12. Time of Essence. Time is of the essence for every provision hereof in which time is a factor.

13. Benefit of Parties. The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors and assigns. No Party shall assign this Agreement or any portion thereof to a third party without the prior written consent of all of the other Parties. Any such assignment without prior written consent by one Party shall give any or all of the other Parties the right to automatically and immediately terminate this Agreement with respect to the Party making the unauthorized assignment without advance notice.
14. No Waiver; Reservation of Rights. This Agreement is limited as specified and the execution, delivery and effectiveness of this Agreement shall not operate as a modification, amendment or waiver of any provision of the CC Power JPA Agreement. This Agreement does not obligate any Party to participate in any Project, and all Members retain their rights under Article VI, whereby all Members have the right, but not the obligation, to participate in a pro-rata share in the Project as determined by the Project Agreement, and all Members who elect not to participate in a Project have no obligations under the Project. Notwithstanding anything contained in this Amendment to the contrary, the Parties expressly reserve the right to exercise any and all of their rights and remedies under the JPA Agreement.
15. Entire Agreement of the Parties. This Agreement supersedes any and all agreements, either oral or written, between the Parties with respect to the subject matter of this Agreement and contains all of the representations, covenants, and agreements between the Parties with respect to the subject matter of this Agreement.
16. Independent Counsel. Each Party has had the opportunity to consult with its own attorney with respect to this Agreement, and in the event that any language contained herein is construed to be vague or ambiguous, this Agreement shall not be strictly construed against any Party.
17. Notice. Notice given under or regarding this Agreement shall be deemed given upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), or reputable overnight commercial delivery service. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to CC Power:

Jim Shetler, Interim General Manager  
Central Coast Community Energy 70  
Garden Court, 3rd Floor Monterey,  
CA 93940  
jimshetler@adirondackpowerconsulting.com

If to 3CE:

Tom Habashi, CEO  
Central Coast Community Energy  
70 Garden Court, 3rd Floor

Monterey, CA 93940  
thabashi@3ce.org

If to CPSF: Barbara Hale, Assistance General Manager, Power  
San Francisco Public Utilities Commission  
525 Golden Gate Ave, 13th Floor  
San Francisco, CA 94102  
bhale@sfgwater.org

If to MCE: Dawn Weisz, CEO  
MCE  
125 Tamalpais Avenue  
San Rafael, CA 94547  
dweisz@mcecleanenergy.org

If to PCE: Jan Pepper, CEO  
Peninsula Clean Energy  
2075 Woodside Road  
Redwood City, California 94061  
jpepper@peninsulacleanenergy.com

If to RCEA: Matthew Marshall, CEO  
Redwood Coast Energy Authority  
633 3rd Street  
Eureka, CA 95501  
mmarshall@redwoodenergy.org

If to SJCE: Lori Mitchell, Director  
cc: Luisa Elkins, Senior Deputy City Attorney  
San José Clean Energy  
200 E. Santa Clara Street, 14th Floor  
San José, CA 95113  
Lori.Mitchell@sanjoseca.gov  
Luisa.Elkins@sanjoseca.gov

If to SVCE: Girish Balachandran, CEO  
Silicon Valley Clean Energy Authority  
333 W. El Camino Real, Suite 330  
Sunnyvale, CA 94087  
girish@svcleanenergy.org

If to SCP: Geof Syphers, CEO  
Sonoma Clean Power

50 Santa Rosa Avenue, 5th Floor  
Santa Rosa, CA 95404  
gsyphers@sonomacleanpower.org

18. Invalid Provision. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
19. Headings and Captions. The headings and captions used in this Agreement are for convenience only and shall in no way define, limit, or describe the scope or intent of the Agreement or any part thereof.
20. Counterparts. This Agreement may be executed in counterpart originals, each of which is deemed to be an original for all purposes.

Approval Draft

IN WITNESS WHEREOF, the Parties have executed this Agreement below on the effective date written above.

**CC Power**

By: \_\_\_\_\_

Approved as to form by counsel for CC Power:

By: \_\_\_\_\_

**Central Coast Community Energy**

By: \_\_\_\_\_

Approved as to form by counsel for 3CE:

By: \_\_\_\_\_

**CleanPowerSE**

By: \_\_\_\_\_

Approved as to form by counsel for CPSF:

By: \_\_\_\_\_

**Marin Clean Energy**

By: \_\_\_\_\_

Approved as to form by counsel for MCE:

By: \_\_\_\_\_

**Peninsula Clean Energy Authority**

By: \_\_\_\_\_

Approved as to form by counsel for PCE:

By: \_\_\_\_\_

**Redwood Coast Energy Authority**

By: \_\_\_\_\_

Approved as to form by counsel for RCEA:

By: \_\_\_\_\_

**City of San José, Chief of Staff Office of the City Manager**

By: \_\_\_\_\_

Approved as to form by counsel for SJCE:

By: \_\_\_\_\_

**Silicon Valley Clean Energy Authority**

By: \_\_\_\_\_

Approved as to form by counsel for SVCE:

By: \_\_\_\_\_

**Sonoma Clean Power**

By: \_\_\_\_\_

Approved as to form by counsel for SCP:

By: \_\_\_\_\_

## Exhibit A

**Table A-1: Not to Exceed Cost Allocation**

PARTICIPANT	TARGET CAP.	ALLOCATION	LDS
	(MW)	(%)	TOTAL
3CE	50	14.9	\$ 56,732.84
CPSF	25	7.5	\$ 28,366.42
MCE	50	14.9	\$ 56,732.84
PCE	50	14.9	\$ 56,732.84
RCEA	10	3.0	\$ 11,346.57
SJCE	50	14.9	\$ 56,732.84
SVCE	50	14.9	\$ 56,732.84
SCPA	50	14.9	\$ 56,732.84
<b>TOTAL</b>	335	100	\$ 380,110.00

Approval Draft

## Exhibit B

### 1. Specific Party Provisions

#### a. Provisions Specific to CleanPowerSF.

- i. False Claims. Pursuant to San Francisco Administrative Code §21.35, any Party to this agreement who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A Party will be deemed to have submitted a false claim to the City if the Party: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
- ii. Political Activity. In performing its responsibilities under this Agreement, Responsible Party shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure.