



### **Staff Report Item 6**

**TO:** East Bay Community Energy Board of Directors

**FROM:** Inder Khalsa, General Counsel

**SUBJECT:** Alameda County Cooperation and Administrative Services Agreement

**DATE:** April 12, 2017

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#### **Recommendations**

Approve Resolution EBCE R-2017-4 approving and authorizing the execution of the Cooperation and Administrative Services Agreement with Alameda County, providing for the provision of certain services to the EBCE by Alameda County and reimbursement to the County of these services.

#### **Analysis and Discussion**

In June 2014, the Alameda County Board of Supervisors Transportation and Planning Committee directed CDA staff to explore the concept of a Community Choice Aggregation Program for Alameda County.

During Phase I of the CCA process, County staff coordinated the preparation of a Technical/Feasibility Analysis and formed the CCA Steering/Advisory Committee as well as conducting public outreach. Up to \$1.325 million were allocated for Phase I costs.

Phase II, launching the EBCE, has now commenced. Phase II includes the following activities:

1. Creation of a Joint Powers Authority composed of participating municipal entities;
2. Retention of experts to assist with energy and technical services, including development of an Implementation Plan, calculating the precise energy needs of the EBCE according to its own policy, assisting with contracts to bring energy service providers on board, and numerous other tasks;

3. Retention of experts to assist with marketing, information dissemination, public communications and outreach;
4. Retention of vendors to provide data management and call center services;
5. Engaging a consultant team to develop a Local Development Business Plan, which can provide a policy blueprint for local renewable development, job creation, and innovation in energy programs;
6. Engaging legal and HR services for guidance and recruitment of the CEO and essential agency personnel;
7. County staff support for all administrative services and coordination among the various consultant teams being hired.

For items 1-6, the Alameda County Board of Supervisors allocated an additional \$2.41 million in 2016 to help bring the EBCE to full operational status, for a total of \$3,735,000. This value does not include the “soft” costs resulting from staff time involved since 2014.

The Cooperation and Administrative Services formalizes the ongoing relationship between Alameda County and the EBCE, providing that the County will provide—through officers, employees, consultants, or contractors—a variety of services to the EBCE, including but not limited to the following:

- a) Fiscal management and credit and financing support, including treasurer and auditor services;
- b) Community outreach and customer enrollment;
- c) Chief Executive Officer (CEO) recruitment and human resources support;
- d) Staff support and secretarial support at EBCE meetings;
- e) Contracted General Counsel/legal services;
- f) Contracted technical and energy services;
- g) Development of local business plan;
- h) Administrative staff support.

This list is non-exhaustive and additional services may be provided at the direction of the EBCE Board and County.

The County may also advance necessary funds, on an as-needed basis, to the EBCE or expend funds on behalf of the EBCE for the implementation of the CCA Program, including the costs of preparing the Implementation Plan, planning and environmental assessments for implementing the CCA Program, and the costs of acquisition and management of energy, equipment, facilities, and property as necessary to implement the CCA Program.

The Cooperation Agreement does not require the County to budget any additional funds for the EBCE, or to provide any services or advance any funds; rather, it allows the County to continue to provide such services and provides for reimbursement of County expenditures. The

Cooperation Agreement will act retroactively and entitle the County to reimbursement of expenditures going back to 2014.

The County will maintain records of all services undertaken and funds advanced for the EBCE and invoice the EBCE on a quarterly or more frequent basis. Pursuant to this Agreement, the EBCE agrees to reimburse the County for all costs incurred for the services outlined in the Agreement and any other expenditures made in order to implement the CCA Program. There is an initial amount of \$2,644, 237 owed under the Agreement for past expenditures, with total expenditures under the Agreement not to exceed \$5.5 million pursuant to the Agreement. These amounts shall be repaid by the EBCE to the County with 2% interest per annum. Payment may occur over time , consistent with the EBCE's financial ability

Staff is recommending that the EBCE approve the Cooperation and Administrative Services Agreement, which would then be presented to the Alameda County Board of Supervisors for approval and final execution.

### **Fiscal Impact**

The Cooperation Agreement allows the EBCE to continue to rely on County services until such time as it can finance its own operations. It requires the EBCE to reimburse the County's costs going back retroactively to Phase I as well as ongoing costs, at 2% interest, which will be done from the charges collected from customers, as the EBCE is financially able to do so.

Attachment 6A - Cooperation and Administrative Services Agreement with Alameda County  
Attachment 6B - Resolution Approving Cooperation and Administrative Services Agreement  
with Alameda County

## COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

THIS COOPERATION AGREEMENT is entered into as of the \_\_\_ day of \_\_\_\_\_, 2017, by and between the EAST BAY COMMUNITY ENERGY AUTHORITY (the "EBCEA") and the COUNTY OF ALAMEDA (the "County").

### RECITALS

A. The County Board of Supervisors and the City Councils of eleven cities in Alameda County, namely the City of Albany, the City of Berkeley, the City of Dublin, the City of Emeryville, the City of Fremont, the City of Hayward, the City of Livermore, the City of Oakland, the City of Piedmont, the City of San Leandro, and the City of Union City (respectively, "Participant City"; or collectively, "Participant Cities"), adopted ordinances authorizing the implementation of a Community Choice Aggregation Program ("CCA Program") to be operated by the East Bay Community Energy Authority ("EBCEA"), pursuant to California Public Utilities Code Section 366.2(c)(12).

B. On December 1, 2016, the Participant Cities and County entered into an East Bay Community Energy Authority Joint Powers Agreement (the "JPA Agreement") pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the "Act") to operate and administer the CCA Program.

C. Section 2.5 of the JPA Agreement authorizes the EBCEA to make and enter into contracts including service, energy and other agreements necessary to plan, implement, operate, and administer a CCA and accept loans or incur debts from private sources or governmental agencies. Section 6.3.2 of the JPA Agreement states that the County shall fund the initial costs of establishing and implementing the CCA Program, and provides that these costs shall be reimbursed by the EBCEA through the payment of charges by EBCEA customers when the CCA Program becomes operational. The terms of such reimbursement shall be provided in a written agreement between the County and the EBCEA.

D. The EBCEA and the County desire to enter into this Agreement for the following purposes:

(1) To set forth activities, services and facilities that the County will render for and make available to the EBCEA in furtherance of the activities and functions of the EBCEA under the JPA Agreement and in furtherance of the CCA Program. These interim support services may include, but not be limited to: a) Fiscal management and EBCEA credit and financing support, including the appointment of a treasurer and auditor; b) Community outreach and customer enrollment; c) Chief Executive recruitment and human resources support; d) Staff support and secretarial support at meetings; e) contracted General Counsel/legal services; f) contracted technical and energy services; g) development of local business plan; and, h) administrative staff support.

(2) To provide that the EBCEA will reimburse the County for actions undertaken and costs and expenses incurred by it for and on behalf of the EBCEA.

## AGREEMENT

1. The County agrees to provide for the EBCEA such staff assistance, supplies, technical services and other services and facilities of the County as the EBCEA may request from time to time in carrying out its functions under the JPA Agreement and in furtherance of the CCA Program. Such assistance and services shall include, but not be limited to: (a) Fiscal management and EBCEA credit and financing support, including treasurer and auditor services; (b) Community outreach and customer enrollment; (c) Chief Executive recruitment and human resources support; (d) Staff support and secretarial support at meetings; (e) contracted General Counsel/legal services; (f) contracted technical and energy services; (g) development of local business plan; and (h) administrative staff support. These services may be provided by officers, employees, or special consultants or contractors of the County.

2. The County agrees to advance necessary funds to the EBCEA or expend funds on behalf of the EBCEA for the implementation of the JPA Agreement and the CCA Program, including, but not limited to, the costs of preparation of an Implementation Plan, and the planning, studies and environmental assessments for the implementation of the CCA Program, the costs of acquisition and management of energy, equipment, facilities and property as necessary to implement the CCA Program, and the costs of retaining independent service providers and EBCEA staff.

3. The County will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof so that an accurate determination of the EBCEA's liability to the County can be made. The County shall provide a quarterly or more frequent (i.e., monthly) invoice to the EBCEA providing a breakdown of the costs and expenses incurred by the County in rendering activities and services of the County to or on behalf of the EBCEA pursuant to this Agreement, together with documentation satisfactory to the EBCEA of such costs. Such statement of costs may include a proration of the County's administrative and salary expense attributable to services of County officials, employees and departments rendered for the EBCEA.

4. The EBCEA agrees to reimburse the County for all costs incurred for services by the County pursuant to this Agreement from and to the extent that funds are available to the EBCEA from charges to CCA customers receiving electric services from the EBCEA, or from revenues from grants or other third-party sources; provided, however, that the EBCEA shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the EBCEA in implementing the CCA Program. The costs of the County under this Agreement will be shown on statements submitted to the EBCEA pursuant to Section 3 above. Although the parties recognize that payment may not occur for a few years and that repayment may also occur over a period of time, it is the express intent of the parties that the County shall be entitled to repayment of the expenses incurred by the County under this Agreement, consistent with the EBCEA's financial ability, in order to make the County whole as soon as practically possible.

5. The EBCEA may enter into similar Cooperation and Administrative Services Agreements with one or more Participant Cities which provides for reimbursement to the Participant City for any costs and funds advanced to or on behalf of the EBCEA by the

Participant City, and that this Agreement would have priority over any such agreement for reimbursement entered into after the date of this Agreement.

6. The County shall be reimbursed for costs described in this Agreement incurred by County, in a total amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000.00). The parties agree that the County previously advanced to the EBCEA funding in the amount of Two Million Six Hundred Forty-four Thousand Two Hundred and Thirty-seven Dollars (\$2,644,237.00), to assist with funding of Initial Costs as referenced in Section 5.3.2 of the JPA Agreement. Said amount shall be deemed the initial amount owed to EBCEA under this Agreement, and further costs incurred by the County, or funding provided to EBCEA, pursuant to this Agreement shall be added to such amount, as incurred from time to time, up to the aggregate total set forth above and reimbursement shall include the interest rate set forth in Section 14 below.

7. The County agrees to perform all services required by this Agreement in a manner commensurate with the standards of a reasonable professional having knowledge and expertise in the services provided under this Agreement.

8. Under no circumstances shall the employees of County be considered employees of the EBCEA, nor shall employees of the EBCEA be considered employees of the County. The County shall be solely responsible and liable for paying all compensation and benefits owed to its employees for the service provided by the County under this Agreement.

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

10. Each party shall defend, indemnify and hold harmless the other party (including its officers, employees and agents) against any claim, loss or liability arising out of the performance of this Agreement by such party. Nothing contained herein shall be construed as a waiver of any immunities or defenses that a party may have under applicable provisions of the law, including the provisions of the California Tort Claims Act (Government Code Section 801 et seq.). This mutual indemnification agreement is adopted pursuant to Government Code Section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6. This provision shall survive expiration or termination of this Agreement.

11. The County shall make all documentation and records concerning all services performed under this Agreement available to the EBCEA for inspection and copying at any reasonable time. The County shall maintain such records for a period of three (3) years following completion of work hereunder.

12. Either party may terminate this Agreement by providing no less than sixty calendar (60) days written notice to the other party. The EBCEA shall pay the County for services satisfactorily performed up to the effective date of termination; provided, however, that the terms and conditions set forth in Sections 5 and 6 of this Agreement shall continue in effect following such termination until all amounts due and owing the County hereunder have been repaid in full. In the event of termination, the County, within thirty calendar (30) days following the date of termination, shall deliver to the authority all records and work products generated by the County under this Agreement.

13. This Agreement and obligations of the parties hereunder are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successor of those authorities). Any suits brought pursuant to this Agreement shall be filed in the Superior Court of the County of Alameda, State of California. A waiver by any party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or conditions contained herein, whether of the same or a different character.

14. The obligations of the County hereunder shall constitute a contribution, payment and advance of funds, and use of personnel, equipment and property as authorized under Government Code Section 6504, to be repaid to the County by the EBCEA as authorized under Government Code Section 6512.1, with interest at the rate of the County's Pooled Interest Fee, which fluctuates over time, plus two percent (2%) per annum.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ATTEST:

COUNTY OF ALAMEDA

\_\_\_\_\_  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
President, Board of Supervisors

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: \_\_\_\_\_  
Andrea L. Weddle  
Chief Assistant County Counsel

ATTEST:

EAST BAY COMMUNITY ENERGY  
AUTHORITY

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Vice Chairperson

APPROVED AS TO FORM:

"EBCEA"

\_\_\_\_\_  
Legal Counsel

**Attachment 6B**

**RESOLUTION EBCE R-2017-4**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY  
APPROVING A COOPERATION AND ADMINISTRATIVE  
SERVICES AGREEMENT BETWEEN THE EAST BAY  
COMMUNITY ENERGY AUTHORITY AND THE COUNTY  
OF ALAMEDA**

**THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY  
AUTHORITY DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:**

Section 1. In 2014, the County of Alameda Board of Supervisors Transportation and Planning Committee directed County Development Agency staff to explore establishing a Community Choice Aggregation Program (“CCA Program”) in Alameda County.

Section 2. Since 2014, the County Board of Supervisors and the City Councils of eleven cities in Alameda County entered into a Joint Powers Agreement to form the East Bay Community Energy Authority (“EBCE”) pursuant to California Public Utilities Code Section 366.2(c)(12).

Section 3. Section 2.5 of the EBCE Joint Powers Agreement authorizes the EBCE to make and enter into contracts including service, energy and other agreements necessary to plan, implement, operate, and administer the CCA Program and accept loans or incur debts from private sources or governmental agencies. Section 6.3.2 of the Joint Powers Agreement states that the County shall fund the initial costs of establishing and implementing the CCA Program, and provides that these costs shall be reimbursed by the EBCE through the payment of charges by EBCE customers when the CCA Program becomes operational. The Joint Powers Agreement provides that the terms of such reimbursement shall be provided in a written agreement between the County and the EBCE.

Section 4. The EBCE and the County of Alameda have negotiated the terms of a Cooperation and Administrative Services Agreement that provides that the County will continue to provide a variety of services to the EBCE until such time as the EBCE can hire its own staff and fund its own operations, and that the EBCE shall reimburse the County for expenditures and costs associated with the provision of services to EBCE.

Section 5. The Cooperation and Administrative Services Agreement between the East Bay Community Energy Authority and the County of Alameda is hereby approved.

Section 6. The Vice-Chair of the Board is directed to execute the Cooperation and Administrative Services Agreement, substantially in the form attached to the Agenda Report that accompanied this Resolution, on behalf of the EBCE, and is authorized to take all other actions necessary to implement the Cooperation Agreement.

**ADOPTED AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2017.**

\_\_\_\_\_  
Chair

**ATTEST:**

\_\_\_\_\_  
Secretary