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[Resolution on Policy and Program Recommendations for Community Choice Aggregation Implementation Plan]

Resolution submitting Policy and Program Recommendations for a Community Choice Aggregation (CCA) Implementation Plan.

WHEREAS, The primary purpose of the San Francisco Local Agency Formation Commission (San Francisco LAFCo or Commission)¹ under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 is to review public service needs, including utility service, and to determine whether new government entities should be created or changes in existing governments should be made to address the needs of its citizens; and

WHEREAS, The Commission adopted by resolution its Energy Services Study and Recommendations for Electric Utility Service, and recommended that the Commission pursue the feasibility of implementing the provisions of AB 117 (Chapter 838, Statutes of 2002) by the City and County of San Francisco (CCSF); and

WHEREAS, The Board of Supervisors subsequently adopted on May 11, 2004, an Ordinance No. 00-86-04 establishing a Community Choice Aggregation Program in accordance with Public Utilities Code Sections 218.3, 331.1, 366, 366.2, 381.1, 394 and 394.25 to further the implementation of a program to purchase electrical power directly

¹ Attached hereto as Exhibit A is Glossary of Terms.
Supervisor Mirkarimi

1 for the citizens of the City and County of San Francisco and to accelerate renewable
2 energy, conservation and energy efficiency programs; and

3 WHEREAS, The Ordinance No. 00-86-04 required that the San Francisco Public
4 Utilities Commission (SFPUC) and the San Francisco Department of the Environment
5 jointly prepare and submit to the Commission for review and comment an
6 Implementation Plan (SFPUC/SFE IP) which was submitted on April 27, 2005. In
7 addition a draft IP was submitted by Local Power (LP Draft IP); and

8
9 WHEREAS, The San Francisco Local Agency Formation Commission (Commission)
10 held hearings regarding the two draft IP's and attempted to resolve the differences between
11 the two on the following dates: February 4, March 11, April 15, April 22, May 13, June 10,
12 June 17, July 8, July 14, July, and August 4, 2005; and

13 WHEREAS, The San Francisco Local Agency Formation Commission hereby
14 recommends the following policy directions and program designs and; now therefore be
15 it

16
17 RESOLVED, That the San Francisco Local Agency Formation Commission
18 adopts and transmits to the Board of Supervisors for the City and County of San
19 Francisco this Resolution for Policy directions and Program Designs for inclusion in the
20 Community Choice Aggregation Implementation Plan:
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Policy Criteria and Program Design Recommendations

1. SCOPE/ORGANIZATIONAL STRUCTURE AND FUNCTIONAL RESPONSIBILITIES.

Chapter 7 and Appendix A of the SFPUC/SFE Draft IP and Chapter II and V of the LP IP describe options for the organizational structure of the CCA. According to recent advice from the City Attorney, the SFPUC has exclusive jurisdiction over the implementation of the CCA with oversight from the Board of Supervisors and the means to change this exclusive jurisdiction would be through a Charter amendment. The Commission is intending to retain independent legal counsel to provide additional advice. The Commission also believes that a joint powers authority may be appropriate for CCA implementation. The Commission makes the following recommendations:

Program Policy

- **Electric service is an essential service.**
- **Citizens deserve the government accountability that City staffing provides.**
- **CCA program is a CCSF commitment to provide retail power services.**
- **CCA program should offer service to all non-municipal customers in the City and County of San Francisco.** California law requires the CCA program to offer all residential customers service; CCA program economics makes it more cost-effective if other classes of customer are also offered service.

1 [Program Design]

- 2 • **SFPUC/SFE Draft IP estimates that 28 city employees will staff the most**
- 3 **important public interface functions of the CCA program. These functions**
- 4 **are:**
- 5 • call center functions – Appendix A of the SFPUC/SFE Draft IP identified 13 full time
 - 6 employees in a steady-state and potentially more (which could be temporary hires)
 - 7 during the mass enrollment process;
 - 8
 - 9 • opt-out supervision and oversight – the notification and opt-out process will involve
 - 10 the vast majority of electric customers within the city. Although the energy service
 - 11 supplier should be directly responsible for the day-day operation of the opt-out
 - 12 function it is vital that this major undertaking occur with the real-time
 - 13 supervision/cooperation of city employees, particularly to help coordinate and deal
 - 14 with problems which are likely to occur. Public communication and out-reach
 - 15 should start considerably before the mass notification/opt-out process for CCA
 - 16 program.
 - 17
 - 18 • regulatory oversight and oversight/negotiation of the RFP process for an energy
 - 19 service supplier.
 - 20
 - 21 • **The wholesale supplier to the CCA program undertakes and staffs the remaining**
 - 22 **functions**
 - 23 • **City staff is assumed to manage any CCA program energy efficiency efforts for**
 - 24 **reasons described in Chapter 7 of the SFPUC/SFE Draft IP. However, initially there**
 - 25 **is no specific staffing set aside for energy efficiency. The City should continue to**

1 pursue administration/management of the PGC funds paid by San Francisco electric
2 ratepayers as a source of funding for this effort.

3 **Organizational Structure Recommendations**

4 **Program Policy**

- 5 • **The City needs to act quickly.** The City needs to establish the CCA program with
6 some urgency to mitigate the risk of its citizenry being allocated additional Cost
7 Responsibility Charges by the California Public Utilities Commission (CPUC).
8

9 **Program Design**

- 10 • **The SFPUC should be tasked, staffed and funded to implement the CCA**
11 **program.**
- 12 • **SFE should be tasked, staffed and funded, via Work Order and PGC funds if**
13 **available to assist the SFPUC by undertaking the energy efficiency aspect of the**
14 **CCA program.** SFE staff has current responsibility for providing certain energy
15 efficiency services and residential solar services to CCSF PG&E customers.
16
- 17 • **The City Attorney's Office should be tasked, staffed and funded to provide legal**
18 **services to the CCA program.**
- 19 • **A Board approved Program Director's position will be created and/or designated**
20 **to implement the program.**
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Governance and Oversight of the Staff Function Recommendations

Program Policy

- The Board of Supervisors will have oversight responsibilities over the CCA and the SFPUC implementation of the IP. This oversight includes approving the budget of the CCA, rate setting, bond financing, the IP, and authorization to award any electric supply contract. A Rate setting advisory board such as a new Electricity Rate Fairness Board or potentially the existing Rate Fairness Board for water and sewer rates should be tasked to handle complaint or citizen input.
- Assigned staff should be directly accountable to the governing and oversight body, the CCSF.

Program Design

City Rate setting Mechanisms and Costs to Participants

- 1) Chapter 3 of the SFPUC/SFE Draft IP and Chapter II and V of the LP Draft IP describe in some detail the different contexts in which energy rate setting will be accomplished. The most crucial aspect of rate setting is the fundamental consumer protection inherent in a public process to establish and change electric rates.

1 **A. DRAFT RATESETTING RECOMMENDATION**

2 **Program Policy**

- 3
- 4 • **The City should meet or beat the level of due process in rate setting currently**
 - 5 **provided under the PG&E/CPUC structure.**
 - 6 • **CCA program staff and governance body should work from a common**
 - 7 **information base.** It is necessary to have an information and coordination linkage
 - 8 between the staff working directly on the CCA program and any formal governance of
 - 9 rate setting.
 - 10 • **The City has ready models for rate setting governance upon which it should**
 - 11 **build.**

12 **Program Design**

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- 14 • A rate setting advisory board such as a new Electricity Rate Fairness Board or
 - 15 potentially the existing Rate Fairness Board for water and sewer rates should be
 - 16 tasked to handle complaint or citizen input.

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18 **3. BENEFITS OF THE PROGRAM TO SF CUSTOMERS**

19 Chapter 4 of the SFPUC/SFE Draft IP and Chapter II and V of the LP Draft IP set forth the

20 benefits, costs, risks and opportunities available to the City if it chooses to implement a

21 CCA. The Commission concurs that the CCA program is of benefit and makes the

22 following recommendations.

23

RECOMMENDATIONS ON PROGRAM BENEFITS

Program Policy

- CCSF should pursue CCA if it is reasonable to expect that CCSF can achieve the program goals articulated in Ordinance No. 00-86-04 – clean, reasonably priced, and reliable electric service.
- CCSF should identify “off ramps” for program development in the event it becomes unreasonable to expect we can achieve our goals.

Program Design

- SFPUC will evaluate the CPUC rules as they are announced and will report significantly negative impacts on program design. CPUC is: 1) resetting the Cost Responsibility Surcharge; 2) presently considering the costs PG&E will be allowed to charge CCAs for related services, (such as customer billing); and 3) establishing the level of commitment a City must demonstrate for the utility to no longer procure for City customers. Decisions on topics like these impact program costs and allocation of risk between PG&E and CCSF, which may in turn affect our ability to achieve our goals.
- **The Request for Proposal (RFP) will incorporate** the direction for program policy and design endorsed by the Mayor and Board of Supervisors.
- **SFPUC will report on the extent and make up of customer opt-out.** Substantial opt-out by larger CCSF electricity customers presents a substantial risk to the economic success of the CCA.

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4. **PROGRAMS ABILITY TO MEET OR EXCEED THE RENEWABLE PORTFOLIO STANDARDS (RPS) REQUIRED OF PG&E BY THE CPUC.**

Chapters 4, 9, and 10 of the SFPUC/SFE Draft IP and Chapters 2, 3, and 5 of the LP Draft IP address different aspects of CCA Renewable Portfolio Standard (RPS) issues. The Commission heard significant testimony on this issue and makes the following recommendations:

RENEWABLE GENERATION RECOMMENDATIONS

Program Policy

- **The CCSF CCA program should achieve the Electric Resource Plan (ERP) target goals for increasing renewables.** Reliance on renewable generation is consistent with San Francisco's community values and reduces the City's contribution to greenhouse gas emissions. The CCSF shall retain discretion to allow design of a program that reflects renewable generation as a percentage of customer load in the event the RFP responses do not achieve all of the goals of the ERP (360MW of renewable and distributed generation and energy efficiency reductions).
- **The pace for reaching the renewable target should be set in a manner that does not increase customer rates.** While increasing our reliance on renewable generation is an important policy objective, we must continue to maintain affordability of this essential service for our citizens. CCSF needs to have a contingency plan in place in the event the full 360 MW target is not achievable. We need to also remove any roll out barriers on new energy programs.

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- **The CCA program should include investment in large-scale, cost-effective renewable generation.** Direct investment in renewable generation increases the City's energy independence.

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Program Design

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- **Retain discretion for how to meet or exceed PG&E's RPS requirements in an Implementation Plan.** Set benchmarks for renewables that protect and defend the policy of 360 MW.
 - **Encourage distributed renewable generation.** The City should plan on offering a CCA net-metering tariff to encourage its customers to invest in renewable self-generation. The City should continue to support expansion of state incentives for distributed solar PV and other renewable technologies.
 - **Use municipal bond financing authority to invest in large-scale wind or other cost-effective renewable generation.** Chapter 5 of the SFPUC/SFE Draft IP and Chapters 4, 5 and 7 of the LP Draft IP assume the use of Proposition H bonds for financing of large-scale wind or other cost-effective renewable generation. The City Attorney has opined that 1) Proposition H bonds may be used by the CCSF to fund such projects; and 2) The taxable status and thereby cost consequences of such funds will depend upon whether the project structure is based upon a lease or build to suit with a private party arrangement.

1 **5. PROGRAMS ABILITY TO MEET OR EXCEED CONSUMER PROTECTION**
2 **STANDARDS REQUIRED BY PG&E OF THE CPUC.**

3 Chapter 7 of the SFPUC/SFE Draft IP and Chapter 5 of LP Draft IP discuss consumer
4 protection issues. After hearing, the Commission makes the following recommendations:

5 **CONSUMER PROTECTION RECOMMENDATIONS**
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7 **Program Policy**

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 - 9 • **The City should meet or beat the level of customer protection currently provided**
10 **under the PG&E/CPUC structure.**
 - 11 • **The City should include a low income ratepayer assistance program in its CCA**
12 **program.**
 - 13 • **The SFPUC may have exclusive jurisdiction over electric rates and if so they can**
14 **use either a new Electricity Rate Fairness Board or the existing Rate Fairness**
15 **Board for water and sewer rates as a rate-setting body.**

16 **Program Design**
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 - 19 • **The CCA program staff must be pro-active regarding the likely sources of**
20 **consumer complaints.**
 - 21 • **CCA call center staff will be on the front lines of consumer complaint resolution.**
22 Call center staff training should incorporate consumer complaint issues. Consumer
23 complaints not adequately addressed by call center staff should be referred to the Rate
24 Fairness Board [or the chosen structure].

- **CCA program staff, working with the rate setting authority, will craft a rate structure for low income customers comparable to the State-mandated program.**

In the event the Call center is unsatisfactory in answering questions regarding rates, consumers may contact the Electricity Rate Fairness Board.

6. CONTRACTING AND DISCLOSURE OF THIRD PARTIES THAT WILL BE SUPPLYING ELECTRICITY OR PROVIDING OTHER SERVICES UNDER THE PROGRAM, INCLUDING INFORMATION ABOUT FINANCIAL, TECHNICAL, AND OPERATIONAL CAPABILITIES.

Chapter 6 of the SFPUC/SFE Draft IP and Chapter 5 of LP Draft IP provide information on the various contracting options available to a CCA as well as guidance regarding maximization of RFP response. The Commission recommends:

PROVIDER INFORMATION RECOMMENDATION

Program Policy

- **CCA supplier selection should conform to city contracting policy.**
- **The CCA program should strive for transparency in the contracting process and bid results disclosure.** The City bodies, e.g., SFPUC, SFE, SFPUC Citizen's Advisory Committee, and CCA Task Force should be informed to ensure citizen confidence in the process and in the resulting rate setting process.
- **The RFP should be structured in a manner that will provide needed information about the winning bidder, upon selection.** Once the winning bidder is selected, information about that bidder should be made available.

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- It may be advisable to have a Request for Information (RFI) or Request for Qualification (RFQ) initially to determine the interest and variety of potential bidders on an RFP. The Board of Supervisors shall have oversight and the CCA Program Director should undertake a pre-qualification process and make preliminary recommendations. The Board of Supervisors shall have final authority to approve the final draft RFP pursuant to Ordinance No. 00-86-04.

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Program Design

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- As envisioned in Ordinance No. 00-86-04, SFPUC and SFE will prepare an RFP. The RFP will incorporate the direction for program policy and design endorsed by the Mayor and Board of Supervisors. The Board of Supervisors will require technical staffing from the SFPUC, SFE, and the Program Director. The Board of Supervisors should approve the RFP, by resolution, before it is issued. The Electricity Rate Fairness Board will also need staffing.
 - **Upon selection, information about the winning bidder will be disseminated.** Potential CCA customers will receive information about the selected provider of services as part of the communications associated with program start-up, and on an on-going basis in response to customer inquiries.
 - **The RFP should request the Energy Service Supplier (ESP) to provide rates for Direct Access customers with the goal of providing incentives for such customers to join the CCA.** The rate setting body will oversee this process to ensure that any Direct Access rates be approved.
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- 1 • The RFP should reserve to CCSF establishment of actual electricity rates, based
2 upon total CCA program costs, to be charged to CCA customers, however, CCSF
3 will establish such rates based upon the rate structure recommended by the
4 bidder chosen by the RFP process.
- 5 • The RFP should include reservation for the Board to retain authority to
6 termination or withdrawal from the bid or bid negotiating process/ with the ESPs
7 should responses to the RFP jeopardize or negatively effect the CCSF program
8 goals.

10 7. INFORMATION ABOUT PROGRAM TERMINATION

11 Chapter 6 of the SFPUC/SFE Draft IP and Chapter 5 of the Local Power Draft IP discuss
12 program termination policies. The Commission makes the following recommendations.

14 PROGRAM TERMINATION RECOMMENDATION

15 Program Policy

- 16 • Program termination can be costly, should be understood upfront, and the
17 consequences mitigated through program design. Termination could be
18 precipitated by events such as non-competitive CCA power prices, a natural disaster,
19 overall market failure, or failure of the provider should be evaluated and planned for.

21 Program Design

- 22 • Incorporate SFPUC/SFE Draft IP Chapter 6, regarding all contractual termination
23 language (sections 2.7, 3.14, 3.15, and 3.17) into the CCA Implementation Plan to
24 be certified by the CPUC. These sections describe the circumstances under which
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1 termination could happen, and the credit and financial assurances, and contracting
2 provisions needed to mitigate program termination costs and disruptiveness.

3 **8. WHAT FUNCTIONS OF THE PROGRAM SHOULD BE PERFORMED BY OTHER**
4 **ENTITIES INCLUDING ELECTRIC SERVICE PROVIDERS**

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6 Chapters 6 and 7 of the SFPUC/SFE Draft IP describe in some detail the functions
7 required for implementation and day-to-day operation of a CCA. The LP Draft IP relies on an
8 ESP to bear the risk of the CCA program. The Commission recommends the following.

9 **PROVIDER FUNCTION RECOMMENDATION**

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11 **Program Policy**

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- 13 • **The City needs to act in a timely manner. It recognizes the program complexity**
14 **and technical sophistication that complexity requires, the scale economies**
15 **achieved, the experience needed, and the risk mitigation that contracting out for**
16 **certain functions provides.** All non-public face CCA functions should be undertaken
17 by other entities.
 - 18 • **There should be clear lines of responsibility and decision-making regarding both**
19 **CCA implementation and day-to-day CCA operation.** This argues for a single CCA
20 provider responsible for all CCA functions apart from those identified above as the
21 responsibility of the City staff.
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- The RFP should invite proposals from qualified providers and not limit bidders to the subset of qualified providers termed "Electric Service Providers". Other entities could be other municipal utilities or other forms of public power providers.

4 **Program Design**

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- The RFP will give preference to a structure that identifies a single, accountable provider for optimum coordination and integration of CCA implementation and operation.
 - SFPUC and SFE have expressed a desire to retain all energy efficiency programs and functions.
 - The RFP will identify the functions that will be performed by City staff and invite all qualified providers to bid on the remaining functions necessary to provide electric service. Qualified providers will detail the functions they will provide and the reporting relationship among the prime contractor and any subcontractors, and between the prime contractor and City staff.

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18 **9. CONTRACT AND BID REQUIREMENTS (ITEMS I – V)**

19 The Commission makes the following recommendations consistent with the SFPUC/SFE
20 Draft IP and the LP Draft IP:

21 **CONTRACT AND BID REQUIREMENTS RECOMMENDATIONS**

22 **Program Policy**

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- CCA supplier selection should conform to city contracting policy.

- 1 • **The contract duration should be set to both preserve CCSF's full public power**
2 **option and ensure the provider a degree of contract stability.**
- 3 • This is a new program that is complex in nature and will provide an essential service to
4 San Franciscans. Contract and bid requirements should not add unduly to this
5 complexity.
- 6 • The CCSF shall retain discretion to allow design of a program that reflects renewable
7 generation as a percentage of customer load in the event the RFP responses do not
8 achieve all of the goals of the ERP (360MW of renewable and distributed generation
9 and energy efficiency reductions).
- 10 • **The pace for reaching the renewable target should be set in a manner that does**
11 **not increase customer rates.** While increasing our reliance on renewable generation
12 is an important policy objective, we must continue to maintain affordability of this
13 essential service for our citizens.
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16 **Program Design**

- 17 • The Board of Supervisors should retain discretion to set the terms of the contract
18 balancing the considerations regarding risk, the City transactional process to sign any
19 new contract, City considerations regarding municipalization, and a degree of contract
20 stability for the wholesale supplier.
- 21 • **The RFP will give preference to a structure that identifies a single, accountable**
22 **provider.** One service provider for all CCA required services will help to integrate CCA
23 rate-setting, meeting renewable portfolio goals, and resource adequacy goals within
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1 one portfolio. It will assure that only one provider has to coordinate with PG&E
2 regarding the day-day operation CCA functions.

- 3 • Bidder should specify how the pace of renewable energy development in their bid
4 implements the Electric Resource Plan targets while ensuring rates competitive with
5 PG&E's. Rates higher than PG&E's to fund renewable generation purchases in the
6 initial program years undermine program stability and success.
- 7 • **City staff is assumed to manage any CCA program energy efficiency efforts for**
8 **reasons described in Chapter 7 of the SFPUC/SFE Draft IP. In the event that**
9 **ESPs are unresponsive in the bidding process, the Board should retain ability to**
10 **direct City staff regarding energy efficiency, peak shaving and load management**
11 **goals in the best interest of the City, including providing 107MW of energy**
12 **efficiency and conservation measures required by Ordinance No. 00-86-04.**
- 13 • **The RFP should require any supplier to describe how it will meet the RPS goals**
14 **set forth for year 1 and year 2 of the contract.**
- 15 • **The RFP should require any supplier to enumerate the local economic benefits of**
16 **its response.** The proposal should make it clear how its bid affects the local economy,
17 e.g. establishment of an office in San Francisco, job creation in San Francisco, and any
18 other local economic benefits.
- 19 • The RFP should ask the ESP to provide rates for Direct Access customers with the
20 goal of providing incentives for such customers to join the CCA provided that the rate
21 setting body will oversee this process to ensure that any direct access rates be
22 approved.
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- The RFP should include reservation for the Board to allow termination or withdrawal from the bid/bid negotiating process/or contract with the designated ESP should response to the RFP and/or CPUC developments (or other matters) jeopardize or negatively effect the CCSF program goals.

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6 **10. HOW PROP H BONDS MAY BE USED TO AUGMENT CCA.**

7 The City Attorney has opined that Proposition H bonds may be used for renewable
8 energy facilities, however, the taxable status and thereby cost consequences of such funds
9 will depend upon the use of those funds in determining whether the project structure is based
10 upon a lease or build to suit with a private party arrangement. Chapter 4 of the SFPUC/SFE
11 Draft IP has found that tax exempt H Bonds for renewable generation can meet both RPS
12 goals as well as cost effectiveness goals.

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14 **DRAFT PROPOSITION H BOND APPLICATION TO CCA RECOMMENDATION**

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16 **Program Policy**

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- **Proposition H authority should be exercised to the fullest extent lawful and consistent with the other CCA program policies.** Voters clearly articulated their desire for increased energy efficiency and renewable generation investment through the vehicle of revenue bonds. That vehicle should be utilized in the CCA program to achieve the renewable generation targets and, as feasible, energy efficiency targets.
 - **Legal and Financial questions raised in the SFPUC/SFE Draft IP are significant and have been initially addressed by the City Attorney. The City Attorney has opined**

1 that Proposition H bonds may be used to fund new wind generation on a lease
2 purchase/build to suit basis with a private third party under contract with the CCSF. Bonds
3 may be tax exempt or taxable and the SFPUC and the Board of Supervisors will need to
4 address in the future the cost/benefits of the alternative bond structures.

5 **Program Design**

- 6 • **The Program Director and SFPUC will pursue the steps necessary to take advantage**
- 7 **of the Proposition H authority.** These steps are outlined in Chapter 5 of the
- 8 SFPUC/SFE Draft IP, and include obtaining a credit rating for the CCSF.
- 9
- 10 • **SFPUC will issue an RFQ/I to ascertain the renewable energy investment**
- 11 **opportunities available to the CCA.**
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13 **11. WITH THE ASSISTANCE OF THE CITY ATTORNEY CONTINUE TO PARTICIPATE**

14 **IN CPUC PROCEEDINGS ON ADOPTING RULES FOR IMPLEMENTING COMMUNITY**

15 **CHOICE AGGREGATION AND OTHER RELEVANT PROCEEDINGS**

16 Chapter 9 of the SFPUC/SFE Draft IP provides details of the proceedings underway at
17 the CPUC and SFPUC and SFE staff participation in those proceedings. SFPUC staff, with
18 City Attorney support, should continue their advocacy efforts to shape program rules most
19 favorable to CCSF.
20

21 **12. COLLECT ELECTRIC LOAD DATA AS SPECIFIED IN THE ORDINANCE**

22 Chapter 2 of the SFPUC/SFE Draft IP provides considerable detail and analysis of the
23 load and customer data gathered and reviewed to date.
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WHEREAS, The San Francisco Local Agency Formation Commission determines that it is advisable for the Board of Supervisors to express its support for the Community Choice Aggregation Implementation Plan; now therefore, be it

RESOLVED That the Board of Supervisors support the recommendations as outlined in this Resolution and submit an Implementation Plan to the California Public Utilities Commission (CPUC) 30 days after 1) the Final Decision issued by the CPUC or CCA Rulemaking, Phase II, or 2) the Board enacted CCA legislation which ever is later, unless events warrant earlier action. The Board of Supervisors shall request the Program Director or the SFPUC to report back at the various CPUC milestones, including when the final decision is issued by the CPUC.