

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND PENINSULA CLEAN ENERGY AUTHORITY FOR A LOAN OF \$2,680,800 AND REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES OF \$300,000

This Agreement, deemed effective February 24, 2015 (“Effective Date”), is made and entered in the County of San Mateo, California, by and between the Peninsula Clean Energy Authority, a joint powers agency created pursuant to sections 6500 *et seq.* of the California Government Code (“PCEA”), and the County of San Mateo (“County”) for the purpose of stating the terms for multiple disbursements of loan funds to be repaid to County by PCEA as provided herein. PCEA and the County shall be referred to collectively as the “Parties” and individually as a “Party” herein.

RECITALS

WHEREAS, beginning in late 2014, the County began to explore the feasibility of developing a Community Choice Aggregation (CCA) program in San Mateo County; and

WHEREAS, on February 29, 2016, PCEA was formed by all the cities in the County of San Mateo, as well as the County itself, to administer a community choice aggregation program in San Mateo County; and

WHEREAS, prior to the legal formation of PCEA, the County funded certain activities necessary to implement the PCEA program at a cost of \$1,100,000 comprised of an appropriation on February 24, 2015 of \$300,000 and an appropriation of \$800,000 on October 20, 2015; and

WHEREAS, as expressly reflected in the Joint Powers Agreement Relating to and Creating the PCEA, it was agreed upon by the parties to that agreement that the County would be reimbursed by PCEA for the funds so expended in the event that PCEA becomes operational;

WHEREAS, after legal formation of PCEA, the County authorized additional funding totaling \$1,880,800 to PCEA to support PCEA’s operational needs during the initial roll out of the PCEA program;

WHEREAS, the Parties desire to enter into this Loan Agreement to document PCEA’s repayment obligations to the County for all such funds expended on behalf of, or in support of the formation of, PCEA.

NOW THEREFORE, in consideration of their mutual promises and obligations, the Parties hereby agree as follows:

1. County Loan of Funds to PCEA.

a. The Parties agree that the recitals herein are true and correct and that the County has provided funding to PCEA in the amount of \$2,980,800 (“Loan Amount”).

b. PCEA acknowledges and agrees that by lending said funds to PCEA, the County does not assume any liability, obligation, or duty whatsoever with respect to PCEA’s operations, liabilities, business, or transactions.

2. Terms of Repayment; Interest.

a. PCEA shall repay to County the Loan Amount plus interest as described in Section 2.b herein no later than the “Repayment Date,” which shall be July 1, 2021.

b. Interest shall be paid on all outstanding portions of the Loan Amount (“Loan Interest”) that bear interest pursuant to Section 2.c. The Loan Interest on any outstanding amount shall be calculated according to the sum of the following calculation for each respective quarter:

Principal x Quarterly Interest Rate x (No. of Days in Quarter / No. of Days in Year)

Where “Principal” is the relevant Funding of the Loan Amount as described herein; “Quarterly Interest Rate” is the gross earnings for the respective quarter as reported in the San Mateo County Treasurer’s monthly investment report found on the Treasurer-Tax-Collector’s website (<http://www.sanmateocountytreasurer.org/investmentReports.html>); “No. of Days in Quarter” is the sum of days of each month that make up each respective quarter; and “No. of Days in Year” is 365, except in leap years, in which the number of days in the year shall be 366.

- c. The Loan Amount shall bear interest as follows:
 - a. \$300,000 of the Loan Amount (“First Funding”) shall bear no interest whatsoever and shall be repaid to County as reimbursement for out-of-pocket expenses by the Repayment Date.
 - b. \$800,000 of the Loan Amount (“Second Funding”) shall bear Loan Interest beginning October 20, 2015 through the Repayment Date.
 - c. \$1,880,800 of the Loan Amount (“Third Funding”) shall bear Loan Interest beginning June 30, 2016 through the Repayment Date.

d. In the event the Loan Amount, along with any and all Loan Interest owed pursuant to Section 2.b, are not repaid by the Repayment Date, any such amounts that remain outstanding shall accrue interest at the rate specified by law for prejudgment interest.

3. Hold Harmless; Indemnity.

a. PCEA shall hold harmless, indemnify and defend the County, its officers, employees, and agents from and against any and all claims, suits or actions of every kind which arise out of the performance or nonperformance of PCEA’s covenants, responsibilities, and obligations under this Agreement and which result from the negligent or wrongful acts of PCEA or its officers, employees, or agents.

b. County shall hold harmless, indemnify and defend PCEA, its officers, employees and agents from and against any and all claims, suits or actions of any kind which arise out of the performance or non-performance of the County's covenants, responsibilities and obligations under this Agreement and which result from the negligent or wrongful acts of the County or its officers, employees or agents.

c. In the event of concurrent negligence of the County, its officer or employees, and the PCEA, its officers and employees, the liability for any and all claims for injuries or damages to persons and/or property or any other loss or costs which arise out of the terms, conditions, covenants or responsibilities of this agreement shall be apportioned according to the California theory of comparative negligence.

4. General Provisions.

a. Waiver. The waiver by PCEA or the County of any term, covenant or condition herein contained shall not be deemed to a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

b. Successors and Assigns. The terms of this Agreement shall apply and bind the heirs, successors, executors, administrators and assigns of the Parties.

c. Amendment to Agreements. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the Parties or their respective successors in interest. This Agreement shall not be effective or binding until fully executed by both Parties.

d. Choice of Law. This Agreement is subject to the laws and jurisdiction of the State of California and any action related to the Agreement shall be brought in the California Superior Court for the County of San Mateo. In the event that any court action should be

brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California.

e. Independent Entities. This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, joint employer, or association.

f. Authority to Execute Agreement. The Parties each warrant that they have the authority to execute this Agreement and that all actions have occurred, and all necessary approvals or consents have been obtained to allow each party to enter into this Agreement.

g. Notices. All notices provided for herein shall be in writing and shall be delivered to the appropriate parties as provided below:

For PCEA:

Janis Pepper, CEO
Peninsula Clean Energy Authority
455 County Center, 4th Floor
Redwood City, CA 94063

For COUNTY:

County Manager
400 County Center, 1st Floor
Redwood City, CA 94063

IN WITNESS WHEREOF, PCEA and COUNTY have signed this Agreement on the dates set forth below.

PENINSULA CLEAN ENERGY AUTHORITY

Date: _____

By: _____

Title: _____

COUNTY OF SAN MATEO

Date: _____

By: _____

Title: _____