

TOWN OF SAN ANSELMO
STAFF REPORT
November 20, 2008

For the meeting of November 25, 2008

TO: Town Council
FROM: Debra Stutsman, Town Manager
SUBJECT: Marin Energy Authority

RECOMMENDATION

That Council waive reading and approve the ordinance approving the Marin Energy Authority Joint Powers Agreement and authorizing the implementation of a Community Choice Aggregation Program.

BACKGROUND

The Town Council introduced the ordinance at the meeting of Monday, November 10, 2008. The staff report for that meeting is attached for reference, along with the proposed Ordinance, the Joint Powers Agreement and the Business Plan.

Respectfully submitted,

Debra Stutsman

Debra Stutsman
Town Manager

Attachment:

1. Staff Report of 11/10/08 and Ordinance Approving Marin Energy Authority Joint Powers Agreement
- Exhibit A: Marin Energy Authority Joint Powers Agreement
Exhibit B: Marin Clean Energy Business Plan

TOWN OF SAN ANSELMO
STAFF REPORT
November 3, 2008

For the meeting of November 10, 2008

TO: Town Council

FROM: Debra Stutsman, Town Manager

SUBJECT: Marin Energy Authority

RECOMMENDATION

That Council introduce the ordinance approving the Marin Energy Authority Joint Powers Agreement and authorizing the implementation of a Community Choice Aggregation Program, conduct a public hearing on the ordinance and direct the Town Manager to read the ordinance by title only.

BACKGROUND

The ordinance before Council is a step towards two goals: creating an alternative energy supply for Marin residents and reducing greenhouse gas emissions.

Community Choice Aggregation, or "CCA," is a State authorized program that allows energy consumers to band together with other members of their community to obtain energy from alternative providers. A local government may implement a CCA program by ordinance; two or more local governments may do so as a group by forming a joint powers authority ("JPA").

Over the past five years the County of Marin and its 11 cities and towns have worked together to explore implementing a CCA program that would give County residents a "greener" choice for their electrical energy needs. Meanwhile, in 2006, the State adopted Assembly Bill 32, the California Global Warming Act of 2006. AB 32 instituted a state-wide program for reducing greenhouse gases.¹ The Task Force charged with developing the CCA program decided to add AB 32 compliance to the new JPA's mandate.

The use of acronyms with respect to this subject appears unavoidable. The following glossary is provided to facilitate the discussion:

- CCA:** Community Choice Aggregation, a state-authorized program to procure energy on behalf of consumers
- JPA:** Joint Powers Authority, a public agency created by contract between existing public agencies
- MEA:** Marin Energy Authority, the proposed joint powers authority

¹ AB 32 is codified at Sections 38500 *et seq.* of the California Health and Safety Code. Earlier this year, the State adopted Senate Bill 375, which adds a host of greenhouse-gas related regulations and requires regional planning efforts to comply with AB 32-adopted regulations.

- MCE:** Marin Clean Energy, a CCA program to be implemented by the MEA
- PG&E:** Pacific Gas and Electric Company
- ESP:** Energy Service Provider

The Marin Energy Authority

The County's plan is to have all participating agencies adopt the attached ordinance by the end of December, 2008 to form the MEA joint powers authority. The ordinance authorizes the adopting agency to enter into the joint powers agreement.

The Town currently belongs to a number of JPAs and the MEA would be similar in most respects. However, it will have several noteworthy atypical features:

- To protect local land use authority, Section 2.7 of the Agreement requires that the MEA comply with the planning and building laws of any jurisdiction in which it locates or constructs facilities.
- Section 4.9 sets forth a somewhat complicated voting formula for MCE-related decisions. Each such decision must pass through two voting tiers, a "percentage" vote and a "share" vote. Each member agency has one equally weighted vote for the percentage vote. In the share vote, each member's vote is enhanced according to their total energy use. This second tier effectively gives more weight to the votes of members using more energy with the provision that no one agency's vote can ever be enough to carry the decision on that tier.
- A board decision to involuntarily remove a party (Section 7.2) or amend the agreement (Section 8.4) requires a 2/3 majority vote.
- Although an agency may easily withdraw from the MEA before the MCE program begins, withdrawal will be more complex after the program is underway, particularly if the withdrawing agency has residents receiving MCE energy. We do not have a resolution for this problem at present. Accordingly, Section 7.1.3 requires that the MEA's Operating Rules and Regulations address that issue.
- As discussed earlier, the MEA would also be able to pursue non-CCA programs, to further compliance with AB 32 mandates. This flexibility requires some creative drafting. We do not know what these programs will look like or whether the Town will want to participate. If member agencies are divided regarding a particular AB 32 program, it would be possible to amend the joint powers agreement to create a separate governance system. Moreover, any agency can withdraw from the MEA upon six months notice under Section 7.
- The County has agreed to fund the upfront costs associated with the MEA's formation and implementation of the MCE program. These costs will be reimbursed only if the MEA actually implements the MCE program, by recouping the cost from energy customers (Section 6.3.2).

Community Choice Aggregation (aka Marin Clean Energy or MCE)

State law allows local governments to create programs to procure electricity on behalf of customers within their jurisdictions under a program called Community Choice Aggregation or CCA. For the past several years, the County and the eleven incorporated cities and towns within

Marin have been investigating the feasibility of this opportunity to improve the renewable profile of Marin's electricity and to help stabilize rates over time. The Town has participated in the Local Government Task Force exploring CCA since 2006. In recent months, the Task Force decided to expand the scope of its efforts to include greenhouse gas reduction programs mandated by Assembly Bill 32, described further below.

The CCA Task Force generated the following documents:

- Marin CCA Business Plan;
- Local Renewables Analysis; and
- An independent peer review of the Marin CCA Business Plan.

The first purpose of the new agency, MEA, is to create and operate a county-wide CCA, Marin Clean Energy (MCE). MEA would be a separate legal entity able to enter into contracts to purchase renewably-generated electricity from independent producers. The MEA would solicit proposals to supply electric power for the MCE project and carry out other technical functions. If the MEA selects a proposal, it will negotiate a draft contract with the energy service provider (ESP). The MEA will circulate the draft for a minimum 90-day review period.

Each MEA member government would then vote on whether to go forward with the contract to implement CCA or not. Signing the contract with an Energy Service Provider would occur in mid- to late 2009, and would be the formal step to launch the MCE project.

PG&E would distribute the MCE power, provide the balance of electricity needed and continue to own and operate the distribution network of power lines. PG&E would also continue to provide billing and customer service. Customers in participating municipalities and the unincorporated County would have the ability to subscribe to power from MEA or could "opt out" and stick with PG&E for all of their power. MEA Customers could choose between two levels of participation: "light green" or "dark green". Initially, "light green" would provide twice as much renewable energy as customers currently receive, increasing to approximately 50% within five years, at rates equal to or less than PG&E's, with rates projected to decrease over time. Those selecting the "dark green" option would agree to pay 8-10% extra to receive 100% renewable power. (Please note that the actual source of the power one receives is a function of the power-balancing that occurs at the regional and state level where electrons are merged in the system as efficiency dictates.)

MCE is based on a fairly complicated and technical business plan that makes many assumptions about the availability and reliability of both renewable and non-renewable resources into the future. All of the participating entities want the highest possible level of certainty that the MCE will achieve the predicted outcome of greener and, eventually, rate-stabilized power, and anticipate and address all possible downsides in advance. Accordingly, the MCE plan has received substantial scrutiny. It was the subject of an extensive Peer Review commissioned by the County in 2007, which concluded that the plan is feasible and would produce the desired outcome. PG&E criticized that review, arguing that the assumptions used were overly rosy.

In part to counteract the effect of these dueling critiques, the cities and towns considering MCE independently commissioned a third peer review of the business plan. That review, which was discussed at the last Council meeting, found that MCE "... creatively proposes a workable path to providing green power to those in Marin who want it while offering rates comparability and predictability to those who need it." The reviewers also raised issues and posed questions they

believe should be answered before participating cities make a binding commitment to MCE (a decision point that will present itself approximately one year from now). The review recommended that the parties proceed to form the MCE Joint Powers Authority at this time with the understanding that, if business plan projections do not materialize as anticipated, it will be possible to withdraw from MCE without penalty during the upcoming year (see Section 7.1.1.1 of the Agreement).

This last point is crucial to all participants, who need to know when and how participating agencies, such as San Anselmo, could elect to withdraw if they were dissatisfied with the prospects of the enterprise. Up until such time as the MEA actually enters into agreements with energy service providers any participating agency could withdraw from the JPA *without penalty*. This arrangement is possible because the County has agreed to bear the costs incurred in the initial process if MCE fails to materialize because of agency withdrawals. If MCE does move forward, the County will eventually be reimbursed for these expenses through the rates charged to program customers. This affords participating cities and towns the benefit of actually seeing what the private sector (including possibly PG&E) has to offer in the way of contracts and if they fit within the parameters set forth in the business plan prior to a commitment to participate in the MEA.

It is important to note that, as structured in the JPA, participating agencies would not have their municipal funds at risk in the enterprise. Marin Energy Authority would be a completely separate legal entity that would succeed or fail without recourse to any of its member cities' coffers. Its funding would come through its ability to issue debt and to set rates for its customers.

AB 32 Mandates

AB 32 requires local governments to limit greenhouse gas (GHG) emissions from government operations and potentially for some sectors in the community as well. An overall reduction of approximately 30% may be needed to meet the state mandate. Countywide, this is equivalent to a reduction of 955,500 tons of CO₂. In addition, a cap and trade program may be in place for local governments so that those who are not reducing GHG emissions enough will be able to buy credits from those who are reducing more than required. Currently, the cost of offsetting carbon on the Chicago Climate Exchange is \$4 per ton.

To address the requirements of AB 32 the proposed JPA "Marin Energy Authority" would allow participating cities and towns to pool resources and address carbon emissions countywide. This JPA could take on a number of projects to reduce greenhouse gas (GHG) emissions. Potential projects could range from implementing the Community Choice Aggregation program described above to increasing energy efficiency or installing more renewable energy supply. Due to the high impact in GHG reductions the first program likely to be launched by the Marin Energy Authority JPA would be Community Choice Aggregation.

DISCUSSION

The ordinance before Council this evening would trigger the following chain of events:

1. The ordinance approves the joint powers agreement and signals the Town's election to participate in the proposed CCA program, subject to the right to withdraw from the JPA before it actually implements the CCA program.

2. The Agreement, upon execution by at least two parties, forms a JPA titled the Marin Energy Agency ("MEA").
3. The MEA will solicit proposals from potential energy service providers (ESPs) to provide electricity meeting certain environmental standards pursuant to a CCA program to be called Marin Clean Energy ("MCE").
4. The MEA is not obliged to proceed with any of the proposals. If the MEA does select a proposal, it will negotiate a draft contract with the ESP.
5. The MEA will circulate the proposed ESP contract to member agencies. The members have sixty days to review the proposed contract and decide whether to participate in the program. If a member decides to withdraw at this point, it may do so without cost or on-going liability. We expect to arrive at this point in approximately one year.
6. If the MEA actually implements the MCE program, the County will recoup the upfront costs of forming the MEA and exploring the program from MEA customers. If the MCE does not implement the program, the County will absorb these unrecoverable costs.
7. Whether or not the MEA implements the MCE program, it will explore and possibly implement other programs directed at compliance with the members AB 32 obligations.

On October 28, 2008, the County Board of Supervisors passed first reading of its ordinance approving the MEA joint powers agreement. Most Marin cities and towns are scheduled to hold their first readings in November; Corte Madera, Novato and Larkspur have not yet scheduled consideration of the ordinance, but are expected to do so shortly. The County's goal is to form the MEA in December and begin work on the request for proposals in January of 2009.

Public meetings to review the MCE concept were held in San Anselmo on March 22, September 16 and October 28, 2008. Every Marin jurisdiction has also held educational sessions on Marin Clean Energy and CCA both for the public and for a variety of community groups including the North Bay Leadership Council, Marin Family Action, Marin Municipal Water District, Marin Builders Exchange, Marin Realtors Association, Sausalito Lions Club, San Rafael Chamber of Commerce, Mill Valley Rotary and many others.

FINANCIAL IMPACT

There is no fiscal impact to San Anselmo in adopting the ordinance to form MEA. The Marin County Board of Supervisors has allocated funding to cover start-up costs for the MCE effort undertaken by the MEA. These start-up costs would be reimbursed through program revenue if the MCE program begins to serve customers. At this junction, we cannot predict what expenses might be incurred if the MEA board elects to pursue additional programs to MCE, but the Town as a member of the JPA would participate in those decisions.

CONCLUSION

The Marin Energy Authority has the following attributes:

1. The program has the potential to offer electric customers in San Anselmo both greener power and stabilized rates over time;

2. There is no financial risk to the town to participate at this stage as the Town can withdraw without penalty if it is dissatisfied with the contracts proffered by the energy service providers later in 2009; and
3. The independent review commissioned by the cities and towns raises important questions which, if answered between now and the withdrawal decision date, will enhance the likelihood that a prudent choice can be made that that time to proceed or withdraw from the JPA.

Respectfully submitted,

Debra Stutsman

Debra Stutsman
Town Manager

Attachment:

1. Ordinance Approving Marin Energy Authority Joint Powers Agreement
 - Exhibit A: Marin Energy Authority Joint Powers Agreement
 - Exhibit B: Marin Clean Energy Business Plan

ORDINANCE NO. _____

ORDINANCE OF THE TOWN COUNCIL
OF THE TOWN OF SAN ANSELMO APPROVING THE
MARIN ENERGY AUTHORITY
JOINT POWERS AGREEMENT AND AUTHORIZING THE
IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION
PROGRAM

The Town Council of the Town of San Anselmo ordains as follows:

SECTION 1. The Town of San Anselmo has been actively investigating options to provide electric services to constituents within its service area with the intent of achieving greater local involvement over the provisions of electric services and promoting competitive and renewable energy.

SECTION 2. On September 24, 2002, the Governor signed into law Assembly Bill 117 (Stat. 2002, ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the "Act"), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation.

SECTION 3. The Act expressly authorizes participation in a Community Choice Aggregation (CCA) program through a joint powers agency, and to this end the Town has been participating since 2003 in the evaluation of a CCA program for the County of Marin and the cities and towns within it.

SECTION 4. On June 22, 2006, the Town joined a Local Government Task Force (LGTF), which was comprised of elected officials and representatives of the County of Marin and each municipality in the County. The purpose of the LGTF was to jointly participate in the investigation of CCA for Marin communities and customers. The LGTF had five meetings with the final meeting taking place on March 6, 2008. The LGTF meetings looked at issues including:

- (a) The costs, benefits and risks of a CCA including legal liability issues.
- (b) The governance and business planning of a CCA.
- (c) The feasibility of a CCA and deciding whether to pursue formation of a countywide CCA organization.
- (d) Public education.

SECTION 5. Through Docket No. R.03-10-003, the California Public Utilities Commission has issued various decisions and rulings addressing the implementation of Community Choice Aggregation programs, including the recent issuance of a procedure by which the California Public Utilities Commission will review "Implementation Plans," which are required for submittal under the Act as the means of describing the Community Choice Aggregation program and assuring compliance with various elements contained in the Act.

SECTION 6. Representatives from the Town along with the other LGTF members have developed the Marin Energy Authority Joint Powers Agreement (“Joint Powers Agreement”) (attached hereto as Exhibit A) in order to accomplish the following:

- (a) To form a Joint Powers Authority (JPA) known as “Marin Energy” and
- (b) To specify the terms and conditions by which participants may participate as a group in energy programs, including but not limited to the preliminary implementation of a Community Choice Aggregation program.

SECTION 7. Representatives from the Town along with the LGTF members have developed a Business Plan (attached hereto as Exhibit B that describes the formation of Marin Clean Energy and the Community Choice Aggregation program to be implemented by and through the Marin Energy Authority.

SECTION 8. A final Implementation Plan will be submitted for review and adoption by the Board of Directors of the Marin Energy Authority as soon after the formation of the Authority as reasonably practicable.

SECTION 9. As described in the Business Plan, Community Choice Aggregation by and through the Marin Energy Authority appears to provide a reasonable opportunity to accomplish all of the following:

- (a) To provide greater levels of local involvement in and collaboration on energy decisions.
- (b) To increase significantly the amount of renewable energy available to Marin customers,
- (c) To provide initial price stability, long – term electricity cost savings and other benefits for the community, and
- (d) To reduce green house gases that are emitted by creating electricity for the community.

SECTION 10. The Act requires Community Choice Aggregation program participants to individually adopt an ordinance (“CCA Ordinance”) electing to implement a Community Choice Aggregation program within its jurisdiction by and through its participation in the Marin Energy Authority.

SECTION 11. The Joint Powers Agreement expressly allows the Town to withdraw its membership in the Marin Energy Authority (and its participation in the Community Choice Aggregation program) prior to the actual implementation of a Community Choice Aggregation program through Program Agreement 1.

SECTION 12. A city, town or county may not participate in the Marin Energy Joint Powers Authority without also participating in the Community Choice Aggregation program unless the Board of Directors of the Marin Energy Joint Powers Authority decides to not

implement or operate a Community Choice Aggregation program after the Authority is established.

SECTION 13. Based upon all of the above, the Council approves the Joint Powers Agreement attached hereto as Exhibit A and elects to implement a Community Choice Aggregation program within the Town's jurisdiction by and through the Town's participation in the Marin Energy Authority, as described in the Business Plan in substantially the form attached hereto as Exhibit B, and subject to the Town's right to forego the actual implementation of a Community Choice Aggregation program pursuant to specified withdrawal rights described in the Joint Powers Agreement. The Mayor is hereby authorized to execute the attached Joint Powers Agreement.

SECTION 14. This ordinance shall take effect and be in force 30 days after its adoption, and, before the expiration of 30 days after its passage, a summary of this ordinance shall be published once with the names of the members of the Council voting for and against the same in the Marin IJ, a newspaper of general circulation published in the County of Marin.

The foregoing ordinance was introduced at a meeting of the Town Council of the Town of San Anselmo, held on _____, and adopted at a meeting held on _____, by the following vote:

AYES: Councilmember
NOES: Councilmember
ABSENT: Councilmember

Ted Freeman, Mayor

Barbara Chambers, Town Clerk

**Marin Energy Authority
- Joint Powers Agreement -**

Effective DATE

Among The Following Parties:

*[City of Belvedere]
[Town of Corte Madera]
[Town of Fairfax]
[City of Larkspur]
[City of Mill Valley]
[City of Novato]
[Town of Ross]
[Town of San Anselmo]
[City of San Rafael]
[City of Sausalito]
[Town of Tiburon]
[County of Marin]*

EXHIBIT A

MARIN ENERGY AUTHORITY JOINT POWERS AGREEMENT

This **Joint Powers Agreement** ("Agreement"), effective as of *DATE*, 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. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.
3. 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.
4. The Parties desire to establish a separate public agency, known as the Marin 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.
5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties 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. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.

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

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 MARIN ENERGY AUTHORITY

2.1 **Effective Date and Term.** This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). 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.** During the first 180 days after the Effective Date, 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)(10) 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 and 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 Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. Unless otherwise agreed, the debts, liabilities, and obligations of the Authority shall not be debts, liabilities or obligations of the 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 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, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.

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 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;
- 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 aids 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 agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.

- 2.6 **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 County of Marin.
- 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 such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.9.1, 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)(10) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. Notwithstanding the foregoing, in the event the Authority decides to not implement a CCA Program, the requirement that an additional party adopt the ordinance required by Public Utilities Code Section 366.2(c)(10) shall not apply. Under such circumstance, the Board resolution authorizing membership of an additional incorporated municipality or county shall be adopted in accordance with the voting requirements of Section 4.10.
- 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 or the alternate Director shall be a member of the governing body of the Party.
- 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 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 shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.
- 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 Related to the CCA Program.

4.9.1. To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one Director having 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.

4.9.2. Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.

4.9.2.1 Pro Rata Voting Share. Each Director shall have an equal voting share as determined by the following formula: $(1/\text{total number of Directors})$ multiplied by 50, and

4.9.2.2 Annual Energy Use Voting Share. Each Director shall have an additional voting share as determined by the following formula: $(\text{Annual Energy Use}/\text{Total Annual Energy})$ multiplied by 50, where (a) "Annual Energy Use" means, (i) with respect to the first 3 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours ("kWhs"), within the Party's respective jurisdiction and (ii) with respect to the period after the third anniversary of the

Effective Date, the annual electricity usage, expressed in kWhs, 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 shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year.

4.9.2.3 The voting shares are set forth in Exhibit D.

4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA. Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.

4.11 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.).

4.12 Selection of Board Officers.

4.12.1 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.

4.12.2 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.

4.12.3 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.

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

ARTICLE 5
IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

5.1.1 Enabling Ordinance. Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) 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 Effect of Vote On Required Implementation Action. In the event that two or more Parties vote to approve Program Agreement 1 or any earlier action required for the implementation of the CCA Program ("Required Implementation Action"), but such vote is insufficient to approve the Required Implementation Action under Section 4.9, the following will occur:

5.1.3.1 The Parties voting against the Required Implementation Action shall no longer be a Party to this Agreement and this Agreement shall be terminated, without further notice, with respect to each of the Parties voting against the Required Implementation Action at the time this vote is final. The Board may take a provisional vote on a Required Implementation Action in order to initially determine the position of the Parties on the Required Implementation Action. A vote, specifically stated in the record of the Board meeting to be a provisional vote, shall not be considered a final vote with the consequences stated above. A Party who is terminated from this Agreement pursuant to this section shall be considered the same as a Party that voluntarily withdrew from the Agreement under Section 7.1.1.1.

5.1.3.2 After the termination of any Parties pursuant to Section 5.1.3.1, the remaining Parties to this Agreement shall be only the Parties who voted in favor of the Required Implementation Action.

5.1.4 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, 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 County Funding of Initial Costs.** The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed \$500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County. This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin 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 County of Marin shall be reimbursed from the payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.
- 6.3.2 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 services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through charges to CCA customers receiving such electric services.
- 6.3.3 General Costs.** Costs that are not directly or indirectly attributable to the provision of electric services under the CCA Program, as determined by the Board, shall be defined as general costs. General costs shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.
- 6.3.4 Other Energy Program Costs.** Costs that are directly or indirectly attributable to energy programs approved by the Authority other than the CCA Program shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

**ARTICLE 7
WITHDRAWAL AND TERMINATION**

7.1 Withdrawal.

7.1.1 General.

7.1.1.1 Prior to the Authority's execution of Program Agreement 1, any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. To permit consideration by the governing body of each Party, the Authority shall provide a copy of the proposed Program Agreement 1 to each Party at least 90 days prior to the consideration of such agreement by the Board.

7.1.1.2 Subsequent to the Authority's execution of Program Agreement 1, 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 6 months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement in the manner provided by Section 8.4.

7.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing 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 an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%, excluding 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 continuing liabilities, as described in Section 7.3. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

- 7.3 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, 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, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party's withdrawal or involuntary termination. 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 **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.
- 7.5 **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 program 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. Should such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.
- 8.2 Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code 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 is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.
- 8.4 Amendment of this Agreement.** This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving 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. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

- 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 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

**ARTICLE 9
SIGNATURE**

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

By: _____

Name: _____

Title: _____

Date: _____

Party: _____

Exhibit A

**To the
Joint Powers Agreement
Marin Energy Authority**

-Definitions-

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

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

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

“Agreement” means this Joint Powers Agreement.

“Annual Energy Use” has the meaning given in Section 4.9.2.2.

“Authority” means the Marin 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.

“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 Marin 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 one or more Administrative Services Provider Agreements and Program Agreement 1. Administrative and operational costs incurred after the approval of Program Agreement 1 shall not be considered Initial Costs.

“Initial Participants” means, for the purpose of this Agreement,

“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 3.2 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 3.2 such that it is considered a member of the Authority.

“Program Agreement 1” means the agreement that the Authority will enter into with an energy service provider that will provide the electricity to be distributed to customers participating in the CCA Program.

“Total Annual Energy” has the meaning given in Section 4.9.2.2.

Exhibit B

**To the
Joint Powers Agreement
Marin Energy Authority**

-List of the Parties-

Exhibit C

**To the
Joint Powers Agreement
Marin Energy Authority**

-Annual Energy Use-

This Exhibit C is effective as of October 8, 2008.

Party	kWh (2005*)
City of Belvedere	10,498,935
Town of Corte Madera	75,726,510
Town of Fairfax	23,594,966
City of Larkspur	63,659,700
City of Mill Valley	64,761,440
City of Novato	268,301,203
Town of Ross	13,329,878
Town of San Anselmo	47,874,957
City of San Rafael	332,588,277
City of Sausalito	52,373,525
Town of Tiburon	42,831,004
County of Marin	332,726,224
Authority Total Energy Use	1,328,266,620

*Data provided by PG&E

Exhibit D

**To the
Joint Powers Agreement
Marin Energy Authority**

- Voting Shares -

This Exhibit D is effective as of October 8, 2008.

Party	kWh (2005*)	Section 4.9.2.1	Section 4.9.2.2	Voting Share
City of Belvedere	10,498,935	4.17%	0.40%	4.56%
Town of Corte Madera	75,726,510	4.17%	2.85%	7.02%
Town of Fairfax	23,594,966	4.17%	0.89%	5.05%
City of Larkspur	63,659,700	4.17%	2.40%	6.56%
City of Mill Valley	64,761,440	4.17%	2.44%	6.60%
City of Novato	268,301,203	4.17%	10.10%	14.27%
Town of Ross	13,329,878	4.17%	0.50%	4.67%
Town of San Anselmo	47,874,957	4.17%	1.80%	5.97%
City of San Rafael	332,588,277	4.17%	12.52%	16.69%
City of Sausalito	52,373,525	4.17%	1.97%	6.14%
Town of Tiburon	42,831,004	4.17%	1.61%	5.78%
County of Marin	332,726,224	4.17%	12.52%	16.69%
	1,328,266,620	50.00%	50.00%	100.00%

*Data provided by PG&E

