



## Board of Directors Meeting

Wednesday, September 21, 2022

5:00pm

<https://us02web.zoom.us/j/87023071843>

Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592 or 888 475 4499 (Toll Free) or 877 853 5257 (Toll Free)

Webinar ID: 870 2307 1843

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 906-0491 or [cob@ebce.org](mailto:cob@ebce.org).*

*If you have anything that you wish to be distributed to the Board of Directors, please email it to the clerk by 5:00 pm the day prior to the meeting.*

### 1. Welcome & Roll Call

### 2. Pledge of Allegiance

### 3. Public Comment

*This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker and must complete an electronic speaker slip. The Board Chair may increase or decrease the time allotted to each speaker.*

## CONSENT AGENDA

### 4. Approval of Minutes from July 20, 2022 and July 25, 2022

### 5. AB 361 - Finding for Continued Remote Meetings

Find that conducting in person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).

### 6. Contracts entered into (Informational Item)

### 7. 2021 Power Source Disclosure Annual Report and Power Content Label

Requesting the Board to accept and attest to the 2021 Power Source Disclosure Report and Power Content Label

**8. Resolution to Authorize CEO to Negotiate and Execute Lease for EBCE HQ (1999 Harrison)**

Requesting the Board to delegate authority to EBCE CEO to complete negotiations and sign the contract

**REGULAR AGENDA**

**9. CEO REPORT**

- A. Executive Committee Meeting
- B. Finance, Administration and Procurement Subcommittee Meeting
- C. Marketing, Regulatory and Legislative Subcommittee Meeting
- D. New Staff
- E. Marketing and Account Services Update

**10. Community Advisory Committee Report**

**11. Stockton JPA Membership (Action Item)**

Board to vote to add Stockton to JPA and EBCE Service Territory

**12. Credit Facility Approval (Action Item)**

Request the Board approve the new credit facility with Union Bank

**13. Legislative Update (Informational Item)**

Informational update on the 2022 state and federal legislative process

**14. Update on EBCE's Electric Vehicle Fast Charging Network Development (Informational Item)**

Informational update on progress on EBCE's EV fast charging network including strategy, coordination with JPA member cities, selection of financing partners and next steps

**15. Update on Integrated Resource Planning Analysis (Informational Item)**

Informational update on progress in IRP analysis ahead of October meeting in which board must review and approve EBCE's compliance filing, due November 1

**16. Board Member and Staff Announcements including requests to place items on future Board agendas**

**17. Adjournment to Wednesday, October 19, 2022 at 5:00pm**



## Draft Minutes

### Board of Directors Meeting

Wednesday, July 20, 2022

5:00 pm

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#### 1. Welcome & Roll Call

**Present: Directors:** Valle (Alameda County), Tiedemann (Albany), Hahn (Berkeley), Eldred (Community Advisory Committee), Kumagai (Dublin), Cox (Fremont), Marquez (Hayward), Munro (Livermore), Hannon (Newark), Kalb (Oakland), Cavanaugh (Piedmont), Narum (Pleasanton), Patino (Union City), Vice-Chair Lopez (San Leandro) and Chair Martinez (Emeryville)

**Excused: Directors:** Valle (Alameda County), Arriola (Tracy)

*Director Hahn served as an Alternate for Director Harrison (Berkeley).*

*Director Cox served as an Alternate for Director Mei (Fremont).*

*Director Kumagai joined the meeting at 5:07pm.*

#### 2. Pledge of Allegiance

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There were no speakers for public comment.

### CONSENT AGENDA

4. **Approval of Minutes from June 15, 2022 and July 6, 2022**
5. **AB 361 - Finding for Continued Remote Meetings**  
Find that conducting in person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).
6. **Contracts entered into (Informational Item)**
7. **Pisenti & Brinker Contract Extension**  
Amend Financial Auditor consulting services agreement to extend for two (2) years.
8. **Sunrun Resource Adequacy Amendment**  
Amend Sunrun Resource Adequacy contract.
9. **Celery Design Contract Amendment**  
Amend Celery Design contract.
10. **Acterra Amendment**  
Second Amendment to consulting services agreement with Acterra.
11. **TRC Amendment**  
Fourth Amendment to consulting services agreement with TRC Engineers.
12. **Treasurer's Report**  
Report on the cash position as of June 30, 2022.

There were no speakers for the Consent Agenda.

Director Hannon motioned to approve the Consent Agenda. Director Patino seconded the motion which passed 12/0. Excused: Directors Arriola, Kumagai, and Valle.

### REGULAR AGENDA

13. **CEO REPORT**
  - A. Executive Committee
  - B. Special Board Retreat - Power Procurement
  - C. New Staff
14. **Community Advisory Committee Report**
  - Chair Eldred reported that the CAC met July 18<sup>th</sup>:
    - Welcomed Member Souza as a full member to replace Mary Sutter.

- Received public comment primarily focused on concern regarding the proposed \$15 million grant to Benioff Children's Hospital, and the power content label.
- Heard the request from CAC Members and the public to learn what is preventing the implementation of a virtual net energy metering project.
- Discussed whether EBCE is looking at the life cycle of solar panels, and the customer relationship with solar leasing contracts that are endorsed by EBCE.

#### 15. Legislative Update (Action Item)

Update on recommended bill positions and EBCE's bill tracker.

There were no speakers for public comment.

##### CAC Chair Eldred Reported:

- The CAC voted six in favor of staff's recommendation of opposition unless amended on SB 1385, the Cortese bill, with one abstention.

Director Munroe moved to adopt staff's recommendation of opposition unless amended for SB 1385. Director Cavanaugh seconded the motion which passed 13/0. Excused: Directors Arriola and Valle.

#### 16. Prepay Transaction Summary (Informational Item)

Summary of Prepay #2 transaction closing details.

There were no speakers for public comment.

#### 17. Joint Rate Mailer and Draft 2021 Power Content (Informational Item)

Overview of the contents in the upcoming Joint Rate Mailer.

Aleta Dupree said EBCE was doing a good job, but needs to explain why it still has 1.7% of nuclear and 40% of "unspecified power," and asked why EBCE is buying so much of its power in unspecified product as opposed to large hydro? Aleta Dupree added that unspecified power has a very high CO2 content.

Tom Kelly stated that EBCE had promised to beat PG&E on greenhouse gases, but it has not done so, and it has fallen below PG&E on renewables as well.

##### CAC Chair Eldred Reported:

- Comments and questions from the CAC and the public included a desire to understand more about the unspecified power and to see a lower amount of that unspecified power in the mix, and questions regarding the future potential to offer Renewable 100 at a price on parity with PG&E.

##### The Board Discussed:

- Why large hydro is not included in EBCE's renewables.
- Challenges ahead for EBCE and cities that have not yet transitioned to Renewable 100.
- The future of nuclear energy.

#### 18. Director and CAC Stipend Update (Action Item)

Increase the stipend to account for inflation and set a limit up to four (4) stipends per calendar month.

There were no speakers for public comment.

The Board Discussed:

- Lowering barriers to public participation as a member of the Community Advisory Committee.
- COLA increase for Board members and the Community Advisory Committee.
- The importance of stipends to CAC members.
- The differences between CAC and Board members.
- CAC's role as an integral part of EBCE
- Compensation strategies of comparable regional agency advisory committees
- Whether the Executive Committee should consider if stipends paid to EBCE Board members should be reconsidered in terms of an amendment to the JPA.

Director Hannon motioned to support staff's recommendation to increase the CAC stipend to \$75 per meeting, including the COLA. Director Cox seconded the motion.

Director Hahn motioned to bring the CAC stipend to exact parity with the Board members, which is \$100 plus a CPI of \$120.07, and the exact terms. Director Tiedemann seconded the motion.

Director Kalb offered a friendly amendment that a dollar amount for CAC compensation be set by a vote of the Board.

Director Hahn, the maker of the motion, accepted the friendly amendment to the motion.

Director Tiedemann, the seconder of the motion, accepted the friendly amendment.

Director Hannon withdrew his motion.

Director Cox withdrew her second to the motion.

Director Hahn restated the motion, with the friendly amendment, to set the compensation for CAC members at \$100 plus cost of living and on the same terms as Board members with a CPI of \$120.07, with up to four meetings per month. The motion passed 12/0.

Excused: Directors Arriola, Patino, and Valle.

**19. Chair and Vice-Chair Elections (Action Item)**

Elections for EBCE Chair and Vice-Chair.

There were no speakers for public comment.

Director Kalb motioned to nominate Chair Martinez and Vice Chair Lopez as Chair and Vice Chair for the remainder of the 2022 calendar year. Director Marquez seconded the motion which passed 12/0.

Excused: Directors Arriola, Patino, and Valle.

20. Schedule EBCE Board Meeting (Informational Item)

Schedule EBCE Board meeting to approve AB 361 legislation.

21. Board Member and Staff Announcements including requests to place items on future Board Agendas

Director Munro requested a subcommittee be formed to address questions of public participation and compensation.

Director Marquez echoed Director Munro's recommendation and requested an update on the current makeup of the CAC, the number of vacancies, the recruitment process, and how many alternate positions are available.

Director Kalb announced that the 20<sup>th</sup> anniversary of Oakland's Art and Soul free outdoor festival would be held on Saturday, July 23<sup>rd</sup>.

Director Cox announced the Fremont free concert series at Lake Elizabeth every Thursday until August 11<sup>th</sup>, the Fremont Arts and Wine Festival on the first weekend in August, and the India Independence Day parade on August 20<sup>th</sup>.

22. Adjournment to Wednesday, September 21, 2022 at 5:00pm.



## Board of Directors Special Meeting

### Draft Minutes

Monday, July 25, 2022

2:00pm

<https://us02web.zoom.us/j/87023071843>

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Webinar ID: 870 2307 1843

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#### 1. Welcome & Roll Call

**Present: Members:** Valle (Alameda County), Tiedemann (Albany), Eldred (Community Advisory Committee), Kumagai (Dublin), Marquez (Hayward), Munro (Livermore), Hannon (Newark), Cavanaugh (Piedmont), Narum (Pleasanton), Arriola (Tracy), Patino (Union City), Eldred (Community Advisory Committee) and Chair Martinez (Emeryville)

**Excused: Members:** Harrison (Berkeley), Mei (Fremont), Kalb (Oakland) and Vice-Chair Lopez (San Leandro)

#### 2. Pledge of Allegiance

#### 3. Public Comment

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**There were no speakers for public comment.**

#### 4. AB 361 - Finding for Continued Remote Meetings



Find that conducting in person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).

**Member Kumagai moved to approve the motion. Member Narum seconded the motion, which passed unanimously.**

**Yes:** Members: Valle (Alameda County), Tiedemann (Albany), Kumagai (Dublin), Marquez (Hayward), Munro (Livermore), Hannon (Newark), Cavanaugh (Piedmont), Narum (Pleasanton), Arriola (Tracy), Patino (Union City), Eldred (Community Advisory Committee) and Chair Martinez (Emeryville).

**Excused:** Members: Harrison (Berkeley), Mei (Fremont), Kalb (Oakland) and Vice-Chair Lopez (San Leandro)

5. **Board Member and Staff Announcements including requests to place items on future Board Agendas**

**There were no announcements or requests to place items on future Board agendas.**

6. **Adjournment to Wednesday, September 21, 2022 at 5:00pm**



## Consent Item 5

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, General Counsel

SUBJECT: Adoption of Imminent Risks Findings Pursuant to AB 361 and Authorization to Continue Meeting via Teleconferencing

DATE: September 21, 2022

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### Recommendation

Find that conducting in-person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).

### Background and Discussion

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency related to COVID-19, pursuant to Government Code Section 8625, which is still in effect. On March 10, 2020, the Alameda County Board of Supervisors ratified the County Health Officer's declaration of a local health emergency due to COVID-19.

The Brown Act allows legislative bodies to meet by "teleconference," but only if the agenda listed the remote location of each member, the agenda was posted at all remote locations, and the public could access any of the remote locations. Additionally, a quorum of the legislative body had to be within the legislative body's jurisdiction. See Government Code Section 54953(b)(3)

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote location, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body's

jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021 Governor Newsom signed AB 361, new legislation that amends the Brown Act to allow local agencies to meet remotely during Governor declared emergencies under certain conditions. AB 361 took effect immediately as an urgency measure, but the Governor subsequently suspended application of the legislation – with limited exceptions – until October 1, 2021. The provisions of AB 361 relevant to local agencies are codified at Government Code Section 54953(e).

AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act's standard teleconferencing provisions if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing.

AB 361 also requires legislative bodies to make remote public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body, and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act. AB 361 adds new procedures and clarifies the requirements for conducting remote meetings. A legislative body that meets remotely must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time.

Due to the rise in COVID-19 cases caused by the Delta Variant, Alameda County is still impacted by the effects of the COVID-19 emergency. The Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. The CDC also recommends that people who live with unvaccinated people avoid activities that make physical distancing hard.

EBCE's public-meetings are held at indoor facilities not designed to ensure circulation of fresh or outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart. Additionally, holding in-person meetings may encourage community members to come to EBCE facilities to participate in EBCE meetings in-person, and some of them could be at high risk of getting very sick from COVID-19 and/or live with someone who is at high risk. At this point in time, there are few in-person locations available for the EBCE to meet in, since most of the agencies in Alameda County are still holding remote meetings.

In-person meetings could also tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to EBCE Board meetings to participate. Attendees may need to use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households.

For these reasons, staff recommends that the Board adopt findings that, as a result of the state of emergency caused by COVID-19, meeting in person would present imminent risks to the health and safety of attendees.

Staff will continue to monitor the situation and will return to the Board every 30 days or as needed with additional recommendations related to the conduct of public meetings.

#### **Attachments**

- Proclamation of Governor Newsom of a State of Emergency due to COVID-19
- Resolution No. R-2020-91 of the Alameda County Board of Supervisors Ratifying the Declaration of a Local Health Emergency due to COVID-19

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

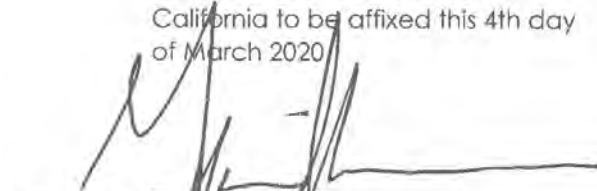


notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.
14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State



**OFFICE OF THE AGENCY DIRECTOR**

1000 San Leandro Boulevard, Suite 300  
San Leandro, CA 94577  
TEL (510) 618-3452  
FAX (510) 351-1367

March 6, 2020

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

**SUBJECT: ADOPT A RESOLUTION RATIFYING THE DECLARATION OF A LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS**

Dear Board Members:

**RECOMMENDATION**

Adopt a Resolution ratifying the Declaration of a Local Health Emergency by the County Health Officer related to the 2019 Novel Coronavirus

**DISCUSSION/SUMMARY**

In December 2019, an outbreak of a respiratory illness due to a novel coronavirus (a disease known as 2019 Novel Coronavirus or COVID-19) was first identified in Wuhan City, Hubei Province, China. Since then, the outbreak has spread to more than 75 countries, including the United States. As of March 5, 14 California counties have had at least one citizen infected with the virus. The County of Alameda is among those counties, as are several Bay Area counties including Contra Costa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

The United States Centers for Disease Control and Prevention (CDC) considers COVID-19 to present a very serious threat to public health. On January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the United States. On January 31, 2020, the Secretary of the US Department of Health and Human Services declared a public health emergency in the United States.

As of March 6, 2020, the CDC has identified 164 confirmed cases of COVID-19 infection, across 19 states, including 45 in California. The number of reported cases has escalated dramatically, with more than 94,000 confirmed cases and more than 3,300 deaths worldwide.

On March 1, 2020, the California Department of Public Health confirmed that an Oakland resident had become infected with COVID-19 after providing healthcare to the Solano County COVID-19 patient. Two days later, an individual in Berkeley also tested positive for COVID-19 Infection.

The Honorable Board of Supervisors

March 6, 2020

Page 2 of 2

California Health and Safety Code section 101080 allows a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, "whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent." On March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a local health emergency. Dr. Pan found that with "multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda." Dr. Pan renewed this declaration of emergency on March 5, 2020.

The declaration of a local health emergency provides the following benefits: it allows other jurisdictions and state agencies to provide mutual aid; it allows the extraordinary costs of providing mutual aid to be a legal charge against the state; and it provides immunity to healthcare providers who render aid during the emergency. The declaration also provides the local Health Officer with the authority to exercise the full range of her power to protect the community's public health, which includes issuance and enforcement of orders for quarantine and isolation.

Under section 101080, your Board is required to ratify the Health Officer's declaration of emergency. Ordinarily, your Board would need to renew this ratification every thirty (30) days; however, on March 4, 2020, California Governor Gavin Newsom issued a Proclamation of a State of Emergency relating to the COVID-19 outbreak that included a waiver of the renewal requirement: "The 30-day time period in Health & Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local emergency." The Governor similarly waived the renewal requirement for a declaration of local emergency.

#### **VISION 2026 GOAL**

This Resolution meets the 10X goal pathway of **Healthcare for All** in support of our shared visions of **Safe and Livable Communities**, **Thriving and Resilient Population**, and **Healthy Environment**.

Sincerely,

DocuSigned by:  
  
CB284AE84C50405...

Colleen Chawla, Director  
Health Care Services Agency

RESOLUTION NUMBER R-2020- 91

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA RATIFYING THE DECLARATION OF LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS**

**WHEREAS**, California Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biological agent, toxin, or radioactive agent; and

**WHEREAS**, on March 1, 2020 and again on March 5, 2020, the County's Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named COVID-19) in the County of Alameda; and

**WHEREAS**, under Health and Safety Code section 101080, the local health emergency shall not remain in effect for more than seven (7) days unless ratified by the Board of Supervisors; and

**WHEREAS**, the Board of Supervisors hereby finds that there continues to exist an imminent and proximate threat to public health from the introduction of COVID-19 in the County for reasons set forth in the declaration of local health emergency by the County's Health Officer, dated March 5, 2020;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Supervisors of the County of Alameda as follows:

Section 1 – The local health emergency declared by the County's Health Officer on March 5, 2020 is hereby ratified. Under authority granted by California Governor Gavin Newsom in a Proclamation of a State of Emergency issued on March 4, 2020, this declaration of local emergency shall remain in effect until the Board of Supervisors determines that the emergency condition no longer exists.

Section 2 – The Board of Supervisors hereby delegates to the County's Health Officer authority to terminate the local health emergency, pursuant to Health & Safety Code section 101080 "at the earliest possible date that conditions warrant the termination."

Section 3 – All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety, and welfare of County citizens and property, including requesting mutual aid to the extent such aid is necessary.

The foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Alameda, State of California, at a regular meeting of the Board on the 10 day of March, 2020 by the following vote:

AYES: Supervisors Carson, Haggerty and President Valle - 3

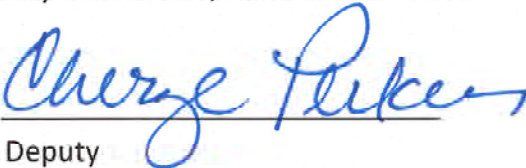
NOES: None

EXCUSED: Supervisors Chan and Miley - 2

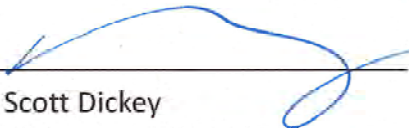


Richard Valle, President of the Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors,  
County of Alameda, State of California

By:   
Deputy

APPROVED AS TO FORM:  
Donna R. Ziegler, County Counsel

By:   
K. Scott Dickey  
Assistant County Counsel

**DECLARATION OF A LOCAL HEALTH EMERGENCY**

**WHEREAS**, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

**WHEREAS**, COVID-19 is a contagious, infectious, or communicable disease;

**WHEREAS**, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

**WHEREAS**, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

**WHEREAS**, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

**WHEREAS**, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

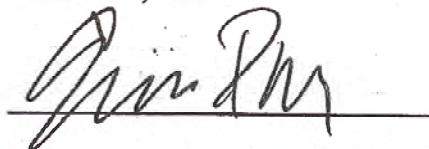
**WHEREAS**, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

**WHEREAS**, based on the forgoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

**THEREFORE**, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1<sup>st</sup>, 2020 throughout the County of Alameda;

**IT IS SO DECLARED**, on this date: March 5<sup>th</sup>, 2020.

**BY:**



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda

## DECLARATION OF A LOCAL HEALTH EMERGENCY

**WHEREAS**, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

**WHEREAS**, COVID-19 is a contagious, infectious, or communicable disease;

**WHEREAS**, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

**WHEREAS**, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

**WHEREAS**, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

**WHEREAS**, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;


**WHEREAS**, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

**WHEREAS**, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

**THEREFORE**, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1<sup>st</sup>, 2020 throughout the County of Alameda;

**IT IS SO DECLARED**, on this date: March 5<sup>th</sup>, 2020.

**BY:**



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda



Consent Item x

TO: East Bay Community Energy Board of Directors  
FROM: Nick Chaset, Chief Executive Officer  
SUBJECT: Contracts Entered Into  
DATE: September 21, 2021

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**RECOMMENDATION**

Accept the CEO's report on contracts that EBCE has entered, as required by the Administrative Procurement Policy.

C-2022-074 Davis, Wright, Tremaine Third Amendment to CSA extends the term through June 30, 2023, adds \$17,000 for fiscal year through June 30, 2022, and adds \$185,000 for the fiscal year from July 1 to June 30, 2022.

C-2022-075 PC Professional Second Amendment to CSA extends the term through June 30, 2023, adds \$50,000 for fiscal year through June 30, 2022, and adds \$100,000 for the fiscal year from July 1 to June 30, 2022.

C-2022-076 Bay Alarm, Alarm Agreement Correction or Change Addendum Clarifies that control Panel, door contacts and motion detectors are not under warranty.

C-2022-077 Bay Alarm Alarm Agreement Correction or Change Addendum Clarifies that 4 smoke detectors are not under warranty.

C-2022-078 Reunion EV Consulting Services Agreement (San Francisco) EV Tolling services to EBCE through June 30, 2022, compensation not to exceed \$95,500.

C-2022-079 CalStart First Amendment to CSA adds \$150,000 in compensation, adds additional services to the scope, extends the term through January 31, 2024, and updates the hourly rates of compensation.

C-2022-080 NewGen Strategies and Solutions Fourth Amendment to CSA extends the term through June 30, 2023.



C-2022-081 Strategic Energy Innovations Agreement Amendment #1 extends the Fellows term through September 30, 2022, with an additional compensation in the amount of \$13,852.

C-2022-082 MassMailer Subscription Agreement Premier Email plan and user licenses, setup cost of \$297 plus monthly cost of \$501.30

C-2022-083 Bentham Paulos Bentham Paulos adds \$45,000 in compensation and extends the term through June 30, 2023.

C-2022-084 Sound of Hope Radio Network Third Amendment to CSA adds \$15,000 in compensation and extends the term through June 30, 2023

C-2022-085 Comcast EffectTV Program TV ads with Geotargeting, not to exceed \$42,000 through June 30, 2023.

C-2022-086 Carrot Fertility Master Services Agreement Provides for Fertility benefits to staff at a cost of \$25,000 per year, including claims, reporting, onboarding, and implementation.

C-2022-087 AIQUEOUS Amendment 2 to the Consulting and Online Services Agreement increases the total compensation of the Agreement to \$260,000, extends the term to October 31, 2023, and updates the Scope and Schedule

C-2022-088 Nixon Peabody Legal Services Agreement provides for credit facility review through June 30, 2023, compensation not to exceed \$60,000.



## Consent Item 7

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

**FROM:** Izzy Carson, Power Resources Manager

**SUBJECT:** 2021 Power Source Disclosure Annual Report and Power Content Label (Action Item)

**DATE:** September 21, 2022

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### Recommendation

Adopt a Resolution to accept and attest to the veracity of the 2021 Power Source Disclosure Program Annual Report (PSDR) and the 2021 Power Content Label (PCL).

### Background and Discussion

#### *Background*

The California State Legislature passed Senate Bill (SB) 1305 in 1997, establishing the Power Source Disclosure Program in order to provide retail electricity consumers “accurate, reliable, and simple to understand information on the sources of energy that are used to provide electric services.” Assembly Bill (AB) 162, adopted in 2009, modified the reporting requirements of SB 1305. AB 162 requires all retail suppliers of electricity in California (CA) to disclose the sources of the electricity they sell to customers using reporting formats developed by the California Energy Commission (CEC). In 2016, AB 1110 was passed which further modified the PSDR reporting requirements, including among other things, changes to reporting for unbundled Renewable Energy Credits (RECs) and requiring retail sellers to disclose the greenhouse gas (GHG) emissions factor associated with each electricity portfolio. The CEC updated the regulations implementing SB 1305, AB 162, and AB 1100 effective May 2020.

For each year’s filing, East Bay Community Energy (EBCE) is required to 1) submit an Annual Report (the PSDR) to the CEC detailing its actual resource mix for the previous calendar year, and 2) provide an annual PCL to customers and the CEC showing the percentage breakdown by resource type by October 1st.

Under the CEC’s regulations, private retail electricity suppliers must engage an auditor to verify the accuracy and completeness of data submitted to the CEC in the PSDR; however, public agencies are allowed to provide a self-attestation. Therefore, to fulfill its Power Source Disclosure Program reporting obligations for 2021, EBCE must provide the CEC with the Board’s attestation to the veracity of the PSDR and PCL.

*Power Source Disclosure Report and Power Content Label*

Each year EBCE reports electricity purchases and retail sales to the CEC through the PSDR. The PSDR contains a breakdown of energy purchases over a calendar year for each retail plan and is counted as a percent of total sales by source. The CEC uses these reports from each electricity retail seller serving load in CA to generate a total CA system power mix by source.

In addition, EBCE discloses to its customers the power mix for each retail plan alongside the CA power mix on the PCL. The PCL allows customers to compare their power content to the total California power mix and to other electricity providers and is provided to customers through a mailer and posted on the EBCE webpage.

Table 1: EBCE’s 2021 Power Content Label data

<b>2021 POWER CONTENT LABEL</b>				
<b>Energy Resources</b>	<b>Renewable 100</b>	<b>Brilliant 100</b>	<b>Bright Choice</b>	<b>2021 CA Power Mix</b>
<b>Eligible Renewable</b>	<b>100.0%</b>	<b>35.8%</b>	<b>42.3%</b>	<b>33.6%</b>
Biomass & Biowaste	0.0%	0.0%	0.5%	2.3%
Geothermal	0.0%	0.0%	0.0%	4.8%
Eligible Hydroelectric	0.0%	0.0%	0.2%	1.0%
Solar	50.0%	17.9%	19.0%	14.2%
Wind	50.0%	17.9%	22.6%	11.4%
Coal	0.0%	0.0%	0.0%	3.0%
Large Hydroelectric	0.0%	64.2%	15.9%	9.2%
Natural Gas	0.0%	0.0%	0.0%	37.9%
Nuclear	0.0%	0.0%	1.7%	9.3%
Other	0.0%	0.0%	0.1%	0.2%
Unspecified sources of power	0.0%	0.0%	40.0%	6.8%
<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

*Greenhouse Gas Emissions*

AB 1110 and the CEC’s regulations require electricity suppliers to disclose the GHG emissions intensity associated with its electricity sources for the previous calendar year. The GHG emissions factor can only be reported through the PCL and not on any third party platform.

In addition to asking the Board to accept the 2021 PSDR and PCL, this report presents the emissions factor for Bright Choice from 2021 that also appears on the PCL.

**EBCE 2021 Bright Choice Emissions Factor:  
564 lb-CO<sub>2</sub>e/MWh**

Under EBCE's current retail plan design, both the Renewable 100 and Brilliant 100 products are emissions free. The emissions from Bright Choice will decrease over time as we move towards carbon free content by 2030.

*Methodology*

In preparing the PSDR, staff populates the template with electricity purchases from generation that occurred during the calendar year. Delivered RECs are tracked using the Western Renewable Energy Generation Information System (WREGIS), and carbon free purchases including electricity from Large Hydroelectric generation is tracked using either meter data or E-tags. The E-tags trace the generation from the source to the delivery location. All the purchased generation is compared against invoices for accuracy, and retail sales are counted using the settlement quality meter data from our accounting service which is EBCE's system of record for sales. The complete PSDR is then reviewed internally to ensure accuracy in reporting prior to submission to the CEC.

**Fiscal Impact**

There are no fiscal impacts in accepting and attesting to the veracity of the 2021 Power Source Disclosure Annual Report and the 2021 Power Content Label.

**Attachments**

- A. Resolution of the Board of Directors of East Bay Community Energy Accepting and Attesting to the 2021 Power Source Disclosure Annual Report and the 2021 Power Content Label
- B. 2021 Power Source Disclosure Reports - Schedule 3
- C. 2021 Power Content Label
- D. Presentation of Power Source Disclosure Report and Power Content Label

RESOLUTION NO. R-2022-\_\_

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO ACCEPT AND ATTEST TO  
THE VERACITY OF THE 2021 POWER SOURCE DISCLOSURE PROGRAM ANNUAL  
REPORT AND THE 2021 POWER CONTENT LABEL

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS The California State Legislature passed Senate Bill (SB) 1305 in 1997, and in 2009 passed Assembly Bill (AB) 162, which modified the reporting requirements of SB 1305. AB 162 requires all retail suppliers of electricity in California to disclose the sources of the electricity they sell to customers using reporting formats developed by the California Energy Commission.

WHEREAS In 2016, AB 1110 was passed which further modified the Power Source Disclosure Reporting requirements.

WHEREAS California Code of Regulations, title 20, section 1394.2(a)(2), as modified by the California Energy Commission in May 2020, allows the Board of Directors of a retail supplier of electricity that is a public agency to attest to the veracity of the information contained in the Power Source Disclosure Annual Report and Power Content Label to fulfill the audit requirement for each retail product.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The Board of Directors accepts and attests to the veracity of the 2021 Power Source Disclosure Annual Report and the 2021 Power Content Label.

ADOPTED AND APPROVED this 21st day of September 2022.

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Dianne Martinez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 3: POWER CONTENT LABEL DATA**  
**For the Year Ending December 31, 2021**  
**East Bay Community Energy**  
**Bright Choice**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	2,261,638	42.3%
Biomass & Biowaste	24,840	0.5%
Geothermal	-	0.0%
Eligible Hydroelectric	12,860	0.2%
Solar	1,015,665	19.0%
Wind	1,208,273	22.6%
Coal	-	0.0%
Large Hydroelectric	847,676	15.9%
Natural gas	-	0.0%
Nuclear	90,635	1.7%
Other	6,344	0.1%
Unspecified Power	2,136,231	40.0%
<b>Total</b>	<b>5,342,524</b>	<b>100.0%</b>

<b>Total Retail Sales (MWh)</b>	<b>5,342,524</b>
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<b>GHG Emissions Intensity (converted to lbs CO<sub>2</sub>e/MWh)</b>	<b>564</b>
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<b>Percentage of Retail Sales Covered by Retired Unbundled RECs</b>	<b>0.0%</b>
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**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 3: POWER CONTENT LABEL DATA**  
**For the Year Ending December 31, 2021**  
**East Bay Community Energy**  
**Brilliant 100**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	347,570	35.8%
Biomass & Biowaste	-	0.0%
Geothermal	-	0.0%
Eligible Hydroelectric	-	0.0%
Solar	173,785	17.9%
Wind	173,785	17.9%
Coal	-	0.0%
Large Hydroelectric	623,296	64.2%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	-	0.0%
<b>Total</b>	<b>970,866</b>	<b>100.0%</b>

<b>Total Retail Sales (MWh)</b>	<b>970,866</b>
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<b>GHG Emissions Intensity (converted to lbs CO<sub>2</sub>e/MWh)</b>	<b>-</b>
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<b>Percentage of Retail Sales Covered by Retired Unbundled RECs</b>	<b>0.0%</b>
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**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 3: POWER CONTENT LABEL DATA**  
**For the Year Ending December 31, 2021**  
**East Bay Community Energy**  
**Renewable 100**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
Renewable Procurements	97,229	100.0%
Biomass & Biowaste	-	0.0%
Geothermal	-	0.0%
Eligible Hydroelectric	-	0.0%
Solar	48,615	50.0%
Wind	48,614	50.0%
Coal	-	0.0%
Large Hydroelectric	-	0.0%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	-	0.0%
<b>Total</b>	<b>97,229</b>	<b>100.0%</b>

<b>Total Retail Sales (MWh)</b>	<b>97,229</b>
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<b>GHG Emissions Intensity (converted to lbs CO<sub>2</sub>e/MWh)</b>	<b>-</b>
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<b>Percentage of Retail Sales Covered by Retired Unbundled RECs</b>	<b>0.0%</b>
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2021 POWER CONTENT LABEL								
East Bay Community Energy								
ebce.org/documents-and-resources								
Greenhouse Gas Emissions Intensity (lbs CO <sub>2</sub> e/MWh)				Energy Resources	Renewable 100	Brilliant 100	Bright Choice	2021 CA Power Mix
Renewable 100	Brilliant 100	Bright Choice	2021 CA Utility Average	<b>Eligible Renewable<sup>1</sup></b>	<b>100.0%</b>	<b>35.8%</b>	<b>42.3%</b>	<b>33.6%</b>
<b>0</b>	<b>0</b>	<b>564</b>	<b>456</b>	Biomass & Biowaste	0.0%	0.0%	0.5%	2.3%
<p>1000 800 600 400 200 0</p> <p>■ Renewable 100 ■ Brilliant 100 ■ Bright Choice ■ 2021 CA Utility Average</p>				Geothermal	0.0%	0.0%	0.0%	4.8%
				Eligible Hydroelectric	0.0%	0.0%	0.2%	1.0%
				Solar	50.0%	17.9%	19.0%	14.2%
				Wind	50.0%	17.9%	22.6%	11.4%
				<b>Coal</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>3.0%</b>
				<b>Large Hydroelectric</b>	<b>0.0%</b>	<b>64.2%</b>	<b>15.9%</b>	<b>9.2%</b>
				<b>Natural Gas</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.0%</b>	<b>37.9%</b>
				<b>Nuclear</b>	<b>0.0%</b>	<b>0.0%</b>	<b>1.7%</b>	<b>9.3%</b>
				<b>Other</b>	<b>0.0%</b>	<b>0.0%</b>	<b>0.1%</b>	<b>0.2%</b>
				<b>Unspecified Power<sup>2</sup></b>	<b>0.0%</b>	<b>0.0%</b>	<b>40.0%</b>	<b>6.8%</b>
<b>TOTAL</b>					<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Percentage of Retail Sales Covered by Retired Unbundled RECs<sup>3</sup>:</b>					<b>0%</b>	<b>0%</b>	<b>0%</b>	
<p><sup>1</sup>The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.</p> <p><sup>2</sup>Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.</p> <p><sup>3</sup>Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.</p>								
For specific information about this electricity portfolio, contact:					<b>East Bay Community Energy</b> <b>1-833-699-EBCE (3223)</b>			
For general information about the Power Content Label, visit:					<a href="http://www.energy.ca.gov/pcl/">http://www.energy.ca.gov/pcl/</a>			
For additional questions, please contact the California Energy Commission at:					Toll-free in California: 844-454-2906 Outside California: 916-653-0237			

SEPTEMBER 21, 2022

# 2021 Power Source Disclosure Annual Report and Power Content Label



# Overview

- What is the Power Source Disclosure Program
- How is the Power Source Disclosure Report (PSDR) prepared
- What is the Power Content Label (PCL)
- 2021 Power Content

# Power Source Disclosure Program

- All electricity providers in CA are required to submit annual report
- The annual report discloses all electricity purchases for a calendar year
- Reported as MWh by source as a percent of total retail sales
- Submitted to the California Energy Commission annually

# PSDR Preparation

Review CY Data



Data Verification



Populate PSDR Templates



Internal Review

Submission



- RECs
- Carbon Free
- Retail sales by plan
  
- WREGIS
- Meter Data, E-Tags
- Invoices
- Contracts
  
- Input by generation source
- Purchased MWh as % of sales
- Individual templates for each plan
  
- Content Check
- Executive and Marketing review
  
- Submit to the CEC

# Power Content Label

- Required annual disclosure to customers, sent by mail
- Contains the power mix for each retail plan and the total CA system power mix
- Allows customers to compare their power content to the total CA power mix and to other electricity providers
- Discloses Emissions from retail plans
- The PCL will be mailed to customers by the end of September

# 2021 Power Content Label

2021 POWER CONTENT LABEL								
East Bay Community Energy								
ebce.org/documents-and-resources								
Greenhouse Gas Emissions Intensity (lbs CO <sub>2</sub> e/MWh)				Energy Resources	Renewable 100	Brilliant 100	Bright Choice	2021 CA Power Mix
Renewable 100	Brilliant 100	Bright Choice	2021 CA Utility Average	Eligible Renewable <sup>1</sup>	100.0%	35.8%	42.3%	33.6%
<b>0</b>	<b>0</b>	<b>564</b>	<b>456</b>	Biomass & Biowaste	0.0%	0.0%	0.5%	2.3%
<p>1000 800 600 400 200 0</p> <p>■ Renewable 100 ■ Brilliant 100 ■ Bright Choice ■ 2021 CA Utility Average</p>				Geothermal	0.0%	0.0%	0.0%	4.8%
				Eligible Hydroelectric	0.0%	0.0%	0.2%	1.0%
				Solar	50.0%	17.9%	19.0%	14.2%
				Wind	50.0%	17.9%	22.6%	11.4%
				Coal	0.0%	0.0%	0.0%	3.0%
				Large Hydroelectric	0.0%	64.2%	15.9%	9.2%
				Natural Gas	0.0%	0.0%	0.0%	37.9%
				Nuclear	0.0%	0.0%	1.7%	9.3%
				Other	0.0%	0.0%	0.1%	0.2%
				Unspecified Power <sup>2</sup>	0.0%	0.0%	40.0%	6.8%
				<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
<b>Percentage of Retail Sales Covered by Retired Unbundled RECs<sup>3</sup>:</b>					<b>0%</b>	<b>0%</b>	<b>0%</b>	
<p><sup>1</sup>The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.</p> <p><sup>2</sup>Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.</p> <p><sup>3</sup>Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.</p>								
For specific information about this electricity portfolio, contact:				<b>East Bay Community Energy</b> <b>1-833-699-EBCE (3223)</b>				
For general information about the Power Content Label, visit:				<a href="http://www.energy.ca.gov/pcl/">http://www.energy.ca.gov/pcl/</a>				
For additional questions, please contact the California Energy Commission at:				Toll-free in California: 844-454-2906 Outside California: 916-653-0237				





# Questions?

Thank You

Izzy Carson

Power Resources Manager



## Consent Item 8

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

**FROM:** Nicolas Chaset, Chief Executive Officer

**SUBJECT:** Lease Agreement for EBCE Office at 1999 Harrison Street, Oakland

**DATE:** September 21, 2022

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### Recommendation

Approve a Resolution authorizing the Chief Executive Officer to finalize negotiations and execute a 12-month Lease Agreement with BCAL LMP Harrison Property LLC for office space at 1999 Harrison St, Oakland, California.

### Background and Discussion

In February 2019, EBCE staff identified a 3-year sublease at 1999 Harrison Street. Since August 1, 2019, EBCE staff has been occupying the space at 1999 Harrison Street, as a subtenant of Mechanics Bank. The Sublease expires on October 31, 2022 and EBCE looks to sign a new, 12-month lease, directly with the Building owner.

The major terms of the new lease will be as follows:

Commencement Date: November 1, 2022

Term: 12 months, expiring on October 31, 2023

License Fees (Rent): \$46,193.33 per month

Security Deposit: \$46,193.33

Landlord to pay for taxes, building insurance and utilities (electricity, water, and heating, ventilation and air-conditioning)

EBCE is continuing to work with Komorous-Towey Architects to finalize building design and layout with Sixth Dimension as the project manager for construction of the new building at 251 8<sup>th</sup> Street, Oakland, California 94607. We are receiving feedback that construction materials, labor/installation of infrastructure projects, and permitting of projects are experiencing delays and a lease extension is prudent in order to ensure that EBCE maintains an office space.

### **Fiscal Impact**

The lease would require the payment of an approximately \$46,193.33 security deposit, and payment of a base lease rent of \$46,193.33 per month, over a 12-month lease.

### **Attachments**

A. Resolution

RESOLUTION NO. R-2022-\_\_

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF  
EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE A LEASE AGREEMENT WITH BCAL  
LMP HARRISON PROPERTY LLC THROUGH OCTOBER 31, 2023 AT 1999 HARRISON  
STREET, OAKLAND**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS EBCE is currently in negotiations with BCAL LMP Harrison Property LLC to lease office space on the 8th floor of 1999 Harrison Street in Oakland, CA,

WHEREAS the Parties have come to terms regarding the payment of security deposit and rent, the term of the sublease, and

WHEREAS the Parties are continuing to negotiate certain minor terms of the Lease.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The Chief Executive Officer is hereby authorized on behalf of EBCE to finalize negotiations, enter into and execute a lease for office space at 1999 Harrison Street, Oakland CA, with a term of no more than 12 months, pursuant to key terms outlined in the associated Staff Report. The Chief Executive Officer is hereby authorized to take all actions necessary or proper to implement or effectuate the actions approved by this Resolution.

ADOPTED AND APPROVED this 21 day of September, 2022.

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Dianne Martinez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board



## CEO Report Item 9

TO: East Bay Community Energy Board of Directors  
FROM: Nick Chaset, Chief Executive Officer  
SUBJECT: CEO Report (Informational Item)  
DATE: September 21, 2022

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### Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

### Executive Committee Meeting

The July 29, 2022 meeting of the Executive Committee Meeting was canceled. The next Executive Committee meeting will be held on Friday, September 30 at noon.

### Finance, Administration and Procurement Subcommittee Meeting

A Finance, Administration and Procurement Subcommittee meeting was held on Friday, September 16, 2022. Members received updates on the status of the audit, the new credit facility and the lease extension for the current office site. The next Finance, Administration and Procurement Subcommittee will be held on Friday, October 14, 2022 at 10:00am.

### Marketing Regulatory and Legislative Subcommittee Meeting

The September 9, 2022 Marketing, Regulatory and Legislative meeting was rescheduled to September 16, 2022. The agenda included updates on Regulatory and Legislative proceedings and an update from the Marketing and Account services team. The next meeting of the Marketing, Regulatory and Legislative Subcommittee will be held on November 4, 2022 at noon.

### New Staff

#### Raissa Ngoma, Receptionist and Assistant Board Clerk

Raissa Ngoma joined EBCE's Operations team in August 8, 2022 as the Receptionist and Board Clerk Assistant. Raissa assists EBCE with office administrative duties and clerking meetings.

Prior to joining EBCE, she worked as a Student Supervisor at UC Berkeley's Unit 1 Residence Halls. There she led a team of student assistants, facilitated the hiring process, and served as a voice between residents, student clerks, and the administrative team.

Raïssa holds a B.A in Legal Studies and has minors in African American Studies and Korean from the University of California, Berkeley."

**Allison Lopez, Energy Efficiency Program Analyst**

Allison Lopez joined EBCE's Local Development, Electrification, and Innovation team as an Energy Efficiency Program Analyst. In this role, Allison will support day-to-day oversight of commercial energy efficiency programs. Her key responsibilities will include monitoring program performance, evaluating new technologies, and coordinating communication with Marketing, Data Analytics, and Policy teams.

Before joining EBCE, Allison worked in the Vehicle Engineering Operations group at Tesla. Prior to Tesla, Allison was with Energy Solutions for over four years, most notably working on the TECH initiative.

Allison holds a BA in Political Science, Public Policy from the University of California, Davis. She is also an active member of the Association for Women in Water Energy and Environment (AWWEE) Bay Area Chapter.

**Marketing and Account Services Update**

**Updated Value Proposition**

In response to the board's approval of the FY22/23 budget, EBCE staff implemented changes to the value proposition of Bright Choice and Renewable 100, effective July 1. Customers began seeing the increased discount of 3% for Bright Choice and reduced premium of ¾¢ for Renewable 100 on their August bill statements. Staff also facilitated the \$50 bill credit to each CARE or FERA customer, which will appear on the September bill statement. There were a total of over 112,000 customers that received a total of \$5.6M in bill credits. Finally, the website, on-bill message, and call center's automated telephone system have been updated to reflect the current value proposition.

06/16/2022 – 07/18/2022			
<b>Rate Schedule: ETOUB-Bright Choice</b>			
Off-Peak Summer	252.040000	kWh @ \$0.14876	\$37.49
Peak Summer	57.422000	kWh @ \$0.27182	15.61
Power Charge Indifference Adjustment Credit			-6.14
Franchise Fee Surcharge Credit			-0.29
Bright Choice			-0.53
		<b>Net Charges</b>	<b>46.14</b>
Local Utility Users Tax (7.500%)			3.46
Energy Commission Tax			0.09
Bright Choice is priced 3% below PG&E rates, inclusive of fees. Learn more at <a href="http://ebce.org/bill">ebce.org/bill</a>			
<b>Total East Bay Community Energy Electric Generation Charges</b>			<b>\$49.69</b>

**Renewable 100 Transition in Four Jurisdictions**

Commercial customers in Berkeley, Dublin, Emeryville, and San Leandro as well as residential customers in Emeryville will switch to Renewable 100 over the month of October. EBCE staff

has worked with local city staff since June to develop and implement a comprehensive outreach strategy, which includes:

- Newsletter announcements
- Customized web pages
- Social media organic and paid posts
- Print advertisements
- Customer notifications (email and print)

So far, we are seeing very minimal opt outs and the number of customers choosing to stay on Bright Choice shows that our outreach has been effective.

Jurisdiction	Customer class	Change from early August	
		Opt Out	Remain On
Berkeley	non-resi	0.06%	0.29%
Dublin	non-resi	0.01%	0.31%
Emeryville	resi	0.0%	0.46%
	non-resi	0.01%	0.6%
San Leandro	non-resi	0.06%	0.12%

### Power Content Label Mailer

The Power Content Label (PCL) mailer is required by the California Energy Commission (CEC) to be sent by October 1 each year. The EBCE PCL mailer will include the prescribed power resource disclosure, as well as highlight our customer programs, improved value proposition, and 2030 power content goal. The mailer will be sent to all customers served during calendar year 2021, show EBCE power content compared to aggregate for the state of California, and be sent via email or hard copy during the last week of September.

### SMUD Call Center Representative

As part of a long-term plan to bring call center jobs into the EBCE territory, SMUD opened an application for a Call Center Representative that will eventually serve EBCE customers. EBCE staff did outreach within our jurisdictions to promote the role and encourage local residents to apply for the position, which opened on September 6. There were over 1500 applications for the position. Outreach included the following:

Channel	Metrics	Date
Nextdoor	572,000 users	Aug 16
Direct outreach to	Rising Sun Center for Opportunity, CalState East Bay, Cypress Mandela, Peralta Community College District, Las Positas, Laney College, Alameda College	Aug 17
EBCE Jobs Page	352 direct links, 622 visits btw 8/23-9/6	Aug 23
Direct email to	BOD/CAC/Municipal staff	Aug 23
SMUD Outreach	40,000 impressions with 441 shares	As of Aug 24
LinkedIn	409 organic impressions, 34 engagements	Sept 2
Meta	7,459 impressions, 570 engagements	Sept 2 and 6
Twitter	1,513 followers	Sept 2 and 6





## Staff Report Item 11

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

**FROM:** Alex DiGiorgio, Public Engagement Manager

**SUBJECT:** Inclusion of New Communities: City of Stockton (Action Item)

**DATE:** September 21, 2022

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### Recommendations

Receive update and analysis on including the City of Stockton within EBCE's service area and take the following actions:

- A) Adopt a Resolution to authorize the City of Stockton to join the EBCE as a member agency and signatory to the JPA Agreement, with customer enrollments to begin in 2024;
- B) Direct staff to update Exhibit A ("List of Parties") of EBCE's Joint Powers Agreement to reflect the inclusion of the City of Stockton;
- C) Direct staff to update Exhibits B ("Annual Energy Use") and C ("Voting Shares Vote") of EBCE's Joint Powers Agreement with 2021 PG&E electric load data and to reflect the inclusion of the City of Stockton); and
- D) Adopt a Resolution to authorize staff to update EBCE's Implementation Plan to reflect the inclusion of the City of Stockton, and to submit the updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of calendar year 2022.

## Background and Discussion

As a mission-driven public agency, EBCE strives to reduce energy-related greenhouse gas (GHG) emissions by providing more renewable energy at competitive rates while pioneering innovative programs and policies. To the extent EBCE retains and expands its customer base, it can accelerate the achievement of this mission. Moreover, by including new communities within its service area, EBCE can cultivate a more demographically diverse customer base; and more generally advance sustainable development, environmental justice, and energy democracy throughout neighboring communities in California.

### **New Community Inclusion: Requirements, Timing, Process**

*Section 3.1* of EBCE's Joint Powers Authority (JPA) Agreement refers to the "Addition of Parties," and provides for the possibility of including new cities and/or counties within the JPA and its corresponding service area.

#### ***Requirements: New community inclusion process and conditions of membership***

In order to join EBCE, the following legal and procedural requirements must be met: 1) the governing body of the prospective jurisdiction (i.e., the City Council or County Board of Supervisors) must pass a Resolution requesting to join EBCE and agreeing to become a signatory of the EBCE JPA Agreement, and pass an ordinance to implement a community choice aggregation program pursuant to Public Utilities Code Section 366.2; 2) EBCE's Board must pass a Resolution authorizing the amendment of the JPA Agreement to add the prospective jurisdiction as a new member; and 3) EBCE must update its Joint Powers Agreement Exhibits (A,B, and C) and submit an updated Implementation Plan to the California Public Utilities Commission (CPUC) reflecting the membership of the new jurisdiction(s) within EBCE's JPA.

The Stockton City Council has already adopted the required Resolution agreeing to become a signatory to EBCE's JPA Agreement and join EBCE, and an Ordinance pursuant to Public Utilities Code Section 366.2. The next step in Stockton's EBCE membership process is for the EBCE Board of Directors to adopt the proposed Resolution amending the JPA Agreement to add the City to EBCE's membership, with customer enrollments in Stockton to begin in 2024.

*Section 3.1* of the JPA Agreement also provides for the satisfaction of other "additional conditions" for JPA membership, including "membership payment" or "membership fee", which are subject to the discretion of EBCE's Board. To date, the EBCE Board has not imposed such conditions on membership for new parties.

Stockton's elected leaders, City staff, and community members expect the City to be able to join EBCE's JPA and participate in its governance under the same conditions as all current members. If these expectations are not met, it could lead Stockton and/or future, prospective new member-jurisdictions in San Joaquin County or elsewhere to become less interested in joining EBCE. For these reasons, the Board is encouraged to proceed cautiously when considering conditions on new membership.

Once Stockton has joined EBCE and its membership is certified by the CPUC, the City will be entitled to appoint a member of the City Council to serve as a member of the EBCE Board of Directors.

***Requirements: Update JPA Exhibits A, B, & C***

To implement the addition of Stockton as a signatory and member of EBCE, the Board should update JPA Exhibits A ("List of Parties"); B ("Annual Energy Use"); and C ("Voting Shares"). Section 1.3 of the JPA Agreement provides that Exhibits A, B, and C may be revised upon the approval of the Board, without such revision constituting an amendment to the Agreement.

**Exhibit A: "List of Parties"**

Exhibit A lists the names of all jurisdictions which are members of EBCE's Joint Powers Authority. Updating this list is straightforward; it simply involves adding the names of new member jurisdictions, pending the passage of a Board Resolution authorizing their JPA membership.

If the Board authorizes the membership of the City of Stockton, the City's name must be added to Exhibit A listed in alphabetical order (draft Attached).

***Recommendation:*** Pending Board authorization to include the City of Stockton, approve a motion to update Exhibit A to include the City among the "List of Parties."

**Exhibits B & C: "Annual Energy Use" & "Voting Shares Vote"**

Exhibits B and C list the annual energy use and the voting shares percentage of each member jurisdiction.

The Board voting procedures are set forth in *Section 4.12* of the JPA Agreement. According to *Section 4.12.1*, most Board decisions require a simple majority vote of all the Directors, with each jurisdiction having one equal vote.<sup>1</sup> This procedure is

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<sup>1</sup> *Section 8.4* ("Amendment of this Agreement") requires a two-thirds majority vote to amend the JPA itself; and a three-quarters vote to amend the voting provisions of *Section 4.12*.

referred to as a “Percentage Vote.” Additionally, *Section 4.12.2* creates a “Voting Shares Vote” procedure, which may immediately follow an affirmative or a tied Percentage Vote if requested by three or more Directors. Under a Voting Shares Vote, each jurisdiction’s vote is essentially ‘weighted’ according to the size of its annual energy usage as compared to EBCE’s total annual energy (i.e., the collective, community-wide electricity demand within its borders). Historically, the Board has allowed new members to participate in ‘Voting Shares’ at their entry into EBCE, rather than waiting until service to the new community is launched.<sup>2</sup> Staff recommends the Board continue following this precedent, rather than risk alienating prospective new member-jurisdictions.

To date, the Voting Shares Vote provision of the JPA has been invoked exceedingly rarely—if ever. Indeed, no current EBCE staff member can recall an instance in which a vote of this type has occurred since EBCE’s formation in 2016.

Exhibit B sets forth the Annual Energy Use for each member-jurisdiction and EBCE’s Total Annual Energy use, for purposes of calculating members’ voting shares.

According to *Section 1.1.23* of the JPA Agreement, “Annual Energy Use” for the first two years after EBCE’s launch date (December 1, 2016) is based on the annual electricity usage within each member’s respective jurisdiction. After two years, the JPA Agreement provides that Annual Energy Use is to be based on the annual electricity usage of accounts served by EBCE within the member’s jurisdiction. The Total Annual Energy is the sum of all the member jurisdictions’ Annual Energy Use. The numbers in Exhibit B, together with the corresponding voting shares in Exhibit C, are supposed to be “adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 each year subject to the approval of the Board.”

At the time of EBCE’s formation, Exhibit B relied on 2014 PG&E load data. Since 2019, EBCE has relied on 2018 PG&E load data.<sup>3</sup> Staff recommendation is to update Exhibit B to reflect more current load data.

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<sup>2</sup> When EBCE’s Board voted in 2019 to include the cities of Newark, Pleasanton, and Tracy, it did so with the intention of allowing those new member-jurisdictions to participate in Voting Shares Votes based on their respective, citywide PG&E load data if/when such votes were to occur. Staff recommends the current EBCE Board follow this precedent.

<sup>3</sup> Since 2019, Exhibit B has relied on 2017 PG&E load data for the City of Newark. This was due to the lengthy time required to receive Newark’s requested 2018 load data from PG&E before the end of the 2019 calendar year.

Specifically, EBCE staff recommends the Board update Exhibit B using the most recent PG&E load data available (i.e., from calendar year 2021).<sup>4</sup> This provides an ‘apples-to-apples’ comparison for each member jurisdiction and does not preclude the Board from transitioning to EBCE’s post-enrollment load data once a full calendar year of EBCE usage becomes available for the City of Stockton.

Exhibit C sets forth the Voting Shares for EBCE member jurisdictions based on the corresponding Annual Energy Use and Total Annual Energy numbers provided in Exhibit B. If the Board decides to follow staff’s recommendation and provides direction to update Exhibit B using 2021 PG&E load data, Exhibit C will be adjusted accordingly to reflect the Voting Shares percentage of each member jurisdiction.

**Recommendation:** Update Exhibit B using 2021 PG&E load data for “Annual Energy Use” and “Total Energy Use,” for all current EBCE member-jurisdictions and the City of Stockton) Update Exhibit C’s Voting Shares to correspond to updated numbers in Exhibit B. Consider updating Exhibits B and C again in 2023 using 2022 EBCE load data, when such data becomes available for EBCE member-jurisdictions.

### *Timing of new enrollments*

In February of 2018, the CPUC passed [Resolution E-4907](#), which delays the timeline by which California cities and counties may begin service with Community Choice Aggregation (CCA) agencies, like EBCE. In effect, cities and counties must wait a full calendar year between the time they form or join a CCA and when electricity customers within their borders may be enrolled in the CCA’s service. As a result, any jurisdiction that requests to begin service with EBCE by 2024, must complete the process of joining EBCE’s JPA by the end of calendar year 2022. Otherwise, enrollment with EBCE will not be possible until 2025 or later.

### *Process*

Given the requirements and timing articulated above, EBCE staff has drafted a document outlining the process to join EBCE in time to enroll customers in 2024 Please see attached: “Steps to Joining East Bay Community Energy (EBCE).”

The table below summarizes the City of Stockton’s EBCE membership consideration and implementation processes:

Date	Event
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<sup>4</sup> The most recent PG&E load data available to EBCE is from calendar year 2021 for all jurisdictions, including the City of Stockton

Jan-April 2022	City completes PG&E load data request forms/non-disclosure agreements. EBCE staff receives load data from PG&E.
April-Aug 2022	EBCE conducts quantitative analysis to evaluate inclusion request. Preliminary analysis presented to City Manager & staff (attached).
June-July 2022	City of Stockton publishes 'Sources Sought' public notice re prospective EBCE membership (attached).
Sept 2022	City Council passes Resolution, Ordinance to join EBCE (attached). City Manager executes JPA signature page (attached).
Sept-Oct 2022	Earliest opportunities for EBCE Executive Committee (Exec Com), Board of Directors (BoD) and Community Advisory Committee (CAC) to consider quantitative analysis, inclusion request(s), and updates to JPA Agreement Exhibits A, B and C.
Oct-Dec 2022	Latest opportunities for EBCE Exec Com, BoD and CAC to consider quantitative analysis, inclusion request(s), and updates to JPA Agreement Exhibits A, B and C. Pending affirmative Board vote, staff updates Exhibits, and files updated Implementation Plan with CPUC.
2023	City of Stockton entitled to a seat on EBCE's Board of Directors; EBCE's community outreach to new communities begins. Some EBCE programs may become available to Stockton's electricity customers (e.g. technical assistance w/energy resilience at critical municipal facilities).
2024	Customer account enrollments begin in Stockton.

### New Community Inclusion: Eligible Communities: City of Stockton

The City Council of the following jurisdiction has approved a Resolution requesting to join EBCE and an Ordinance to implement EBCE's CCA program:

- 1) City of Stockton (San Joaquin County)

### Fiscal Impact

The prospect of including a new, large city within EBCE's Joint Powers Authority and service area—particularly one as dynamic and demographically diverse as Stockton<sup>5</sup>—presents considerable financial implications for the Agency. For this reason, EBCE staff conducted a Quantitative Analysis (QA) using the City's annual PG&E load data (from calendar year 2021) to evaluate the cost of service to this prospective new member jurisdiction. The preliminary results of this analysis (attached) were presented to Stockton's City Manager and staff on April 21, 2022.<sup>6</sup>

<sup>5</sup> In 2020, *U.S. News & World Report* named Stockton as America's most diverse city: "[U.S. News Special Report: Stockton, Calif., Is the Most Diverse City in America](https://www.usnews.com/story/news/2020/01/22/stockton-california-most-diverse-city)". *U.S. News & World Report*. January 22, 2020. For EBCE's purposes, key demographics also include utility-focused, energy-specific measures, such as the proportion of residential vs non-residential/commercial/industrial/municipal electric accounts, their various sizes and unique load profiles, etc. For more general information about Stockton, please refer here: [https://en.wikipedia.org/wiki/Stockton,\\_California#cite\\_ref-63](https://en.wikipedia.org/wiki/Stockton,_California#cite_ref-63)

<sup>6</sup> Please refer to the attached "Presentation: Stockton EBCE Membership: Preliminary Analysis"

In short, the purpose of the QA was to help answer the following, basic question: *Can EBCE include Stockton within its growing service area, while providing the same level of service (or better) offered to current JPA member-jurisdictions and their communities?* This level of service (also known as EBCE's "Value Proposition") offers customers competitive electricity rates with greater access to non-nuclear, carbon-free energy resources compared to standard PG&E service.<sup>7</sup>

Based on the results of the QA, staff is more than confident the answer to this question is 'yes'.<sup>8</sup>

According to the QA, the additional electric load of Stockton is estimated to yield annual net revenues of approximately \$17.8 million to EBCE, or 12.4% above the cost of service to Stockton. This would have a positive fiscal impact on EBCE and its existing communities and customer base, potentially increasing EBCE's overall net position by more than a percentage point (i.e., from 5.3% to 6.4%). These additional net revenues could be used to supplement EBCE reserves, reduce retail rates, and/or expand funding for local renewable energy project development and energy-related programs (e.g., rebates for energy storage, electric vehicles and EV charging infrastructure).

The table below summarizes the findings of the QA:

	<i>Stockton 2021</i>	<i>EBCE 2021</i>	<i>EBCE w/Stockton 2024</i>
<b>Accounts</b>	<b>112,200</b>	<b>642,500</b>	<b>754,800</b>
<b>Annual Load<sub>(MWh/yr)</sub></b>	<b>1,337</b>	<b>6,453</b>	<b>7,790</b>
<b>Peak Load<sub>(MW)</sub></b>	<b>398</b>	<b>1,288</b>	<b>1,669</b>
<b>Net Position %</b>	<b>+12.4%</b>	<b>+5.3%</b>	<b>+6.4%</b>
<b>Net Position \$</b>	<b>\$17.8M</b>	<b>\$41.0M</b>	<b>\$58.8M</b>

NOTES:

\*Based on current overhead costs and expected market values/forecasts;

<sup>7</sup> EBCE currently offers customers a Bright Choice electric rate discount of 3% (previously 1%); and a Renewable 100 premium of ¾ a penny per kilowatt-hour (previously \$0.01/kWh), compared to PG&E standard rates. Meanwhile, in 2021 (the most recent year for which data is available), EBCE's non-nuclear carbon-free power supply was 58.2%; while PG&E's was 52.7%, and California's Statewide utility average was 42.8%. This power content information is publicly available through the [2021 EBCE/PG&E Annual Joint Rate Mailer](#) and [EBCE's 2021 Power Content Label](#).

<sup>8</sup> Please refer to the attached "Letter from CEO: EBCE Invitation to the City of Stockton"

- \*Assumes 5% account opt out rate (slightly above EBCE's current service area-wide opt out rate);
- \*Applies EBCE's 2022 rates from 2022-23 budget development;
- \*Data excludes ineligible loads (e.g. BART, Direct Access, Standby);
- \*Uses 2021 PG&E load data for Stockton;

## Financial Stress Test: Modeling Wholesale Energy Market and Power Charge Indifference Adjustment (PCIA) Scenarios

To help the Board evaluate the financial risk associated with including the City of Stockton, the QA included a "Financial Stress Test." Among other things, this test measured the impact of two key cost variables: 1) wholesale energy market prices; and 2) the Power Charge Indifference Adjustment (PCIA).<sup>9</sup>

For example, a financial scenario could include a sustained wholesale energy price environment in which prices remain at EBCE's median forecasted levels, while the PCIA increases dramatically (e.g., the PCIA climbing to the 5<sup>th</sup> percentile in cost,). Per the Board's rate-setting policies, EBCE absorbs the cost of the PCIA to ensure its value proposition to customers (i.e., Bright Choice customers receive a 3% discount compared to PG&E's standard rates; and Renewable 100 customers pay an additional ¾ cent per kilowatt-hour above PG&E rates). In other words, EBCE's rate discount for Bright Choice customers, and the slight premium for Renewable 100 customers, remains consistent, despite any fluctuations in the PCIA. As such, dramatic increases in the PCIA can negatively impact EBCE's financial position.

In these conditions, EBCE could still 'break even' (i.e., the Agency's costs would be roughly equal to revenues during the sample year). Moreover, EBCE could take steps to mitigate the negative financial impacts of this scenario (e.g., by adjusting the Bright Choice discount from 3% to 2%).

EBCE staff also modeled a "worst case" scenario, defined as a sustained wholesale energy price environment in which costs vastly exceed forecasts (e.g., wholesale prices that are roughly 85% higher than forecasted, or in the 95<sup>th</sup> percentile). To be clear, a scenario of this kind would not be a temporary 'spike' in energy costs due to a weather event like a cold snap or a heat wave; it would be a prolonged energy market disruption lasting approximately a year or more, and likely the result of catastrophic events (e.g. a war between energy-rich countries; or an unprecedented natural disaster that destroys or extensively damages vast critical infrastructure, like natural gas pipelines and/or electric transmission networks).

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<sup>9</sup> The [PCIA](#) is a charge to ensure that both PG&E customers and those who have left PG&E to purchase electricity from other providers (e.g., EBCE and other community choice aggregators) pay for the above market costs for electric generation resources that were procured by PG&E on their behalf.



Under these conditions, EBCE could experience costs that exceed revenues by approximately 33%.<sup>10</sup> Nevertheless, EBCE could still mitigate the financial impacts by 1) adjusting rates (e.g., reducing the Bright Choice discount/raising retail rates, and/or increasing the Renewable 100 premium); and 2) taking various cost-cutting measures (e.g., reducing the budgets of certain departments or programs).

While it is difficult to predict future energy market prices, or account for large-scale catastrophic events, the modeling and 'stress tests' routinely performed by EBCE staff provide a conservative lens through which to consider the City of Stockton's membership request. As mentioned above, staff's goal was to determine whether EBCE could include Stockton within its growing service area, while providing the same level of service offered to current JPA member-jurisdictions and their communities. Based on the results of the QA, staff is more than confident EBCE can do so.

### Qualitative Considerations

Lastly, in addition to considering the governance and financial implications of Stockton's EBCE membership, there are numerous qualitative benefits to consider as well. These include the following:

- **Diversity, Equity, and Inclusion (DEI)** - By expanding access to competitively priced renewable energy and related programs to frontline communities in California's Central Valley, EBCE can continue to advance the Agency's goals around diversity, equity, and inclusion;
- **Environmental Justice** - For a variety of systemic, economic, geographic, topographic, historical, and socio-political reasons, air pollution (among other forms of pollution) in Stockton and the greater San Joaquin Valley region represents an urgent public health challenge.<sup>11</sup> Pediatric asthma, in particular, is fairly widespread, affecting one in six children.<sup>12</sup> By providing alternatives to fossil fuel-based energy resources in the building, transportation, and agricultural sectors, EBCE can help advance environmental justice and increase the quality of life for local communities;
- **Local Programs** - Due to its size and stature as a global hub for agriculture, industry, and light/medium/heavy-duty trucking and goods transport, Stockton offers tremendous programmatic opportunities for EBCE's transportation and building electrification endeavors. Staff from EBCE and the City of Stockton

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<sup>10</sup> The financial stress test assumes cost increase persist for an entire year. It estimates the cost of energy to be the percentage of additional load multiplied by the 2022-23 budgeted energy expenses. It does not include initial customer notification costs (e.g., four mailed enrollment notices, staff time, event fees, travel, etc.)

<sup>11</sup> <https://www.kvpr.org/local-news/2022-05-20/low-income-san-joaquin-valley-families-struggle-to-get-asthma-services-through-new-state-program>

<sup>12</sup> <https://www.scientificamerican.com/article/climate-change-is-bad-news-for-california-children-with-asthma/>

have identified multiple areas where the two agencies can begin collaborating right away;

- **Legislation and Political Influence** - By welcoming new State Assembly/Senate districts and new Federal Congressional districts into EBCE's service area, EBCE's current communities and customers will benefit from greater representation in Sacramento and Washington DC through EBCE's legislative and regulatory advocacy efforts;
- **CCA Proliferation, Public Power, and Energy Democracy** - When large, historic, and prominent cities, like Stockton, join California's CCA moment, they help catalyze public power and energy democracy throughout California by example. As with the City of Tracy, Stockton's EBCE membership would likely have a compounding positive impact by influencing neighboring Central Valley jurisdictions to consider CCA generally and/or EBCE membership specifically.

While difficult to measure, perhaps, these qualitative benefits and opportunities should not be underestimated. By including the City of Stockton within its service area, EBCE can cultivate a more demographically diverse customer base, while advancing sustainable development, environmental justice, and energy democracy in communities throughout California and the United States.

### Staff Recommendation

1. Receive update and analysis on including the City of Stockton within EBCE's service area;
2. Adopt a Resolution to include the City of Stockton within EBCE's Joint Powers Authority and service area, with customer enrollments to begin in 2024;
3. Approve a motion to direct staff to update Exhibit A ("List of Parties") of EBCE's Joint Powers Agreement to reflect the inclusion of the City of Stockton.
4. Approve a motion to direct staff to update Exhibits B ("Annual Energy Use") and C ("Voting Shares Vote") of EBCE's Joint Powers Agreement with 2021 PG&E electric load data, and to reflect the inclusion of the City of Stockton;
5. Adopt a Resolution to authorize staff to update the Implementation Plan to reflect the inclusion of the City of Stockton, and to submit the updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of calendar year 2022.

## Attachments

- A. Steps to Joining East Bay Community Energy;
- B. Presentation: City of Stockton EBCE Membership: Preliminary Analysis;
- C. Letter from CEO: EBCE Invitation to the City of Stockton;
- D. City of Stockton: Sources Sought Public Notice re EBCE membership
- E. City of Stockton's signed Resolution to join EBCE;
- F. City of Stockton's signed Ordinance to implement EBCE CCA
- G. Proposed EBCE Resolution to include the City of Stockton as a JPA member;
- H. Current EBCE Joint Powers Agreement including Exhibits A, B and C;
- I. Proposed Updates to Exhibits A, B and C to include the City of Stockton; and
- J. Proposed EBCE Resolution authorizing EBCE staff to update EBCE's Implementation Plan and submit it to the CPUC by the end of calendar year 2022;
- K. City of Stockton's signed EBCE JPA signature page.



## Steps to joining East Bay Community Energy (EBCE)

- 1) Two presentations to Council:
  - Vote #1 on Ordinance & Resolution to join EBCE's Joint Powers Authority (JPA) Agreement;
  - Vote #2 on Ordinance – *Best if completed by July 2022 for a 2024 enrollment*;
- 2) EBCE Board considers Resolution to include prospective new community;
- 3) Pending Board approval, EBCE updates Joint Powers Agreement and files amended Implementation Plan with CPUC before 12/31/22;

**2023**: Community outreach in new community;

- Elected official of new community entitled to seat on EBCE Board of Directors;

**2024**: EBCE enrollment of electricity accounts begins in new community

APRIL 21, 2022

# City of Stockton EBCE Membership: *Preliminary Analysis*



# Data & Methodology

- We used historical data available from PG&E to model the impact of Stockton joining EBCE:
  - Item16 dataset summarizes customer information by month (2019,2020, 2021)
  - Item17 provides hourly usage information (2018, 2019, 2020, 2021)
  - We combined these two datasets to generate the most complete possible picture of Stockton hourly electricity use by customer and class
  - We focused the preliminary analysis on 2021
  - We will use the historical data to generate a forward-looking estimate
- Using 2021 data, we analyzed what electricity customers in Stockton *would have* paid in 2021 if they had been EBCE customers;
- Using 2021 data, we also estimated the increase in citywide renewable energy consumption;
- Separately, a preliminary cost/benefit analysis confirms that EBCE service could be expanded to Stockton without impacting EBCE's ability to achieve its value proposition of a 1% discount (relative to PG&E) for customers taking default Bright Choice service.

# Summary Data

Attachment Staff Report Item 11B

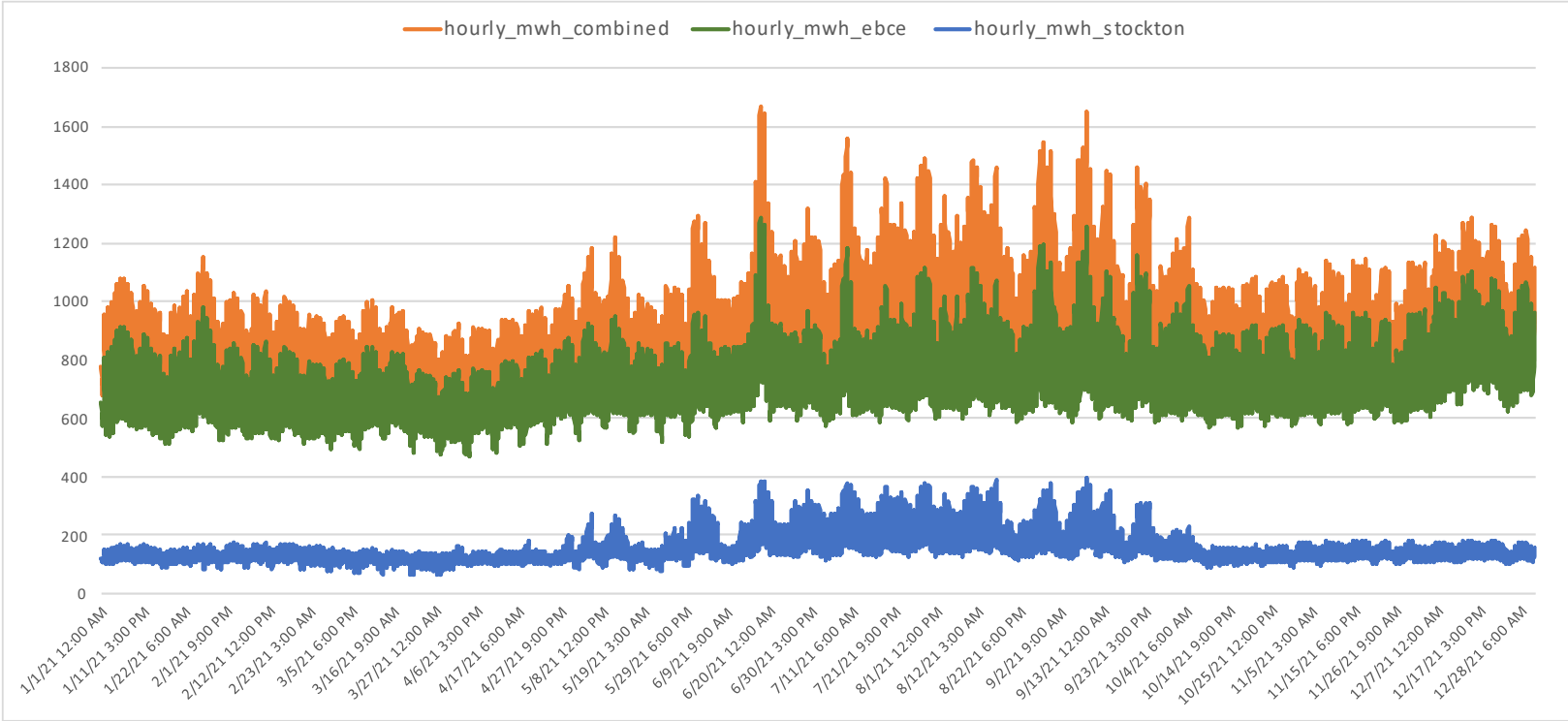
	Customer Count	Annual Load (GWh)	Peak Load (MW)	Peak Date & Time
EBCE	642,562	6,453	1,288	2021-06-17 @ 5pm
Stockton	112,254	1,337	398	2021-09-08 @ 5pm
Combined	754,816	7,790	1,669	2021-06-17 @ 5pm

Rate Class	EBCE		Stockton		Combined	
	2021 MWh	Percent	2021 MWh	Percent	2021 MWh	Percent
RES	1,339,074	21%	549,589	41%	1,888,662	24%
E19	1,259,000	20%	170,963	13%	1,429,963	18%
RES TOU	1,205,829	19%	131,285	10%	1,337,114	17%
A10	981,878	15%	168,335	13%	1,150,213	15%
A1	936,863	15%	155,108	12%	1,091,970	14%
E20	522,630	8%	149,772	11%	672,402	9%
EV	115,299	2%	272	0%	115,571	1%
AGR	43,794	1%	1,084	0%	44,878	1%
LS	41,444	1%	9,888	1%	51,331	1%
TC	6,842	0%	932	0%	7,774	0%
<b>Total</b>	<b>6,452,653</b>		<b>1,337,227</b>		<b>7,789,880</b>	

\* Data presented here and throughout excludes Direct Access customers

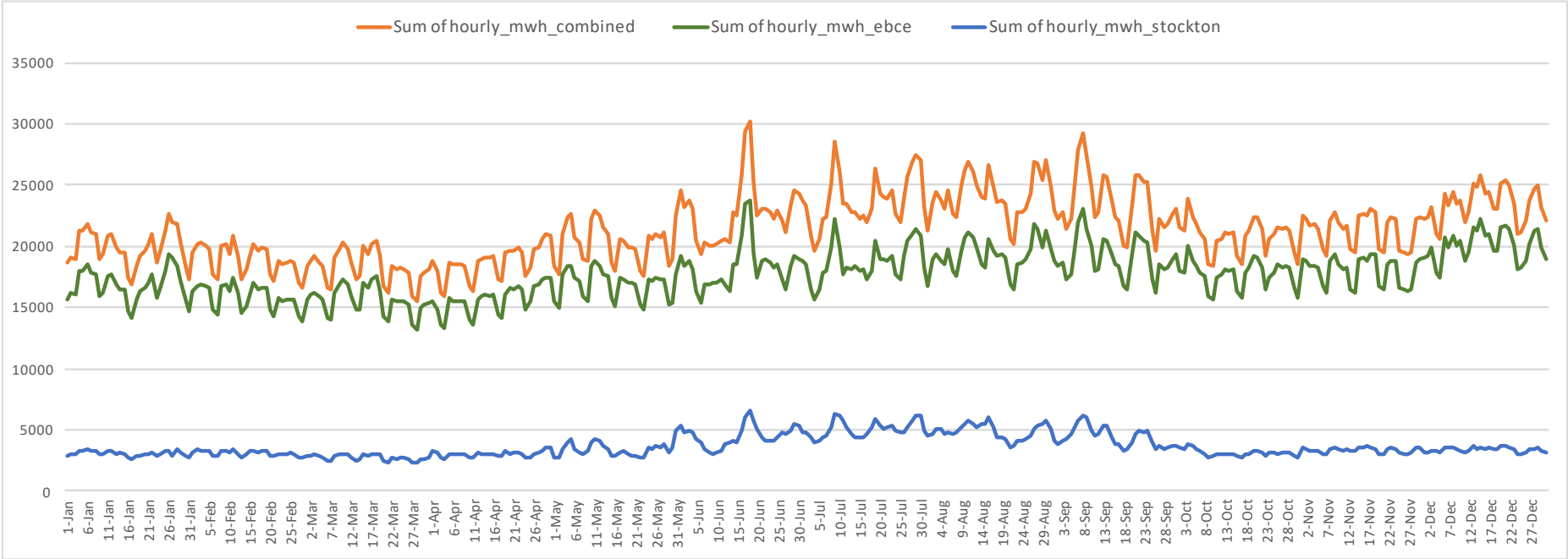
\*\* Standard PG&E Reports do not provide information allowing us to parse out NEM (Solar) customers.

# 2021 Hourly Load



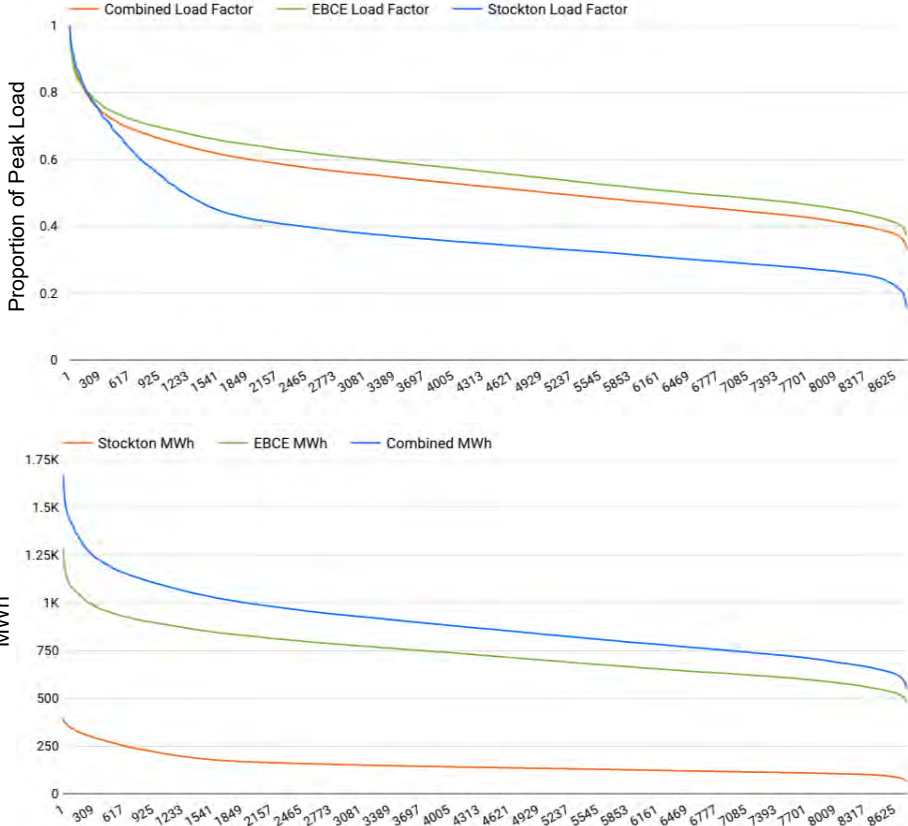


# 2021 Daily Load



# Load in Stockton v. Current EBCE Load

- Stockton load is “peakier” than EBCE's
- Diversity in the timing of peaks means that the addition of Stockton would not substantially impact EBCE’s load distribution throughout the year



# Summary Results - 2021

- Stockton consumption:
  - **1,337 GWh** (20.8% of EBCE’s current load)
- Average PG&E electricity cost for Stockton customers in 2021:
  - **11.2¢** per kWh
- In 2021, EBCE’s “Bright Choice” product would have:
  - Reduced customer expenditures by **\$1.49M**
  - Increased renewable consumption by at least 6%
    - 80 GWh, or enough to power **15,700 homes for a year**

# Next Steps

## City of Stockton

- Review analysis & follow up with questions/clarifications for EBCE staff;
- Pending City Manager approval, agendize Ordinance + Resolution re EBCE JPA membership; preferably for consideration at Council meeting in May or June;
- Two (2) readings of Ordinance required

## EBCE

- Perform complete cost/benefit analysis using forecasted data to examine conditions in 2024 and beyond;
- Perform internal due diligence to determine timing of certain cost obligations should Stockton join EBCE (Resource Adequacy primarily);
- Pending second reading of City's Ordinance to join JPA, update EBCE Implementation Plan and submit it to CPUC by Dec 2022 (for Stockton's prospective 2024 enrollment)



**May 12, 2022**

Dear City Manager Black,

On behalf of East Bay Community Energy (EBCE), I am pleased to confirm our staff has completed its membership analysis for the City of Stockton. We had the pleasure of sharing the positive, preliminary findings with your staff on April 21 and thought it would be helpful to summarize our final conclusions via this correspondence.

To recap, the membership analysis involved 1) a quantitative assessment of Stockton's citywide, electric usage data (as provided by PG&E); and 2) an evaluation of EBCE's ability to serve electricity customers throughout the City.

In short, our goal was to answer the following question: Can EBCE include the City of Stockton within our growing service area and Joint Powers Authority (JPA), while offering the same level of service we provide current JPA member-jurisdictions and their communities?

Based on our analysis, we are more than confident we can.

Moreover, based on our experience serving similarly sized cities—and operating one of California's largest, most demographically-diverse Community Choice Aggregation (CCA) agencies—we believe an enduring partnership between Stockton and EBCE would advance our mutual, energy-related interests.

Among other things, these include access to more competitive rates and renewable energy supplies. Collectively, EBCE customers have saved about \$10 million a year in rate savings, even while they have purchased more renewable energy than they would have with PG&E. Our analysis determined Stockton's energy consumers would have experienced similar benefits.

For example, if the City's residents and businesses had received EBCE service throughout 2021, they would have collectively saved nearly \$1.5 million on their utility bills. Meanwhile, they would have purchased at least 6% more renewable energy compared to what PG&E supplied that year. This latter figure may seem modest, but it represents approximately 80 Gigawatt-hours of clean energy—enough to sustainably power 15,700 homes for a year.

Additionally, a partnership with Stockton would help EBCE (and the State of California, more generally) accelerate efforts to electrify the building and transportation sectors. Expanding access to Direct Current Fast Charging (DCFC) hubs in Stockton and the Central Valley is critical to this endeavor, particularly given the region's status as one of America's most important trading hubs. I know improving local air quality in Stockton is a major area of

focus for the City Council, and a partnership with EBCE to deliver electric transportation solutions to residents and businesses will be a top priority.

Similar investments in local energy resilience (such as installing solar + battery storage systems at critical municipal facilities) are also among EBCE's forward-looking strategies to help our communities mitigate and adapt to climate change. If successful, EBCE's efforts in these areas will not only present new development opportunities; they will also enhance the quality of life by helping to reduce local air pollution and create new, green-collar jobs.

I would be remiss if I failed to convey what a pleasure it has been to work with your talented and dedicated team. As we continue to explore the possibility of Stockton's EBCE membership, the prospect of collaborating more closely together is highly motivating.

In consideration of the above, **I would like to formally invite the City of Stockton to initiate the process of joining the East Bay Community Energy Authority.** We stand ready to partner with the City of Stockton to deliver cleaner, more affordable electricity to your residents and businesses. To do so, the City of Stockton City Council must pass a resolution to join the East Bay Community Energy Authority and an ordinance to implement a community choice aggregation program by joining EBCE's Joint Power Authority. A detailed description of the membership process is included as an attachment to this letter.

Finally, I want to note that this process will carry no direct cost to the City of Stockton, through either this assessment phase or upon joining the EBCE JPA.

If you have questions or would like any additional information, please do not hesitate to contact me at your convenience.

Many thanks,

Nick Chaset  
Chief Executive Officer, EBCE

Attachments (3):

- 1) City of Stockton Membership Analysis,
- 2) Joining East Bay Community Energy,
- 3) Intro to East Bay Community Energy: Lower Costs + Greener Electricity + Community Investments

**PUR 23-000  
NOTICE SOURCES SOUGHT**

**INTENT TO JOIN EAST BAY COMMUNITY ENERGY AUTHORITY  
JOINT POWERS AGREEMENT**

The City of Stockton (“the City”) intends to pursue the process of joining the East Bay Community Energy (EBCE) Joint Powers Agreement and implement a Community Choice Aggregation (CCA) program. This decision is based on a CCA feasibility study that was presented to City Council in March 2021, which recommended a transition to a CCA agency. However, due to financial constraints, the City determined the only prudent path forward is to join an existing joint powers authority (JPA) to avoid the significant upfront costs and protect the City’s assets. The City is publishing Notice to better understand the CCA marketplace and determine if there are any other agencies that could offer more advantageous or suitable benefits to the City.

**Specific objectives for such a project may include:**

- No upfront cost to the City;
- Procure electricity at a lower cost than current cost for residents, businesses, and local government operations; and
- Funding for local energy efficiency projects and programs that will create jobs for local residents, provide benefits to customers, and bolster climate resilience.
- Governance structure that affords meaningful opportunities for the City to weigh in on decision making, particularly regarding rate setting.

The City intends to pursue membership with EBCE because it can fulfill the aforementioned objectives, such as offering lower or competitive electricity rates than PG&E for similar products. Furthermore, EBCE can deliver clean energy programs and projects using a stable, skilled workforce through such mechanisms as project labor agreements, or other workforce programs that are cost effective, designed to avoid work stoppages, and ensure quality. The City is interested in attracting these opportunities to create jobs and reap the benefits of clean energy programs. The City is also preferential to a local CCA that is responsive to regional priorities, such as electrifying major transit corridors. EBCE’s proximity to Stockton ensures these regional priorities are shared and will be acted upon in the near future.

This notice shall not be construed as a request for quotation, proposal, or as any commitment or obligation on the part of the City to issue a future solicitation. However, all responses received by the deadline will be considered by the City. A determination by the City not to join the proposed JPA based upon responses to this notice is solely within the discretion of the City. Information received will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

**Submission Instructions:** Responses via email are due Wednesday, July 15, 2022, to [Grant.Kirkpatrick@stocktonca.gov](mailto:Grant.Kirkpatrick@stocktonca.gov) and must include the information requested below. Responses greater than three (3) double-sided pages (including all attachments) will not be considered. Late responses will not be accepted. This is strictly market research and the City will not entertain any questions.

No reimbursement will be made for any costs associated with providing information in response to this synopsis or any follow-up information requests. Respondents will not be notified of the results of the evaluation. We appreciate your interest and thank you in advance for responding to the Notice.

Qualified firms shall submit a statement of interest on company letterhead demonstrating the firm's qualifications to perform the defined work. Responses must be complete and sufficiently detailed to address the specific information. The documentation shall address, at a minimum, the following:

- A. Agency Profile to include:
  - 1. Agency name and address;
  - 2. Current membership information: names of all current members of the JPA;
  - 3. Year the agency was established, number of employees, and current electrical load served;
  - 4. Two points of contact (names, titles, phone numbers and email addresses);
- B. Documentation of the agency's ability to obtain financing, or use current financial reserves, to offer membership to the City at no upfront cost.
- C. Bonding capability.
- D. Documentation of the agency's ability to procure adequate resources to meet the current and projected electrical load of the City (response should be based on the data included in the City's publicly available [March 2021 CCA Feasibility Study](#)).
- E. Documentation of the agency's current or planned energy efficiency projects and/or programs, and an explanation of how they could benefit the City.
- F. Signature block to include the following statement, "This information is true and correct to the best of my knowledge. Agent to print and sign name and title.



Resolution No. **2022-09-13-1504**

## **STOCKTON CITY COUNCIL**

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### **RESOLUTION TO AUTHORIZE THE CITY OF STOCKTON'S MEMBERSHIP IN THE EAST BAY COMMUNITY ENERGY AUTHORITY AND PARTICIPATION IN ITS COMMUNITY CHOICE AGGREGATION PROGRAM**

The City of Stockton has been actively investigating options to provide electricity supply services to constituents within the City with the intent of achieving greater local involvement over the provision of electric supply services, competitive electric rates, the development of local renewable energy projects, reduced greenhouse gas emissions and the wider implementation of energy conservation and efficiency projects and programs, and

Community Choice Aggregation (CCA) is a mechanism by which local governments assume responsibility for supplying electrical power for residential and commercial customers in their jurisdiction in partnership and competition with local commercial energy purveyors and owners of transmission facilities, which in the case of the City of Stockton is Pacific Gas & Electric Co., and

CCA has the potential to reduce greenhouse gas emissions related to the use of power in the City of Stockton; provide electric power to customers at a competitive cost; carry out programs to reduce energy consumption; stimulate and sustain the local economy by developing local jobs in renewable energy; and through local control of electric generation resources, and

Staff has examined and identified CCA as a key strategy to meet local clean energy goals and projected greenhouse gas reduction targets, and

City of Stockton has completed studies and taken additional proactive steps to determine a CCA program is feasible, and

Alameda County and cities in Alameda County have developed the East Bay Community Energy Authority Joint Powers Agreement (JPA) which creates the East Bay Community Energy Authority (EBCE) which governs and operates its CCA program, and

EBCE is interested in providing potential services to the City of Stockton and made a presentation to City Council at its special meeting of November 9, 2021, and formally invited the City to pursue membership on May 12, 2022, and

A standard JPA Agreement must be executed with EBCE to participate in the CCA program; now, therefore,

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**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:**

1. The recommendation in this report is not a project under the California Environmental Quality Act (CEQA) because it does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Sections 15378, therefore, not subject to CEQA pursuant to CEQA Guidelines section 15060.

2. The City Council of Stockton hereby approves the agreement titled "East Bay Community Energy Authority – Joint Powers Agreement" in order to participate with other signatories in a Community Choice Aggregation JPA for regional municipalities.

3. The City Manager is authorized to execute the agreement.

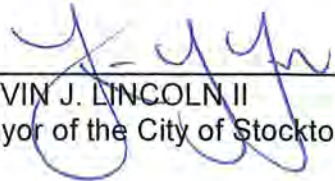
4. The City Manager is hereby authorized to take appropriate and necessary actions to carry out the purpose and intent of the Resolution.

PASSED, APPROVED, and ADOPTED September 13, 2022.

ATTEST:

  
\_\_\_\_\_  
ELIZA R. GARZA, CMC  
City Clerk of the City of Stockton



  
\_\_\_\_\_  
KEVIN J. LINCOLN II  
Mayor of the City of Stockton

## ORDINANCE NO. 2022-09-13-1504

### **AN ORDINANCE OF THE CITY OF STOCKTON APPROVING THE EAST BAY COMMUNITY ENERGY AUTHORITY JOINT POWERS AGREEMENT AND AUTHORIZING IMPLEMENTATION OF ITS COMMUNITY CHOICE AGGREGATION PROGRAM**

WHEREAS, The City of Stockton has an interest in achieving greater local involvement over the provision of electricity supply services, competitive electric rates, the development of local renewable energy projects, reduced greenhouse gas emissions, and the wider implementation of energy conservation and efficiency projects and programs; and

WHEREAS, Assembly Bill 117 codified as Public Utilities Code Section 366.2 (the "Act"), 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 (CCA"); and

WHEREAS, The Act allows a CCA program to be carried out under a joint powers agreement entered into by entities that each have capacity to implement a CCA program individually. The joint powers agreement structure reduces the risks of implementing a CCA program by immunizing the financial assets of participants; and

WHEREAS, The City of Stockton CCA feasibility study and evaluation showed that implementing a program was likely to provide multiple benefits to the residents, including the following:

1. Providing customers a choice of power providers;
2. Increasing local control over energy rates and other energy-related matters;
3. Providing electric rates that are competitive with those provided by the incumbent utility;
4. Reducing greenhouse gas emissions arising from electricity use;
5. Increasing local and regional renewable generation capacity;
6. Increasing energy conservation and efficiency projects and programs;
7. Encouraging local economic and employment benefits through energy conservation and efficiency projects.

WHEREAS, Representatives from Alameda County and Alameda County cities have developed the East Bay Community Energy Authority Joint Powers Agreement ("Joint Powers Agreement"), attached hereto as Exhibit A. The Joint Powers Agreement creates the East Bay Community Energy Authority ("Authority") which will govern and operate the CCA program. The County and a majority of major Alameda County cities have elected to participate in the CCA program by executing the Joint Powers Agreement and adopting an ordinance electing to implement a CCA program, as required by Public Utilities Code Section 366.2(c)(12), and

WHEREAS, The Authority has entered into agreements with electric power suppliers and other service providers and, based upon those agreements, the Authority has provided electrical power to residents and businesses at rates that are competitive with those of the incumbent utility. Upon the California Public Utilities Commission's certification of the implementation plan prepared by the Authority, the Authority has provided service to customers within its member jurisdictions. Under Public Utilities Code Section 366.2, customers have the right to opt-out of a CCA program and continue to receive service from the incumbent utility. Customers who wish to continue to receive service from the incumbent utility will be able to request to do so at any time, and

WHEREAS, The Authority made a presentation to City Council at its November 9, 2021, meeting; showed interest in exploring potential services to the City of Stockton; and the City Council authorized staff to investigate participation in the CCA program with the Authority, and

WHEREAS, Concurrent with the introduction of this ordinance, the City Council considered a resolution that authorized the City Manager to execute the East Bay Community Energy Authority Joint Powers Agreement;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

**SECTION 1. FINDINGS.**

Based upon the findings set forth hereinabove, the City Council elects to participate in, and approves the implementation of a Community Choice Aggregation program within the City of Stockton's jurisdiction by and through the East Bay Community Energy Authority.

**SECTION 2. ENVIRONMENTAL.**

The passage of this ordinance is not a project under the California Environmental Quality Act (CEQA) because it does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Sections 15378, therefore, not subject to CEQA pursuant to CEQA Guidelines Section 15060.

**SECTION 3. SEVERABILITY.**

If any part of this ordinance is declared invalid by a court, such validity shall not affect any of the remaining parts.

**SECTION 4. PUBLICATION.**

This ordinance shall be published once in a newspaper of general circulation of the City of Stockton within fifteen days after its adoption.

**SECTION 4. EFFECTIVE DATE.**

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: 9/13/2022

EFFECTIVE: 10/13/2022

ATTEST:



ELIZA R. GARZA, CMC  
City Clerk of the City of Stockton

  
\_\_\_\_\_  
KEVIN J. LINCOLN II  
Mayor of the City of Stockton

RESOLUTION NO. \_\_

A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CITY OF  
STOCKTON TO BECOME A PARTY TO THE JOINT POWERS AGREEMENT AND MEMBER  
OF EBCE

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

WHEREAS, on September 24, 2002, the Governor of California 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 ("CCA"); and,

WHEREAS, the Act expressly authorizes participation in a CCA program through a joint powers agency; and on December 1, 2016, the East Bay Community Energy Authority ("EBCE" or "the Agency") was formed under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions; and

WHEREAS, on November 8, 2017, the California Public Utilities Commission ("CPUC") certified the "Implementation Plan" of EBCE, confirming EBCE's compliance with the requirements of the Act; and

WHEREAS, Section 3.1 of the EBCE Joint Powers Agreement ("Agreement") sets forth the procedures for the addition of new member jurisdictions; and

WHEREAS, on November 20, 2019, EBCE's Board of Directors unanimously authorized the cities of Tracy, Pleasanton, and Newark to become new parties to the Agreement with EBCE service beginning in those jurisdictions in April 2021; and

WHEREAS, on December 20, 2019, EBCE submitted an updated "Implementation Plan" to the CPUC reflecting the membership of the cities of Tracy, Pleasanton, and Newark to the Agreement and EBCE service area; and

WHEREAS, including new member jurisdictions within EBCE's Joint Powers Authority can benefit EBCE communities, customers, and the general public by 1) expanding access to competitively-priced renewable energy, innovative programs and equitable policies; 2) achieving greater economies of scale while accelerating the

reduction of greenhouse gas emissions; 3) enhancing EBCE's financial strength through increased revenues and reserves; 4) diversifying the Agency's service area while advancing environmental justice in historically marginalized communities; 5) empowering local stakeholders with more direct representation before State-level regulators and elected officials; and 6) inspiring more cities and counties to explore public power options in California and nationwide; and

**WHEREAS**, on September 13, 2022, through a unanimous vote of its City Council, the City of Stockton expressed its intention of joining EBCE and participating in the Agency's CCA program by passing a resolution to request membership in EBCE and introducing an ordinance to implement a CCA program as required by Public Utilities Code section 366.2; and

**WHEREAS**, EBCE conducted a quantitative analysis to examine the cost of service to the City of Stockton, which indicated positive financial and environmental benefits from their membership to the prospective City as well as to EBCE's current communities and customer base; and,

**WHEREAS**, per CPUC rules, prospective member jurisdictions must join EBCE before the end of calendar year 2022 to begin customer enrollments in EBCE's service options by 2024; and

**WHEREAS**, Section 3.1 of the Agreement requires the Board of Directors to adopt a resolution authorizing the membership of additional member jurisdictions, and specifying the membership payment and conditions for membership, if any.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:**

**Section 1.** The City of Stockton is hereby authorized to become a party to the Agreement and a member of EBCE, subject to the following conditions:

(a) The Community Choice Aggregation ordinance adopted by the City of Stockton becoming effective.

(b) The execution of the Agreement by the duly authorized official of the City of Stockton.

**Section 2.** Exhibits A, B, and C of the Agreement are hereby revised to include updated energy load information and to include Stockton as a member of EBCE. Revised Exhibits are attached to this agreement and incorporated herein.

**Section 3.** The CEO and General Counsel are hereby authorized to take all necessary implementing actions to effectuate this Resolution, including but not limited to filing the revised Agreement with the Secretary of State and applicable Local Agency Formation Commissions, as required by state law.

ADOPTED AND APPROVED this 21<sup>st</sup> day of September, 2022.

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Dianne Martinez, Chair

ATTEST:

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Adrian Bankhead, Secretary



**East Bay Community Energy Authority**

**- Joint Powers Agreement –**

Effective December 1, 2016  
As amended by Resolution No. 2018-23 dated June 20, 2018

Among The Following Parties:

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Tracy

City of Union City

**EAST BAY COMMUNITY ENERGY AUTHORITY**  
**JOINT POWERS AGREEMENT**

This Joint Powers Agreement (“Agreement”), effective as of December 1, 2016, 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 A (“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 gas emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 1.1.16 below) entering into this Agreement include securing electrical energy supply for customers in participating jurisdictions, addressing climate change by reducing energy related greenhouse gas emissions, promoting electrical rate price stability, and fostering local economic benefits such as jobs creation, community energy programs and local power development. 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 State, regional and local solar and wind energy production.
4. The Parties desire to establish a separate public agency, known as the East Bay Community 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 a Community Choice Aggregation program 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.
6. By establishing the Authority, the Parties seek to:
  - (a) Provide electricity rates that are lower or competitive with those offered by PG&E for similar products;

- (b) Offer differentiated energy options (e.g. 33% or 50% qualified renewable) for default service, and a 100% renewable content option in which customers may “opt-up” and voluntarily participate;
- (c) Develop an electric supply portfolio with a lower greenhouse gas (GHG) intensity than PG&E, and one that supports the achievement of the parties’ greenhouse gas reduction goals and the comparable goals of all participating jurisdictions;
- (d) Establish an energy portfolio that prioritizes the use and development of local renewable resources and minimizes the use of unbundled renewable energy credits;
- (e) Promote an energy portfolio that incorporates energy efficiency and demand response programs and has aggressive reduced consumption goals;
- (f) Demonstrate quantifiable economic benefits to the region (e.g. union and prevailing wage jobs, local workforce development, new energy programs, and increased local energy investments);
- (g) Recognize the value of workers in existing jobs that support the energy infrastructure of Alameda County and Northern California. The Authority, as a leader in the shift to a clean energy, commits to ensuring it will take steps to minimize any adverse impacts to these workers to ensure a “just transition” to the new clean energy economy;
- (h) Deliver clean energy programs and projects using a stable, skilled workforce through such mechanisms as project labor agreements, or other workforce programs that are cost effective, designed to avoid work stoppages, and ensure quality;
- (i) Promote personal and community ownership of renewable resources, spurring equitable economic development and increased resilience, especially in low income communities;
- (j) Provide and manage lower cost energy supplies in a manner that provides cost savings to low-income households and promotes public health in areas impacted by energy production; and
- (k) Create an administering agency that is financially sustainable, responsive to regional priorities, well managed, and a leader in fair and equitable treatment of employees through adopting appropriate best practices employment policies, including, but not limited to, promoting efficient consideration of petitions to unionize, and providing appropriate wages and benefits.

## **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 below, unless the context requires otherwise.

- 1.1.1** “AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.
- 1.1.2** “Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*)
- 1.1.3** “Agreement” means this Joint Powers Agreement.
- 1.1.4** “Annual Energy Use” has the meaning given in Section 1.1.23.
- 1.1.5** “Authority” means the East Bay Community Energy Authority established pursuant to this Joint Powers Agreement.
- 1.1.6** “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.
- 1.1.7** “Board” means the Board of Directors of the Authority.
- 1.1.8** “Community Choice Aggregation” or “CCA” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.
- 1.1.9** “CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.4 and 5.1.
- 1.1.10** “Days” shall mean calendar days unless otherwise specified by this Agreement.
- 1.1.11** “Director” means a member of the Board of Directors representing a Party, including an alternate Director.
- 1.1.12** “Effective Date” means the date on which this Agreement shall become effective and the East Bay Community Energy Authority shall exist as a separate public agency, as further described in Section 2.1.

- 1.1.13** “Ex Officio Board Member” means a non-voting member of the Board of Directors as described in Section 4.2.2. The Ex Officio Board Member may not serve on the Executive Committee of the Board or participate in closed session meetings of the Board.
- 1.1.14** “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.
- 1.1.15** “Initial Costs” means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority’s initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. The Board shall determine the termination date for Initial Costs.
- 1.1.16** “Initial Participants” means, for the purpose of this Agreement the County of Alameda, the Cities of Albany, Berkeley, Emeryville, Oakland, Piedmont, San Leandro, Hayward, Union City, Fremont, Dublin, and Livermore.
- 1.1.17** “Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.
- 1.1.18** “Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.
- 1.1.19** “Party” means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.
- 1.1.20** “Percentage Vote” means a vote taken by the Board pursuant to Section 4.12.1 that is based on each Party having one equal vote.
- 1.1.21** “Total Annual Energy” has the meaning given in Section 1.1.23.
- 1.1.22** “Voting Shares Vote” means a vote taken by the Board pursuant to Section 4.12.2 that is based on the voting shares of each Party described in Section 1.1.23 and set forth in Exhibit C to this Agreement. A Voting Shares vote cannot take place on a matter unless the matter first receives an affirmative or tie Percentage Vote in the manner required by Section 4.12.1 and three or more Directors immediately thereafter request such vote.

**1.1.23** “Voting Shares Formula” means the weight applied to a Voting Shares Vote and is determined by the following formula:

(Annual Energy Use/Total Annual Energy) multiplied by 100, where (a) “Annual Energy Use” means (i) with respect to the first two years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWh”), within the Party’s respective jurisdiction and (ii) with respect to the period after the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, 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 B and the initial voting shares are designated in Exhibit C. Both Exhibits B and C shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year subject to the approval of the Board.

**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: List of the Parties
- Exhibit B: Annual Energy Use
- Exhibit C: Voting Shares

**1.3** **Revision of Exhibits.** The Parties agree that Exhibits A, B and C 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 EAST BAY COMMUNITY ENERGY AUTHORITY**

**2.1** **Effective Date and Term.** This Agreement shall become effective and East Bay Community Energy Authority shall exist as a separate public agency on December 1, 2016, provided that this Agreement is executed on or prior to such date by at least three Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(12). 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 7.3, subject to the rights of the Parties to withdraw from the Authority.

**2.2** **Initial Participants.** Until December 31, 2016, 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)(12) 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 that 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 East Bay Community Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing boards of all 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 and any other powers granted to the Authority under state law to participate as a group in the CCA Program pursuant to Public Utilities Code Section 366.2(c)(12); 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.

**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** to make and enter into contracts, including those relating to the purchase or sale of electrical energy or attributes thereof;
- 2.5.2** to employ agents and employees, including but not limited to a Chief Executive Officer and General Counsel;
- 2.5.3** to acquire, contract, manage, maintain, and operate any buildings, works or improvements, including electric generating facilities;
- 2.5.4** to acquire property 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** to lease any property;
- 2.5.6** to sue and be sued in its own name;
- 2.5.7** to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 *et seq.* and authority under the Act;

- 2.5.8 to form subsidiary or independent corporations or entities, if appropriate, to carry out energy supply and energy conservation programs at the lowest possible cost consistent with the Authority's CCA Program implementation plan, risk management policies, or to take advantage of legislative or regulatory changes;
- 2.5.9 to issue revenue bonds and other forms of indebtedness;
- 2.5.10 to apply for, accept, and receive all licenses, permits, grants, loans or other assistance from any federal, state or local public agency;
- 2.5.11 to 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;
- 2.5.12 to adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority ("Operating Rules and Regulations");
- 2.5.13 to make and enter into service, energy and any other agreements 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; and
- 2.5.14 to negotiate project labor agreements, community benefits agreements and collective bargaining agreements with the local building trades council and other interested parties.

**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 City of Emeryville and any other restrictions on exercising the powers of the Authority that may be adopted by the Board.

**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 and comply with the California Environmental Quality Act ("CEQA").

**2.8 Compliance with the Brown Act.** The Authority and its officers and employees shall comply with the provisions of the Ralph M. Brown Act, Government Code Section 54950 *et seq.*

**2.9 Compliance with the Political Reform Act and Government Code Section 1090.** The Authority and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 *et seq.*) and Government Code Section 1090 *et seq.*, and shall adopt a Conflict of Interest Code pursuant to Government Code Section 87300. The Board of



Directors may adopt additional conflict of interest regulations in the Operating Rules and Regulations.

**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 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 a majority of all Directors of the entire Board satisfying the requirements described in Section 4.12, 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)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership fee, if any, and (e) satisfaction of any conditions established by the Board.

**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 of Directors.** The Directors shall be appointed 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 regular Director shall be a member of the governing body of the Party at the time of appointment but may continue to serve as a Director following his/her term as a member of the Party's governing body until a new Director is appointed pursuant to the timing in Section 4.3. The person appointed and designated as the alternate Director shall also be a member of the governing body of a Party and the alternate may continue to serve

as an alternate following his/her term as a member of a Party's governing body until a new alternate is appointed pursuant to the timing in Section 4.3.

**4.2.2** The Board shall also include one non-voting ex officio member as defined in Section 1.1.13 ("Ex Officio Board Member"). The Chair of the Community Advisory Committee, as described in Section 4.9 below, shall serve as the Ex Officio Board Member. The Vice Chair of the Community Advisory Committee shall serve as an alternate Ex Officio Board Member when the regular Ex Officio Board Member is absent from a Board meeting.

**4.2.3** The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.12 may include rules regarding Directors, such as meeting attendance requirements. No Party shall be deprived of its right to seat a Director on the Board.

**4.3 Term of Office.** Each regular and alternate 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 the time. If at any time a vacancy occurs on the Board because a Director is no longer a member of a Party's governing body, the Party shall appoint a replacement to fill the position of the previous Director in accordance with the provisions of Section 4.2.1 within ninety (90) days of the date that such Director is no longer a member of a Party's governing body or for any other reason that such position becomes vacant.

**4.4 Quorum.** A majority of the Directors of the entire Board shall constitute a quorum, except that less than a quorum may adjourn a meeting 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. Board approval shall be required for any of the following actions, which are defined as "Essential Functions":

**4.5.1** The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.

**4.5.2** The hiring of a Chief Executive Officer and General Counsel.

**4.5.3** The appointment or removal of an officer.

**4.5.4** The adoption of the Annual Budget.

**4.5.5** The adoption of an ordinance.

**4.5.6** The initiation of resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant or cross petitioner, or intervenor; provided, however, that the Chief

Executive Officer or General Counsel, on behalf of the Authority, may intervene in, become party to, or file comments with respect to any proceeding pending at the California Public Utilities Commission, the Federal Energy Regulatory Commission, or any other administrative agency, without approval of the Board. The Board shall adopt Operating Rules and Regulations governing the Chief Executive Officer and General Counsel's exercise of authority under this Section 4.5.6.

**4.5.7** The setting of rates for power sold by the Authority and the setting of charges for any other category of service provided by the Authority.

**4.5.8** Termination of the CCA Program.

**4.6** **Executive Committee.** The Board shall 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 Section 4.5 and the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.12 to adopt and amend the Operating Rules and Regulations or its Essential Functions listed in Section 4.5. After the Executive Committee meets or otherwise takes action, it shall, as soon as practicable, make a report of its activities at a meeting of the Board.

**4.7** **Director Compensation.** Directors shall receive a stipend of \$100 per meeting, as adjusted to account for inflation, as provided for in the Authority's Operating Rules and Regulations.

**4.8** **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. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

**4.9** **Community Advisory Committee.** The Board shall establish a Community Advisory Committee consisting of nine members and three alternates, none of whom may be voting members of the Board. One alternate from the pool of three alternates may take the place of a Community Advisory Member when a Community Advisory Committee member cannot attend a meeting. The Community Advisory Committee member that is unable to attend a meeting must notify the alternates of their inability to attend and obtain confirmation that one of the Alternates can attend the Community Advisory Committee meeting in that member's place. The function of the Community Advisory Committee shall be to advise the Board of Directors on all subjects related to the operation of the CCA Program as set forth in a work plan adopted by the Board of Directors from time to time, with the exception of personnel and litigation decisions. The Community Advisory Committee is advisory only, and shall not have decision making authority, or receive any delegation of authority from the Board of Directors. The Board shall publicize the opportunity to serve on the Community Advisory Committee and shall

appoint members of the Community Advisory Committee and Alternates from those individuals expressing interest in serving, and who represent a diverse cross-section of interests, skill sets and geographic regions. Members of the Community Advisory Committee shall serve staggered four-years terms (the first term of three of the members shall be two years, and four years thereafter), which may be renewed. A member or Alternate of the Community Advisory Committee may be removed by the Board of Directors by majority vote. The Board of Directors shall determine whether the Community Advisory Committee members will receive a stipend or be entitled to reimbursement of expenses.

**4.10 Chief Executive Officer.** The Board of Directors shall appoint a Chief Executive Officer for the Authority, who shall be responsible for the day-to-day operation and management of the Authority and the CCA Program. The Chief Executive Officer may exercise all powers of the Authority, including the power to hire, discipline and terminate employees as well as the power to approve any agreement, if the expenditure is authorized in the Authority's approved budget, except the powers specifically set forth in Section 4.5 or those powers which by law must be exercised by the Board of Directors. The Board of Directors shall provide procedures and guidelines for the Chief Executive Officer exercising the powers of the Authority in the Operating Rules and Regulations.

**4.11 General Counsel.** The Board of Directors shall appoint a General Counsel for the Authority, who shall be responsible for providing legal advice to the Board of Directors and overseeing all legal work for the Authority.

**4.12 Board Voting.**

**4.12.1 Percentage Vote.** Except when a supermajority vote is expressly required by this Agreement or the Operating Rules and Regulations, action of the Board on all matters shall require an affirmative vote of a majority of all Directors on the entire Board (a "Percentage Vote" as defined in Section 1.1.20). A supermajority vote is required by this Agreement for the matters addressed by Section 8.4. When a supermajority vote is required by this Agreement or the Operating Rules and Regulations, action of the Board shall require an affirmative Percentage Vote of the specified supermajority of all Directors on the entire Board. No action can be taken by the Board without an affirmative Percentage Vote. Notwithstanding the foregoing, in the event of a tie in the Percentage Vote, an action may be approved by an affirmative "Voting Shares Vote," as defined in Section 1.1.22, if three or more Directors immediately request such vote.

**4.12.2 Voting Shares Vote.** In addition to and immediately after an affirmative percentage vote, three or more Directors may request that, a vote of the voting shares shall be held (a "Voting Shares Vote" as defined in Section 1.1.22). To approve an action by a Voting Shares Vote, the corresponding voting shares (as defined in Section 1.1.23 and Exhibit C) of all Directors voting in the affirmative shall exceed 50% of the voting share of all Directors on the entire Board, or such other higher voting shares percentage expressly required by this Agreement or the Operating Rules

and Regulations. In the event that any one Director has 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. When a voting shares vote is held, action by the Board requires both an affirmative Percentage Vote and an affirmative Voting Shares Vote. Notwithstanding the foregoing, in the event of a tie in the Percentage Vote, an action may be approved on an affirmative Voting Shares Vote. When a supermajority vote is required by this Agreement or the Operating Rules and Regulations, the supermajority vote is subject to the Voting Share Vote provisions of this Section 4.12.2, and the specified supermajority of all Voting Shares is required for approval of the action, if the provision of this Section 4.12.2 are triggered.

**4.13 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 and Emergency meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.

**4.14 Officers.**

**4.14.1 Chair and Vice Chair.** Prior to the end of the fiscal year, the Directors shall elect, 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 newly elected Chair and Vice Chair shall commence serving in those capacities on July 1, except that no separate election shall be required for Fiscal Year 2018-2019 and the Chair and Vice Chair elected in 2018 shall continue to serve until the end of the 2018-2019 Fiscal Year. The Chair and Vice Chair shall hold office for one year and serve no more than two consecutive terms, however, the total number of terms a Director may serve as Chair or Vice Chair is not limited. The office of either the Chair or Vice Chair shall be declared vacant and the Board shall make a new selection if: (a) the person serving dies, resigns, or ceases to be a member of the governing body of a Party that person represents, except if the person is continuing to serve on the Board after that person no longer serves on the governing body in conformance with section 4.2.1; (b) the Party that the person represents removes the person as its representative on the Board, or (c) the Party that the person represents withdraws from the Authority pursuant to the provisions of this Agreement.

**4.14.2 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.

**4.14.3 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. The same person may not simultaneously hold both the office of Treasurer and the office of the Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made annually by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depositary 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.

**4.15 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 an Administrative Services Agreement. The appointed administrative services provider may be one of the Parties. 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.

**4.16 Operational Audit.** The Authority shall commission an independent agent to conduct and deliver at a public meeting of the Board an evaluation of the performance of the CCA Program relative to goals for renewable energy and carbon reductions. The Authority shall approve a budget for such evaluation and shall hire a firm or individual that has no other direct or indirect business relationship with the Authority. The evaluation shall be conducted at least once every two years.

## **ARTICLE 5**

### **IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS**

#### **5.1 Implementation of the CCA Program.**

**5.1.1 Enabling Ordinance.** Prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code

Section 366.2(c)(12) 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 4.12.

**5.1.3 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 Other Authority Documents.** The Parties acknowledge and agree that the operations of the Authority will be implemented through various documents duly adopted by the Board through Board resolution or minute action, 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.

**5.3 Integrated Resource Plan.** The Authority shall cause to be prepared an Integrated Resource Plan in accordance with CPUC regulations that will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with the State Renewable Portfolio standard and customer rate competitiveness. The Authority shall prioritize the development of energy projects in Alameda and adjacent counties. Principal aspects of its planned operations shall be in a Business Plan as outlined in Section 5.4 of this Agreement.

**5.4 Business Plan.** The Authority shall cause to be prepared a Business Plan, which will include a roadmap for the development, procurement, and integration of local renewable energy resources as outlined in Section 5.3 of this Agreement. The Business Plan shall include a description of how the CCA Program will contribute to fostering local economic benefits, such as job creation and community energy programs. The Business Plan shall identify opportunities for local power development and how the CCA Program can achieve the goals outlined in Recitals 3 and 6 of this Agreement. The Business Plan shall include specific language detailing employment and labor standards that relate to the execution of the CCA Program as referenced in this Agreement. The Business Plan shall identify clear and transparent marketing practices to be followed by the CCA Program, including the identification of the sources of its electricity and explanation of the various types of electricity procured by the Authority. The Business Plan shall cover the first five (5) years of the operation of the CCA Program. Progress on the implementation of the Business Plan shall be subject to annual public review.

**5.5 Labor Organization Neutrality.** The Authority shall remain neutral in the event its employees, and the employees of its subcontractors, if any, wish to unionize.

**5.6 Renewable Portfolio Standards.** The Authority shall provide its customers renewable energy primarily from Category 1 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCA Program. The Authority shall not procure energy from Category 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) exceeding 50% of the State law requirements, to achieve its renewable portfolio goals. However, for Category 3 RECs associated with generation facilities located within its service jurisdiction, the limitation set forth in the preceding sentence shall not apply.

## **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.

**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 Funding of Initial Costs.** The County shall fund the Initial Costs of establishing and implementing the CCA Program. In the event that the CCA Program becomes operational, these Initial Costs paid by the County and any specified interest shall be included in the customer charges for



electric services to the extent permitted by law, and the County 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 shall not be entitled to any reimbursement of the Initial Costs.

- 6.3.4 Additional Contributions and Advances.** Pursuant to Government Code Section 6504, the Parties may in their sole discretion make financial contributions, loans or advances to the Authority for the purposes of the Authority set forth in this Agreement. The repayment of such contributions, loans or advances will be on the written terms agreed to by the Party making the contribution, loan or advance and the Authority.

## **ARTICLE 7**

### **WITHDRAWAL AND TERMINATION**

#### **7.1 Withdrawal.**

- 7.1.1 General Right to Withdraw.** 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 180 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.
- 7.1.2 Withdrawal Following Amendment.** Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement provided that the requirements of this Section 7.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in the Authority effective 180 days after the Board approves 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.
- 7.1.3 The Right to Withdraw Prior to Program Launch.** After receiving bids from power suppliers for the CCA Program, the Authority must provide to the Parties a report from the electrical utility consultant retained by the Authority comparing the Authority's total estimated electrical rates, the estimated greenhouse gas emissions rate and the amount of estimated renewable energy to be used with that of the incumbent utility. Within 30 days after receiving this report, through its City Manager or a person expressly authorized by the Party, any Party may immediately withdraw its membership in the Authority by providing written notice of withdrawal to the Authority if the report determines that any one of the following

conditions exists: (1) the Authority is unable to provide total electrical rates, as part of its baseline offering to customers, that are equal to or lower than the incumbent utility, (2) the Authority is unable to provide electricity in a manner that has a lower greenhouse gas emissions rate than the incumbent utility, or (3) the Authority will use less qualified renewable energy than the incumbent utility. Any Party who withdraws from the Authority pursuant to this Section 7.1.3 shall not be entitled to any refund of the Initial Costs it has paid to the Authority prior to the date of withdrawal unless the Authority is later terminated pursuant to Section 7.3. In such event, any Initial Costs not expended by the Authority shall be returned to all Parties, including any Party that has withdrawn pursuant to this section, in proportion to the contribution that each made. Notwithstanding anything to the contrary in this Agreement, any Party who withdraws pursuant to this section shall not be responsible for any liabilities or obligations of the Authority after the date of withdrawal, including without limitation any liability arising from power purchase agreements entered into by the Authority.

**7.2 Continuing Liability After Withdrawal; Further Assurances; Refund.** A Party that withdraws its membership in the Authority under either Section 7.1.1 or 7.1.2 shall be responsible for paying its fair share of costs incurred by the Authority resulting from the Party's withdrawal, including costs from the resale of power contracts by the Authority to serve the Party's load and any similar costs directly attributable to the Party's withdrawal, such costs being limited to those contracts executed while the withdrawing Party was a member, and administrative costs associated thereto. The Parties agree that such costs shall not constitute a debt of the withdrawing Party, accruing interest, or having a maturity date. 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 costs described above. Any amount of the Party's funds held by the Authority for the benefit of the Party that are not required to pay the Party's costs described above shall be returned to the Party. 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. A withdrawing party has the right to continue to participate in Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party until the withdrawal's effective date.

**7.3 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.

**7.4 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 Authority 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. Before exercising any remedy provided by law, a Party or the Parties and the Authority shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and the Authority. The Parties agree that each Party may specifically enforce this section 8.1. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 120 days after the demand for mediation is made, any Party and the Authority may pursue any remedies provided by law.

**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 the Board deems necessary to protect the interests of the Authority, the Parties and the public. Such insurance coverage shall name the Parties and their respective Board or Council members, officers, agents and employees as additional insureds. 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 in writing by a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.12. Except that, any amendment to the voting provisions in Section 4.12 may only be made by a three-quarters affirmative vote of the entire Board. The Authority shall provide written notice to the Parties at least 30 days in advance of any proposed amendment being considered by the Board. If the proposed amendment is adopted by the Board, the Authority shall provide prompt written notice to all Parties of the effective date of such amendment along with a copy of the amendment.

**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 72 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. In addition, a duplicate copy of all notices provided pursuant to this section shall be provided to the Director and alternate Director for each Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties. All notices required hereunder shall be delivered to:

The County of Alameda

Director, Community Development Agency  
224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to [PARTY No. \_\_\_\_]

Office of the City Clerk

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Manager/Administrator

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Attorney

\_\_\_\_\_  
\_\_\_\_\_

if to [PARTY No.\_\_\_\_ ]

Office of the City Clerk

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Manager/Administrator

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Attorney

\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 9**  
**SIGNATURE**

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

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

Name: \_\_\_\_\_

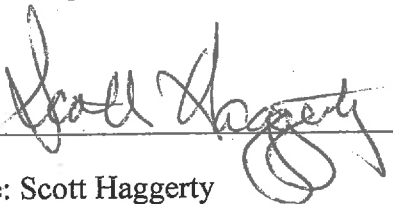
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Party: \_\_\_\_\_

**ARTICLE 9**  
**SIGNATURE**

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

By: 

Name: Scott Haggerty

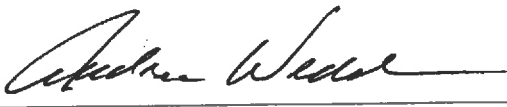
Title: Board President

Date: January 4, 2017

Party: County of Alameda

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: 

Andrea L. Weddle  
Chief Assistant County Counsel

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to [PARTY No. \_\_\_\_]

Office of the City Clerk

Eileen Harrington, Deputy  
Eileen Harrington 12/2/16

Office of the City Manager/Administrator

Isabelle Crumpley  
Isabelle Crumpley

Office of the City Attorney

Craig Labadie  
Craig Labadie

if to [PARTY No. \_\_\_\_]

Office of the City Clerk

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Manager/Administrator

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Attorney

\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 9**  
**SIGNATURE**

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

By: *D. Williams-Ridley*

Name: *Dee Williams-Ridley*

Title: *City Manager*

Date: *December 1, 2016*

Party: *City of Berkeley*

APPROVED AS TO FORM

By *Michael Woo*  
CITY ATTORNEY FOR THE  
CITY OF BERKELEY

Registered by:

*Ann-Monica Hagan*  
City Treasurer

ATTEST for the City of Berkeley

*Maui Sprinell*  
City Clerk



With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to [PARTY No. \_\_\_\_]

City of Dublin  
City Manager  
100 Civic Plaza  
Dublin, CA 94568

Meyers Nave  
City Attorney  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607

if to [PARTY No. \_\_\_\_ ]

Office of the City Clerk

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Office of the City Manager/Administrator

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Office of the City Attorney


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**ARTICLE 9**  
**SIGNATURE**

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

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

  
Christopher L. Foss, City Manager  
City of Dublin

Date: \_\_\_\_\_

12/1/10

Party: \_\_\_\_\_

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to: City of Emeryville

Office of the City Clerk  
1333 Park Avenue  
Emeryville, CA 94608

Office of the City Manager  
1333 Park Avenue  
Emeryville, CA 94608

Office of the City Attorney  
1333 Park Avenue  
Emeryville, CA 94608

if to [PARTY No. \_\_\_\_\_ ]

Office of the City Clerk

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Office of the City Manager/Administrator

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Office of the City Attorney

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**ARTICLE 9**  
**SIGNATURE**

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

By: Carolyn Lehr  
Name: Carolyn Lehr  
Title: City Manager  
Date: 12-1-16  
Party: City of Emeryville

APPROVED AS TO FORM:

Michael A. Guina  
Michael A. Guina, City Attorney

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to [PARTY No. \_\_\_\_]

City of Fremont

Office of the City Clerk  
3300 Capitol Ave., Building A  
Fremont, CA 94538

Office of the City Manager/Administrator  
3300 Capitol Ave., Building A  
Fremont, CA 94538

Office of the City Attorney  
3300 Capitol Ave., Building A  
Fremont, CA 94538

if to [PARTY No. \_\_\_\_ ]

Office of the City Clerk

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Manager/Administrator

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Attorney

\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 9**  
**SIGNATURE**

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

By: 

Name:     **Jessica von Borck**    

Title:     **Assistant City Manager**    

Date:     **12-1-16**    

Party: \_\_\_\_\_

**APPROVED AS TO FORM:**



**Debra S. Margolis**  
**Assistant City Attorney**

The County of Alameda

Director, Community Development Agency  
224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

City of Hayward

Office of the City Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541

With a copy to:

Office of the City Attorney  
City of Hayward  
777 B Street  
Hayward, CA 94541

**ARTICLE 9**  
**SIGNATURE**

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

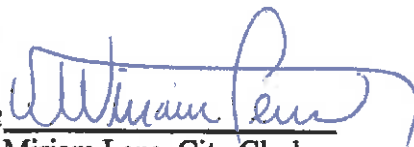
**CITY OF HAYWARD, A Municipal Corporation**

Date of Approval: 12/16/2016



\_\_\_\_\_  
Kelly McAdoo, City Manager

ATTEST:



\_\_\_\_\_  
Miriam Lens, City Clerk

**APPROVED AS TO FORM**



\_\_\_\_\_  
Michael Lawson, City Attorney

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to City of Livermore

City Clerk's Office  
1052 South Livermore Avenue  
Livermore, CA 94550

With a copy to:

Public Works Department  
Attn: Public Works Manager  
3500 Robertson Park Road  
Livermore, CA 94550



**ARTICLE 9**  
**SIGNATURE**

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

By: Marc Roberts

Name: Marc Roberts

Title: City Manager

Date: 1/4/2017

Party: City of Livermore

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be a stylized 'J' or similar character, written over a horizontal line.

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to [PARTY No. \_\_\_\_]

Office of the City Clerk  
1 Frank H. O'Connell Plaza  
Oakland, CA 94612

Office of the City Manager/Administrator  
1 Frank H. O'Connell Plaza  
Oakland, CA 94612

Office of the City Attorney  
\_\_\_\_\_  
\_\_\_\_\_

if to [PARTY No. \_\_\_\_]

Office of the City Clerk  
\_\_\_\_\_  
\_\_\_\_\_

Office of the City Manager/Administrator  
\_\_\_\_\_  
\_\_\_\_\_

Office of the City Attorney  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 9**  
**SIGNATURE**

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

By: *CL Cappio for SBL*

Name: CLAUDIA CAPPIO

Title: ASST CITY ADMINISTRATOR

Date: 12/07/16

Party: CITY OF OAKLAND

**ARTICLE 9**  
**SIGNATURE**

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

By: Jeff Wieler

Name: Jeffrey Wieler

Title: Mayor

Date: 12/19/16

Party: City of Piedmont

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 72 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. In addition, a duplicate copy of all notices provided pursuant to this section shall be provided to the Director and alternate Director for each Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties. All notices required hereunder shall be delivered to:

The County of Alameda

Director, Community Development Agency  
224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to the City of San Leandro

Office of the City Clerk  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

Office of the City Manager/Administrator  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577  
Office of the City Attorney  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

**ARTICLE 9**  
**SIGNATURE**

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

CITY OF SAN LEANDRO



\_\_\_\_\_

Chris Zapata, City Manager

Attest:



\_\_\_\_\_

Tamika Greenwood, City Clerk

Approved as to Form:



\_\_\_\_\_

Richard D. Pio Roda, City Attorney

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

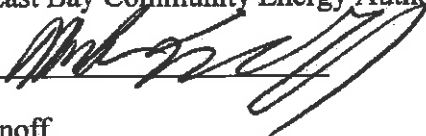
if to The City of Union City [PARTY No. 12]

Office of the City Clerk

Anna M. Brown, City Clerk  
34009 Alvarado-Niles Road  
Union City, CA 94587

**ARTICLE 9**  
**SIGNATURE**

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

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

Name: Mark Evanoff \_\_\_\_\_

Title: Deputy City Manager \_\_\_\_\_

Date: December 5, 2016 \_\_\_\_\_

Party: The City of Union City \_\_\_\_\_



East Bay Community Energy (EBCE)  
1999 Harrison Street, Suite 800  
Oakland CA 94612

if to Newark

Office of the City Clerk  
37101 Newark Boulevard  
Newark, CA 94560

Office of the City Manager/Administrator  
37101 Newark Boulevard  
Newark, CA 94560

Office of the City Attorney  
37101 Newark Boulevard  
Newark, CA 94560

**ARTICLE 9**  
**SIGNATURE**

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

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

Name: David J. Benoun

Title: City Manager

Date: November 18, 2019

Party: CITY OF NEWARK


**ARTICLE 9**  
**SIGNATURE**

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

**CITY OF PLEASANTON, a municipal corporation**

Date: November 27, 2019

  
\_\_\_\_\_  
Nelson Fialho, City Manager


ATTEST:   
\_\_\_\_\_  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

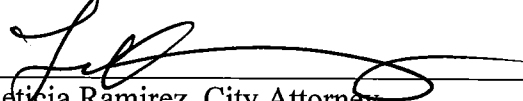
  
\_\_\_\_\_  
*for* Daniel G. Sodergren, City Attorney

**ARTICLE 9**  
**SIGNATURE**

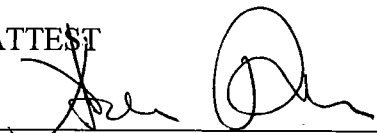
IN WITNESS WHEREOF, the Parties hereto have executed this Joint Powers Agreement establishing the East Bay Community Energy Authority.

By:   
Name: Robert Rickman  
Title: Mayor  
Date: 11-7-19  
Party: City of Tracy

APPROVED AS TO FORM

  
Leticia Ramirez, City Attorney

ATTEST

  
Adrienne Richardson, City Clerk

**EXHIBIT A**

**-LIST OF THE PARTIES**

This Exhibit A is effective as of December 14, 2019.

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Tracy

City of Union City

**EXHIBIT B****ANNUAL ENERGY USE**

This Exhibit B is effective as of December 14, 2019.

<b>Party</b>	<b>kWh (2018*)</b>
Albany	63,772,461
Berkeley	508,448,567
Dublin	297,210,239
Emeryville	197,077,013
Fremont	1,665,481,673
Hayward	984,424,723
Livermore	509,943,277
Newark**	419,357,962
Oakland	1,962,783,117
Piedmont	30,163,670
Pleasanton	520,214,314
San Leandro	556,074,739
Tracy	527,997,761
Unincorporated County	564,393,280
Union City	387,369,206
<hr/>	
Total	9,194,712,002

\*All data provided by PG&E

\*\*2017

**EXHIBIT C**  
**VOTING SHARES**

This Exhibit C is effective as of December 14, 2019.

<b>Party</b>	<b>kWh (2018*)</b>	<b>Voting Shares Section 4.12.2</b>
Albany	63,772,461	0.7%
Berkeley	508,448,567	5.5%
Dublin	297,210,239	3.2%
Emeryville	197,077,013	2.1%
Fremont	1,665,481,673	18.1%
Hayward	984,424,723	10.7%
Livermore	509,943,277	5.5%
Newark**	419,357,962	4.6%
Oakland	1,962,783,117	21.3%
Piedmont	30,163,670	0.3%
Pleasanton	520,214,314	5.7%
San Leandro	556,074,739	6.0%
Tracy	527,997,761	5.7%
Unincorporated County	564,393,280	6.1%
Union City	387,369,206	4.2%
<b>Total</b>	<b>9,194,712,002</b>	<b>100%</b>

\*All data provided by PG&E

\*\*2017

**EXHIBIT A**  
**LIST OF THE PARTIES**

This Exhibit A is effective as of [Month] [Day], 2022.

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Stockton

City of Tracy

City of Union City



**EXHIBIT B**  
**ANNUAL ENERGY USE**

This Exhibit B is effective as of [Month] [Day], 2022.

<b>Party</b>	<b>kWh (2021)</b>
Albany	51,776,870
Berkeley	370,191,096
Dublin	254,391,482
Emeryville	170,415,886
Fremont	1,152,160,067
Hayward	685,960,209
Livermore	441,369,886
Newark	263,309,620
Oakland	1,749,739,631
Piedmont	29,230,795
Pleasanton	405,288,495
San Leandro	448,938,229
Stockton	1,388,481,371
Tracy	434,861,665
Unincorporated	471,391,155
Union City	269,516,289
<hr/>	
Total	8,587,022,746

All data provided by PG&E

**EXHIBIT C**  
**VOTING SHARES**

This Exhibit C is effective as of [Month] [Day], 2022.

<b>Party</b>	<b>kWh (2021)</b>	<b>Voting Shares Section 4.12.2</b>
Albany	51,776,870	0.6%
Berkeley	370,191,096	4.3%
Dublin	254,391,482	3.0%
Emeryville	170,415,886	2.0%
Fremont	1,152,160,067	13.4%
Hayward	685,960,209	8.0%
Livermore	441,369,886	5.1%
Newark	263,309,620	3.1%
Oakland	1,749,739,631	20.4%
Piedmont	29,230,795	0.3%
Pleasanton	405,288,495	4.7%
San Leandro	448,938,229	5.2%
Stockton	1,388,481,371	16.2%
Tracy	434,861,665	5.1%
Unincorporated	471,391,155	5.5%
Union City	269,516,289	3.1%
<b>Total</b>	<b>8,587,022,746</b>	<b>100%</b>

All data provided by PG&E

RESOLUTION NO. \_\_

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING EBCE STAFF TO UPDATE EBCE'S IMPLEMENTATION PLAN TO REFLECT THE INCLUSION OF A NEW MEMBER JURISDICTION AND SUBMIT THE UPDATED PLAN TO THE CPUC

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

WHEREAS, The East Bay Community Energy Authority ("EBCE") was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

WHEREAS, on November 20, 2019, EBCE's Board of Directors unanimously authorized the cities of Tracy, Pleasanton, and Newark to become new parties to the Agreement with EBCE service beginning in those jurisdictions in April 2021; and

WHEREAS, on December 20, 2019, EBCE submitted an updated "Implementation Plan" to the CPUC reflecting the membership of the cities of Tracy, Pleasanton, and Newark to the Agreement and EBCE service area; and

WHEREAS, the Board of Directors has approved Resolution XX to authorize the City of Stockton to become a member of EBCE, with enrollments expected to begin in 2024;

WHEREAS, on February 8, 2018, the California Public Utilities Commission ("CPUC") passed Resolution E-4907, which requires a one year waiting period for jurisdictions intending to form or join a community choice aggregation ("CCA") program, like EBCE;

WHEREAS, in order to begin enrolling electricity customers in Stockton by 2024, EBCE must submit to the CPUC an updated Implementation Plan and Statement of Intent ("Implementation Plan") reflecting the inclusion of this new member jurisdiction before the end of the 2022 calendar year.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Board hereby authorizes EBCE staff to update EBCE's Implementation Plan, reflecting the membership of the City of Stockton.

Section 2. The Board hereby directs staff to submit the updated Implementation Plan to the CPUC for certification as soon as reasonably feasible, before December 31, 2022.

ADOPTED AND APPROVED this 21st day of September, 2022.

---

Dianne Martinez, Chair

ATTEST:

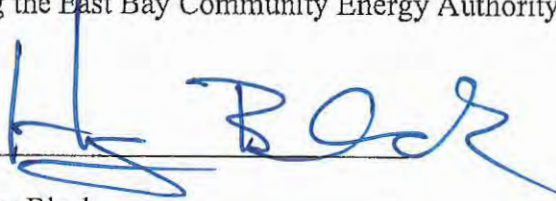
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Adrian Bankhead, Secretary

**ARTICLE 9**  
**SIGNATURE**

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

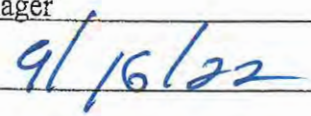
By: \_\_\_\_\_



Name: Harry Black

Title: City Manager

Date: \_\_\_\_\_



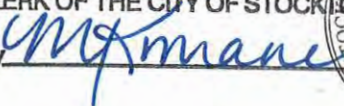
Party: City of Stockton

ATTEST:

CLERK OF THE CITY OF STOCKTON

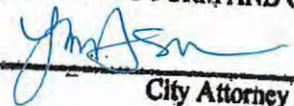
for

By \_\_\_\_\_



APPROVED AS TO FORM AND CONTENT

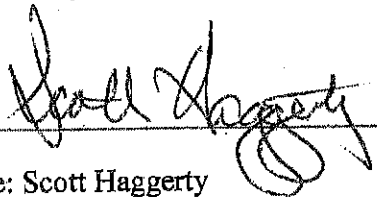
By \_\_\_\_\_



City Attorney

**ARTICLE 9**  
**SIGNATURE**

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

By: 

Name: Scott Haggerty

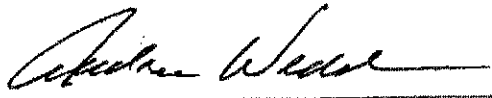
Title: Board President

Date: January 4, 2017

Party: County of Alameda

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: 

Andrea L. Weddle  
Chief Assistant County Counsel

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612

if to [PARTY No. \_\_\_\_]

Office of the City Clerk

Eileen Harrington, Deputy  
Eileen Harrington 12/2/16

Office of the City Manager/Administrator

Enelope Crumpley

Office of the City Attorney

Craig Labadie  
Craig Labadie

if to [PARTY No. \_\_\_\_]

Office of the City Clerk

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Manager/Administrator

\_\_\_\_\_  
\_\_\_\_\_

Office of the City Attorney

\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 9**  
**SIGNATURE**

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

By: *D. Williams-Ridley*  
Name: *Dee Williams-Ridley*  
Title: *City Manager*  
Date: *December 1, 2016*  
Party: *City of Berkeley*

APPROVED AS TO FORM

By *Michael Woo*  
CITY ATTORNEY FOR THE  
CITY OF BERKELEY

Registered by:

*Ann-Monica Hogn*  
City Clerk

ATTEST for the City of Berkeley

*Monte Serrano*  
City Clerk



**With a copy to:**

**Office of the County Counsel  
1221 Oak Street, Suite 450  
Oakland, CA 94612**

if to [PARTY No. \_\_\_\_]

**City of Dublin  
City Manager  
100 Civic Plaza  
Dublin, CA 94568**

**Meyers Nave  
City Attorney  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, CA 94607**

if to [PARTY No. \_\_\_\_ ]

**Office of the City Clerk**

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**Office of the City Manager/Administrator**

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**Office of the City Attorney**

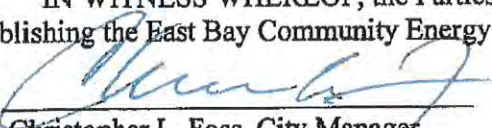
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**ARTICLE 9**  
**SIGNATURE**

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

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

  
Christopher L. Foss, City Manager  
City of Dublin

Date: \_\_\_\_\_

12/1/10

Party: \_\_\_\_\_



## Staff Report Item 12

TO: East Bay Community Energy Board of Directors

FROM: Jason Bartlett, Senior Finance Manager

SUBJECT: New Revolving Credit Agreement (Action Item)

DATE: September 21, 2022

---

### Recommendation

Adopt a Resolution authorizing the Chief Executive Officer to finalize and execute a Revolving Credit Agreement with Union Bank.

### Background and Discussion

Currently EBCE maintains an \$80MM credit facility with Barclays Bank, PLC. This facility was entered into agreement by Board approval on March 15, 2018 for \$50MM.

A First Amendment to this facility was approved in the July 2019 Board meeting and was entered into on August 1, 2019. This Amendment lowered interest rates, reduced required reserve holdings, and established \$30MM of the facility to be allowed for use with letters of credit (LOCs).

A Second Amendment was approved in the December 2019 Board meeting and was entered into on January 3, 2020. This Amendment increased the capacity of the facility to a maximum amount of \$80MM with up to \$60MM available for cash draws and up to \$35MM to be available for LOCs.

The cash portion of this facility is set to expire on December 19, 2022 and the LOC portion expires on July 31, 2024.

Barclays has opted not to renew any credit exposure to CCAs in light of Western Energy bankruptcy in 2021, where they were Western's facility underwriter. As such Barclays will not renew or extend the current facility. Because of Barclays position, and the

approaching cash expiration date, Staff is seeking to put a new credit facility in place to cover the operational need a facility provides.

On May 6, 2022, EBCE issued a request for proposals (RFP) to provide revolving credit agreement services, with proposals due June 3, 2022. Staff initially conducted uniform interviews with all responding proposers. Based upon interview scoring, Staff proceeded to have several conversations negotiating proposed terms with the two highest scoring proposers until one was selected. Considerations beyond rates and terms used in scoring were Environmental and Social Governance (ESG) goals, vetting of references, adherence to RFP details, location of operations, and exposure to brown power industries. Through this process EBCE Staff has selected MUFG Union Bank as the proposer that has delivered the most favorable terms with the highest rating in the additional considerations and scoring process.

Staff is finalizing a three-year agreement sized to \$200MM, which can be used as either LOCs or cash. Staff does not expect the need to utilize the full amount of the facility, but considering the current rising cost environment, geo-political influences on costs, and the high volatility we are seeing in market prices, having a large enough facility in place to cover short-term working capital needs is a relatively low cost means of maintaining operating liquidity without using reserves. Keeping reserves steady and growing while maintaining large enough insurance coverage for working capital is viewed favorably with credit rating agencies and counterparties that extend operating credit.

The term rates associated with the agreement are as follows, and examples are provided in the Fiscal Impact section of this memorandum:

- The term rate for the bank to hold the agreement available to us is the Undrawn Fee and is 0.25% of any undrawn or unused balance
- The term rate for LOC issuances is the Applicable Margin of 1.40%
- The term rate for cash borrowings is the Applicable Margin plus the Secured Overnight Financing Rate (SOFR), which is 2.28% as of September 9, 2022.
- A default from EBCE results in 1.50% being added onto both the Undrawn Fee and the Applicable Margin and an additional 2.0% on to the SOFR.
- The terms also indicate increases in both the Undrawn Fee and Applicable Margin for any downgrade to EBCE's S&P "A" rating.
- There is no reserve requirement to the facility.

While the terms stated above are negotiated as final, there are some additional aspects of the agreement still under finalization. These aspects are not material to the financial terms, but are essential to execution of the Agreement, facility maintenance, and

clarifications on definitions. Although very close to finalization, Staff will require authority to finalize these remaining details and execute.

### Fiscal Impact

Terms and conditions of the proposed facility are provided in the attached Term Sheet and Draft Credit Agreement. Additionally, the following good faith estimates have been provided by PFM Financial Advisors LLC in accordance with California Government Code Section 5852.1, requiring such presentation in a meeting open to the public.

- A. Interest cost per annum:
  - a. Undrawn fee: 0.25% for undrawn or unissued amounts of the facility
  - b. LOCs: 1.40% for issued LOCs (without draws made by the LOC holder)
  - c. Cash Draws: SOFR + 1.40% for cash draws and LOC draws not reimbursed on the same day
- B. Finance charges to third parties: \$125,000 for legal, consulting, and upfront fees
- C. Proceeds: Maximum gross proceeds are \$200,000,000 for a fully utilized facility. Because this is a revolving credit facility, this amount may be lower and fluctuate at any time up to the maximum of \$200,000,000.
- D. Total Interest Payment amount with following assumptions: \$22,080,000
  - a. Maximum draw of \$200,000,000
  - b. Full facility term length of 3 years
  - c. SOFR at 9/8/2022 rate of 2.28%
  - d. Applicable Margin rates for EBCE maintaining "A" rating
- E. If no cash draws are made and no LOCs are issued, the maximum interest payments for the full term of the facility over three years would be \$1,500,000. This is \$210,000 less than our current facility with Barclays
- F. If as much as \$50MM is issued as LOCs, and no cash is drawn, then the total maximum interest payment for the full term of the facility over three years would be \$3,225,000.

### Committee Recommendation

This has been presented at the Finance, Administrative, and Procurement Committee as an informational item on September 16, 2022.

### Attachments

- A. Current draft of Revolving Credit Agreement
- B. Current draft of Fee Agreement
- C. Resolution authorizing the CEO to finalize and execute the Revolving Credit Agreement

REVOLVING CREDIT AGREEMENT

Dated as of September [\_\_], 2022

by and between

EAST BAY COMMUNITY ENERGY AUTHORITY,  
as Borrower

and

MUFG UNION BANK, N.A.,  
as Lender

---

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EXHIBITS

- Exhibit A — Form of Compliance Certificate
- Exhibit B — Form of Borrowing Request
- Exhibit C — Form of Promissory Note
- Exhibit D — Account Control Agreement
- Exhibit E — Intercreditor Agreement
- Exhibit F — Security Agreement

## REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT, dated as of September [\_\_\_], 2022 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between EAST BAY COMMUNITY ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*EBCEA*”), and MUFUG UNION BANK, N.A. (together with its successors and permitted assigns, the “*Lender*”).

### WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, Borrower and Lender agree as follows:

## ARTICLE 1

### DEFINITIONS

*Section 1.1. Definitions.* As used in this Agreement:

“*Account Control Agreement*” means the Account Control Agreement, attached hereto as Exhibit D, as amended and supplemented in accordance with the terms hereof, by and among (i) River City Bank, as account bank, (ii) EBCEA and (iii) River City Bank, in its capacity as collateral agent.

“*Act*” means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq.

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Amortization End Date*” means the third (3<sup>rd</sup>) anniversary of the Maturity Date.

“*Amortization Payment*” has the meaning set forth in Section 2.16(d) hereof.

“*Amortization Payment Date*” means (a) the Initial Amortization Payment Date and each three-month anniversary of the Initial Amortization Payment Date occurring thereafter which occurs prior to the Amortization End Date and (b) the Amortization End Date.

“*Amortization Period*” has the meaning set forth in Section 2.16(d) hereof.

“*Annual Debt Service*” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, Letters of Credit, other Parity Debt and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Parity Debt, the stated amounts of Letters of Credit and Subordinate Debt during such Fiscal Year or other designated four fiscal quarter period by 5.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption.

“*Applicable Law*” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“*Applicable Margin*” has the meaning set forth in the Fee Agreement.

“*Audited Financial Statements*” has the meaning set forth in Section 4.6 hereof.

“*Authorized Representative*” means an “Authorized Representative” as defined in the Resolution, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by Borrower and delivered to Lender.

“*Available Tenor*” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.19(d).

“*Availability Period*” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“*Base Rate*” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus two percent (2.00%), (b) the Federal Funds Effective Rate in effect on such day plus four percent (4.0%) per annum, and (c) five percent (5.0%).

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, and (c) and any other documents executed

and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“*Benchmark*” means, initially, the Term SOFR Reference Rate; *provided* that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.19(a).

“*Benchmark Replacement*” means with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Lender and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Lender and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative or non-compliant with or non-aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks; provided that such non-representativeness,

non-compliance or non-alignment will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Start Date*” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“*Benchmark Unavailability Period*” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.19 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.19.

“*Board*” means the Board of Directors of Borrower.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means the making of a Loan pursuant to Article II hereof.

“*Borrowing Request*” means a request by Borrower for a Borrowing in accordance with Section 2.3 hereof and in the form of Exhibit B hereto.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco, California are authorized or required by law to remain closed.

“*Change in Law*” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by Lender (or, for purposes of Section 2.10(b) hereof, by any lending office of Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by Lender.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Collateral Agent*” has the meaning set forth in the Security Agreement.

“*Commitment*” means the commitment of Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.5 hereof. The initial amount of the Commitment is \$225,000,000.

“*Conforming Changes*” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.19 and other technical, administrative or operational matters) that Lender decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by Lender in a manner substantially consistent with market practice (or, if Lender decides that adoption of any portion of such market practice is not administratively feasible or if Lender determines that no market practice for the administration of any such rate exists, in such other manner of administration as Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Basic Documents).

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Agreement and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Debt Service Coverage Ratio*” means, for any period of determination, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the

four consecutive fiscal quarter periods ended on the last date of such fiscal quarter[current quarter or last quarter?].

“*Debt Service Coverage Ratio Notice*” has the meaning set forth in Section 5.1(q) hereof.

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” has the meaning set forth in the Fee Agreement.

“*Direction Letter*” has the meaning set forth in the Security Agreement.

“*dollars*” or “*\$*” refers to lawful money of the United States of America.

“*EEI Master Agreement*” means the EEI Master Power Purchase and Sale Agreement, version 2.1 (modified 4/25/00), created by the Edison Electric Institute and National Energy Marketers Association.

“*Electronic System*” means any electronic system, including e-mail, e-fax, web portal access for Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“*Electronic Signature*” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“*Employee Plan*” means an employee benefit plan covered by Title W of ERISA and maintained for employees of Borrower.

“*Environmental Laws*” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Event of Default*” has the meaning set forth in Section 6.1 hereof.



“*Excluded Taxes*” means, with respect to Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower is located.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall set forth on NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, *provided* that if the Federal Funds Effective Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*Fee Agreement*” means the Fee Agreement of even date herewith between Borrower and Lender, as supplemented, amended, restated or otherwise modified from time to time in accordance with the terms hereof.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“*Floor*” means a rate of interest equal to 0.25%.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“*Governmental Approval*” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“*Governmental Authority*” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of

or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Guarantees*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“*Indemnified Taxes*” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“*Initial Amortization Payment Date*” means the Maturity Date.

“*Intercreditor and Collateral Agency Agreement*” means the Intercreditor and Collateral Agency Agreement, attached hereto as Exhibit E, as amended and supplemented in accordance with the terms hereof, is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, for the benefit of the PPA Providers, and its successors and assigns in such capacity, (ii) each of the creditors from time to time signatory thereto that are party to a Power Purchase Agreement (as defined in the Security Agreement), and (iii) EBCEA.

“*Interest Payment Date*” means the last day of each Interest Period and the Maturity Date.

“*Interest Period*” means, as to any Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the numerically corresponding day in the calendar month that is one month thereafter (in each case, subject to the availability thereof), as specified in the applicable Borrowing Request; *provided* that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, (iii) no Interest Period shall extend beyond the Maturity Date and (iv) no tenor that has been removed from this definition pursuant to Section 2.19(d) shall be available for specification in such Borrowing Request. For purposes hereof, the date of a Loan or Borrowing initially shall be the date on which such Loan or Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan or Borrowing.

“*Investment Policy*” means the investment guidelines of Borrower, as the same may be adopted by Borrower and amended from time to time in accordance with State laws.

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

“*Joint Powers Agreement*” means the Joint Powers Agreement of Borrower effective as of December 1, 2016, as amended by Resolution No. 2018-23 dated June 20, 2018, and as further amended from time to time.<sup>1</sup>

“*Law*” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“*LC Collateral Account*” has the meaning set forth in Section 2.17(h) hereof.

“*LC Disbursement*” means a payment made by Lender pursuant to a Letter of Credit.

“*LC Exposure*” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of Borrower at such time.

“*Letter of Credit*” means any letter of credit issued pursuant to this Agreement.

“*Letter of Credit Fees*” has the meaning set forth in the Fee Agreement.

“*Letter of Credit Request*” means a request by Borrower for a Letter of Credit in accordance with Section 2.17(a) hereof and in the form specified by Lender from time to time.

“*Lender*” has the meaning set forth in the introductory paragraph hereof.

“*Liabilities*” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“*Lien*” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*Loans*” means individually, each Revolving Loan and the Term Loan under this Agreement and, collectively, the Revolving Loans and Term Loan under this Agreement.

“*Lockbox Account*” has the meaning set forth in the Account Control Agreement.

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<sup>1</sup> Please provide a copy of the resolution referenced here.

“*Lockbox Security Document(s)*” means, individually or collectively, as applicable, the Security Agreement, the Account Control Agreement, the Intercreditor and Collateral Agency Agreement and the Direction Letter.

“*Material Adverse Change*” means any material or adverse change in the operations, properties, assets, liability or financial condition Borrower which, in the reasonable determination of Lender, materially impairs Borrower’s ability to perform Borrower’s Obligations hereunder.

“*Material Adverse Effect*” means (a) a Material Adverse Change; (b) a material impairment of the rights and remedies of any Lender under this Agreement or any other Basic Document; (c) the ability of Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“*Material Litigation*” shall have the meaning assigned to such term in Section 4.5 hereof.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on [\_\_\_\_\_], 2025, or such later date to which the Maturity Date may be extended pursuant to Section 2.14 hereof and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Rate*” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“*Member*” or “*Members*” means, individually or collectively, as applicable, (i) County of Alameda, (ii) City of Albany, (iii) City of Berkeley, (iv) City of Dublin, (v) City of Emeryville, (vi) City of Fremont, (vii) City of Hayward, (viii) City of Livermore, (ix) City of Newark, (x) City of Oakland, (xi) City of Piedmont, (xii) City of Pleasanton, (xiii) City of San Leandro, (xiv) City of Tracy, and (xv) City of Union City.

“*Net Revenues*” means, for any period and as of any date of determination, the amount obtained by subtracting Operating and Maintenance Costs from Revenues, in each case for such period as of such date. Net Revenues does not include the “*Collateral*” as defined under the Security Agreement.

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB’s Website*” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“*Obligations*” means all obligations of Borrower to Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees (including, without limitation, the Undrawn Fee and the Letter of Credit Fees) and all expenses,

reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of Borrower to Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Basic Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

*“Operating and Maintenance Costs”* shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission, the cost to purchase Regulatory Compliance Products, the cost of preparing and filing regulatory plans, reports and filings required by Governmental Authority, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, retirement benefits, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of legal counsel and an independent certified public accountant, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Operating and Maintenance Costs shall include all amounts required to be paid by Borrower under contracts for the purchase of Product.

*“Operating Account”* means the deposit account of Borrower established with Lender and used by Borrower for operating purposes.

*“Other Connection Taxes”* means, with respect to Lender, Taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

*“Other Taxes”* means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

*“Parity Debt”* means any Debt of Borrower issued or incurred by Borrower (i) the payment of which is on parity with Borrower’s payment Obligations under this Agreement and (ii) that is subject to an intercreditor agreement in form and substance satisfactory to Lender.

“*Participant*” has the meaning set forth in Section 7.3(b) hereof.

“*Participation*” has the meaning set forth in Section 7.3(b) hereof.

“*Periodic Term SOFR Determination Day*” has the meaning specified in the definition of “Term SOFR”.

“*Person*” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*PPA*” means any agreement for the purchase of Product executed between Borrower and a PPA Counterparty. For greater clarity, “PPA” includes Power Purchase Agreements (as defined under the Security Agreement), EEI Master Agreements, and individual transaction confirmations executed under an EEI Master Agreement or WSPP Agreement. A PPA may be for short term or multi-year transactions for the purchase of Products.

“*PPA Counterparty*” means a party to a PPA other than Borrower.

“*Prime Rate*” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Lender) or any similar release by the Federal Reserve Board (as determined by Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“*Product*” means any of the following: energy, renewable energy attributes, capacity attributes, transmission rights, resource adequacy benefits, or any other similar or related products contemplated in the PPAs.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Reimbursement Obligations*” means any and all obligations of Borrower to reimburse Lender for LC Disbursements under Letters of Credit and all obligations to repay Lender for any Loan relating thereto, including in each instance all interest accrued thereon.

“*Regulatory Compliance Product*” means any Product required to be purchased by Borrower to satisfy the requirements of the California Public Utilities Commission, the Federal Energy Regulatory Commission, the California Independent System Operator or any other Governmental Authority with jurisdiction over the operation of the System.

“*Related Parties*” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“*Relevant Governmental Body*” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“*Requirement of Law*” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“*Reserve Policy*” means the Financial Reserve Policy of the Borrower, effective as of January 20, 2021 pursuant to Resolution No. R-2021-2, as the same may be amended or supplemented from time to time in accordance with the terms hereof and thereof.

“*Resolution*” means Resolution No. [\_\_\_\_\_], adopted by EBCEA on [\_\_\_\_\_], as the same may be amended or supplemented from time to time in accordance with the terms hereof and thereof.

“*Revenues*” means all revenues, rates and charges received and accrued by Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“*Revolving Credit Exposure*” means, with respect to Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“*Revolving Loan*” means, collectively and individually, each revolving loan extended by Lender to Borrower pursuant to the terms and conditions hereof, which shall be a Daily SOFR Rate Loan, and, after the Term SOFR Transition Date, a Term SOFR Rate Loan.

“*Sanctioned Country*” means, at any time, a country, region or territory which is the subject or target of any Sanctions ( at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“*Sanctioned Person*” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or

Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“*Sanctions*” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“*Security Agreement*” means the Security Agreement, dated as of February 12, 2018, attached hereto as Exhibit F, as amended and supplemented in accordance with the terms hereof, by and among EBCEA, as pledgor, River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, for the benefit of the PPA Providers (as defined in the Security Agreement) as Secured Creditors (as defined in the Security Agreement).

“*SOFR*” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“*SOFR Administrator*” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“*State*” means the State of California.

“*Subordinate Debt*” means any unsecured Debt of Borrower issued or incurred by Borrower, the payment of which is subordinate to the payment in full of Borrower’s payment Obligations under this Agreement in form and substance satisfactory to Lender.

“*Swap Agreement*” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or any option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or the Subsidiaries shall be a Swap Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include Lender or any Affiliate of Lender).



“*System*” means (i) contractual rights to generation, distribution, metering and billing services, electric power, resource adequacy, scheduling and coordination and transmission capacity of Borrower for the generation, transmission and distribution of electric power to its customers, and behind the meter/distributive energy resources, (ii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*S&P*” means S&P Global Ratings, and any successor rating agency.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*Term Loan*” means a Revolving Loan that is converted to a Term Loan pursuant to Section 2.16 hereof.

“*Term SOFR*” means, for any calculation with respect to a Term SOFR Rate Loan, the Term SOFR Reference Rate for a tenor comparable to the Interest Period on the day (such day, the “*Periodic Term SOFR Determination Day*”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; *provided, however*, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; *provided, further*, that if Term SOFR determined as provided above shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“*Term SOFR Administrator*” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by Lender in its reasonable discretion).

“*Term SOFR Rate*” means a fluctuating rate per annum equal to the sum of (i) Term SOFR, and (ii) the Applicable Margin.

“*Term SOFR Rate Loan*” means a Revolving Loan which then bears interest at the Term SOFR Rate.

“*Term SOFR Reference Rate*” means the forward-looking term rate based on SOFR.

“*Term Out Rate*” means, for each day of determination on and after the Maturity Date, a fluctuating rate per annum, with respect to any Term Loan, equal to the Base Rate from time to time in effect plus one percent (1.00%); *provided* that from and after the occurrence of an Event of Default, “*Term Out Rate*” shall mean the Default Rate.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*WSPP Agreement*” means the WSPP Agreement created by WSPP Inc. and filed with the Federal Energy Regulatory Commission, as revised by the WSPP Inc. from time to time.

“*U.S. Government Securities Business Day*” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

*Section 1.2. Terms Generally.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (c) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

*Section 1.3. Accounting Terms; GAAP.* Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before

such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

*Section 1.4. Rates.* Lender does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. Lender and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. Lender may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE 2

### THE CREDITS

*Section 2.1. Commitments.* Subject to the terms and conditions set forth herein, Lender agrees to make Loans to Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7 hereof) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, prepay and reborrow Loans.

*Section 2.2. Loans and Borrowings.* Each Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$200,000. Each Revolving Loan shall be made solely for the purpose of working capital and general purposes, including without limitation, the purchase of Products or posting of collateral in connection with the purchase of Products. The Revolving Credit Exposure at any time shall not exceed the Commitment at such time.

*Section 2.3. Requests for Revolving Borrowings.* To request a Borrowing, Borrower shall notify Lender of such request by telephone not later than 10:00 a.m., New York City time three (3) U.S. Government Securities Business Days before the date of the proposed Borrowing. Each such telephonic request for a Borrowing shall be irrevocable and shall be confirmed promptly by

electronic means to Lender in the form of a written Borrowing Request as attached hereto as Exhibit B and signed by an Authorized Representative of Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit B hereto. Subject to satisfaction of the terms and conditions of Section 3.2 hereof, Lender shall make available to, or for the account of, Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on date of the applicable Borrowing. If, after examination, Lender shall have determined that a Borrowing Request does not conform to the terms and conditions hereof, then Lender shall use its best efforts to give notice to Borrower to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. Borrower may attempt to correct any such nonconforming Borrowing Request, if, and to the extent that, Borrower is entitled (without regard to the provisions of this sentence) and able to do so.

*Section 2.4. Interest Elections.* Lender shall promptly notify Borrower of the Term SOFR Rate for any Revolving Loan upon determination of such interest rate; *provided, however,* that the failure by Lender to provide notice of the applicable interest rate shall not relieve Borrower of its obligation to make payment of amounts as and when due hereunder. Each determination by Lender of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

*Section 2.5. Termination and Reduction of Commitment.* (a) Unless previously terminated, the Commitment shall terminate automatically on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, Borrower may at any time terminate, or from time to time reduce, the Commitment; *provided* that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000 and (ii) Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.7 hereof, the Revolving Credit Exposure would exceed the Commitment.

(c) Borrower shall notify Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least ten (10) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by Borrower pursuant to this Section shall be irrevocable. Any termination or reduction of the Commitment shall be permanent.

*Section 2.6. Repayment of Loans; Evidence of Debt.* (a) Subject to Section 2.16 hereof, Borrower hereby unconditionally promises to pay to Lender the then unpaid principal amount of each Loan and any then unpaid accrued interest on such Loan on the Maturity Date.

(b) Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to Lender resulting from each Loan made by Lender and the amounts of principal and interest payable and paid to Lender from time to time hereunder. The entries made in such account or accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Loans shall be evidenced by a promissory note in the form of Exhibit C attached hereto (which, for the avoidance of doubt, includes any applicable Revolving Loans and the Term Loan). Borrower shall prepare, execute and deliver to Lender such promissory note as set forth in the immediately preceding sentence payable to Lender and in a form approved by Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3 hereof) be represented by such promissory note.

*Section 2.7. Prepayment of Loans.* (a) Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, on the last day of any applicable Interest Period, without penalty, subject to prior notice in accordance with paragraph (b) of this Section. If the Borrower shall elect to prepay any Borrowing on any day that is not the last day of the applicable Interest Period for such Borrowing, then Borrower shall pay to Lender in immediately available funds on the date of such prepayment any fees calculated in accordance with Section 2.20 hereof.

(b) Borrower shall notify Lender by telephone (confirmed by electronic mail) or through the Electronic System, if arrangements for doing so have been approved by Lender, of any prepayment hereunder not later than 10:00 a.m., New York City time, ten (10) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid.

*Section 2.8. Fees.* Borrower agrees to pay to Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

*Section 2.9. Interest.* (a) The Revolving Loans shall bear interest at the Term SOFR Rate.

(b) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans and Letters of Credit. Interest and fees for Loans and Letters of Credit accruing at the Default Rate shall be payable on demand to Lender.

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (e) of this Section shall be payable on demand, and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed. The applicable Term SOFR Rate shall be determined by Lender, and such determination shall be conclusive absent manifest error.

(e) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, Borrower shall pay to Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.9(e) that has not previously been paid to Lender in accordance with the immediately preceding sentence.

*Section 2.10. Increased Costs.* (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, Lender; or

(ii) impose on Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by Lender or any Letter of Credit; or

(iii) subject Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by Lender hereunder (whether of principal, interest or otherwise), then Borrower will pay to Lender such additional amount or amounts as will compensate Lender for such additional costs incurred or reduction suffered.

(b) If Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on Lender's capital or on the capital of Lender's holding company, as a consequence of this Agreement, the Commitment of or the Loans made by Lender, to a level below that which Lender or Lender's holding company could have achieved but for such Change in Law (taking into consideration Lender's policies and the policies of Lender's holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to Lender such additional amount or amounts as will compensate Lender or Lender's holding company for any such reduction suffered.

(c) A certificate of Lender setting forth the amount or amounts necessary to compensate Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation, *provided* that Borrower shall not be required to compensate Lender pursuant to this Section for any increased costs incurred or reductions suffered more than twelve (12) months prior to the date that Lender or notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Lender's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

*Section 2.11. Payments Free of Taxes.* (a) Any and all payments by or on account of any obligation of Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.11) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. The foregoing obligation of Borrower shall not apply to any payment to a Participant that is a non-U.S. person that would be subject to withholding under FATCA.

(b) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Lender timely reimburse Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.11, Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

(d) Borrower shall indemnify Lender, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A reasonably detailed certificate as to the calculation of the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error.

(e) If Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.11 (including by the payment of additional amounts pursuant to this Section 2.11), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Borrower, upon the request of Lender, shall repay to Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will Lender be required to pay any amount to Borrower pursuant to this paragraph (e) the payment of which would place Lender in a less favorable net after-Tax position than Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

(f) Each party's obligations under this Section 2.11 shall survive any assignment of rights by Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

*Section 2.12. Payments Generally.* (a) Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees, or reimbursement of LC Disbursements, or of amounts payable under Section 2.10, 2.11 or 2.17 hereof, or otherwise) prior to 3:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Lender at its offices at [**Commercial Loan Operations, 1980 Saturn Street, 1<sup>st</sup> Floor, MC V01-120, Monterey Park, California 91755**], or such other location as Lender may direct in writing to Borrower from time to time, except that payments pursuant to Sections 2.10, 2.11 or 2.17 and 7.5 hereof shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

*Section 2.13. Mitigation Obligation.* If Lender requests compensation under Section 2.10 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to Lender or any Governmental Authority for the account of Lender pursuant to Section 2.11 hereof, then



Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.10 or 2.11 hereof, as the case may be, in the future and (ii) would not subject Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by Lender in connection with any such designation or assignment.

*Section 2.14. Extension of Maturity Date.* The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.14. Upon receipt of written request of Borrower to extend the Maturity Date, received no more than three hundred sixty-five (365) days and no less than forty-five (45) days prior to the then current Maturity Date, Lender will use its commercially reasonable efforts to notify Borrower of its response within thirty (30) days of receipt of the request therefor (Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which Lender and Borrower may agree); *provided, however*, that the failure of Borrower to receive a written confirmation from Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless Lender and Borrower have entered into a written agreement confirming a change in any term of this Agreement.

*Section 2.15. Security of Obligations.* The Net Revenues shall be and hereby are pledged by Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and all Obligations hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt. In addition to the security set forth in this Section 2.15, Borrower shall also provide to Lender a lien on and security interest in the Operating Account.

*Section 2.16. Term Loan.* (a) Borrower shall have the option to convert the unpaid principal amount of any Revolving Loan to a single Term Loan if the conditions set forth in Section 2.16(b) hereof are satisfied on and as of the Maturity Date.

(b) The obligation of Lender to convert the principal amount owed on a Revolving Loan to a Term Loan shall be subject to the fulfillment of each of the following conditions precedent on the Maturity Date in a manner satisfactory to Lender:

(i) the representations and warranties of Borrower contained herein and in each of the other Basic Documents and each certificate, letter, other writing or instrument delivered by Borrower to Lender pursuant hereto or thereto are true and correct on and as of the Maturity Date as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing as of the Maturity Date or would result from converting a Revolving Loan to a Term Loan.

(c) The Term Loan shall bear interest from the Maturity Date to the date the Term Loan is paid in full at a rate per annum equal to Term Out Rate as determined by Lender. Interest on the Term Loan shall be paid to Lender quarterly in arrears on the last Business Day of each March, June, September, and December. Interest on the Term Loan shall be calculated on the basis of a year of 360 days based on the actual number of days elapsed.

(d) The principal of the Term Loan shall be paid in installments payable on each Amortization Payment Date (each such payment, an "*Amortization Payment*"), with the final installment in an amount equal to the entire then-outstanding principal amount of the Term Loan to be paid in full on the Amortization End Date (the period commencing on the Maturity Date and ending on the Amortization End Date is herein referred to as the "*Amortization Period*"). Each Amortization Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Payments over the Amortization Period.

*Section 2.17. Letters of Credit.*

(a) *General.* Subject to the terms and conditions set forth herein, Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of maintenance and operating requirements to the System, including, but not limited to, PPA payment or collateral obligations, collateral postings with the California Independent System Operator and the posting of collateral for regulatory obligations pursuant to the requirements of the California Public Utilities Commission, in the form of a Letter of Credit Request at any time and from time to time during the Availability Period; *provided, however*, that prior to the issuance of each Letter of Credit hereunder, Borrower shall execute a Letter of Credit Request in the form prescribed by Lender from time to time. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), Borrower shall hand deliver or fax (or transmit through an Electronic System approved by Lender) to Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five (5) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the

beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment.

Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain Lender from issuing such Letter of Credit, or any Requirement of Law relating to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which Lender in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of Lender applicable to letters of credit generally.

(c) *Expiration Date.* Unless otherwise expressly agreed to by Lender, each Letter of Credit shall expire (or be subject to termination by notice from Lender to the beneficiary thereof) one (1) year from issuance and at or prior to the close of business on the date that is thirty (30) calendar days prior to the Maturity Date.

(d) *Reimbursement.* If Lender shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to Lender an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on the date that such LC Disbursement is made, if Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, if such LC Disbursement is not less than \$250,000, and no Default or Event of Default shall have occurred, Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 hereof that such payment be financed as a Revolving Loan in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving Loan.

(e) *Obligations Absolute.* Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document

presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder. Neither Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of Lender; *provided* that the foregoing shall not be construed to excuse Lender from liability to Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are caused by Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of Lender (as finally determined by a court of competent jurisdiction), Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Lender shall promptly after such examination notify Borrower by telephone (confirmed by fax or through an Electronic System) of such demand for payment if Lender has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse Lender with respect to any such LC Disbursement.

(g) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from Lender demanding the deposit of cash collateral pursuant to this paragraph, Borrower shall deposit in an account with Lender, in the name and for the benefit of Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; *provided* that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in Section 6.1(c) or Section 6.1(f) hereof. Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and Borrower hereby grants Lender a security

interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of Lender and at Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by Lender for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by Lender.

*Section 2.18. Inability to Determine Rates; Illegality.* Subject to Section 2.19, if, on or prior to the first day of any Interest Period for any Term SOFR Rate Loan:

(a) Lender determines (which determination shall be conclusive and binding absent manifest error) that "Term SOFR" cannot be determined pursuant to the definition thereof, or

(b) Lender determines that for any reason in connection with any request for a Term SOFR Rate Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Rate Loan does not adequately and fairly reflect the cost to Lender of funding such Loan, or

(c) if Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, the Term SOFR Reference Rate or Term SOFR, or to determine or charge interest rates based upon SOFR, the Term SOFR Reference Rate or Term SOFR, then, upon notice thereof by Lender to Borrower any obligation of Lender to make Term SOFR Rate Loans, and any right of the Borrower to continue Term SOFR Rate Loans shall be suspended, in each case until Lender notifies Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower shall, if necessary to avoid such illegality, upon demand from Lender, prepay or, if applicable, convert all Term SOFR Rate Loans to Loans that bear interest at the Base Rate, on the last day of the Interest Period therefor, if Lender may lawfully continue to maintain such Term SOFR Rate Loan to such day, or immediately, if Lender may not lawfully continue to maintain such Term SOFR Rate Loan to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.20; then

Lender will promptly so notify the Borrower.

Upon notice thereof by Lender to the Borrower, any obligation of Lender to make Term SOFR Rate Loans, shall be suspended (to the extent of the affected Term SOFR Rate Loans or

affected Interest Periods) until Lender revokes such notice. Upon receipt of such notice, (i) the Borrower may revoke any pending request for a borrowing of Term SOFR Rate Loans (to the extent of the affected Term SOFR Rate Loans or affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of Loans that bear interest at the Base Rate in the amount specified therein and (ii) any outstanding affected Term SOFR Rate Loans will be deemed to have been converted into Loans that bear interest at the Base Rate at the end of the applicable Interest Period. Upon any such conversion, the Borrower shall also pay accrued interest on the amount so converted, together with any additional amounts required pursuant to Section 2.20.

*Section 2.19. Benchmark Replacement Setting.*

(a) *Benchmark Replacement.* (i) Notwithstanding anything to the contrary herein or in any other Basic Document, upon the occurrence of a Benchmark Transition Event, Lender and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.19(a)(i) will occur prior to the applicable Benchmark Transition Start Date.

(ii) No swap agreement shall be deemed to be a “Basic Document” for purposes of this Section 2.19).

(b) *Benchmark Replacement Conforming Changes.* In connection with the use, administration, adoption or implementation of a Benchmark Replacement, Lender will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(c) *Notices; Standards for Decisions and Determinations.* Lender will promptly notify Borrower of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Lender will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.19(d). Any determination, decision or election that may be made by Lender pursuant to this Section 2.19, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.19.

(d) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by Lender in its reasonable discretion or (B) the administrator of such Benchmark or the

regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks, then Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative or in compliance with or aligned with the International Organization of Securities Commissions (IOSCO) Principles for Financial Benchmarks for a Benchmark (including a Benchmark Replacement), then Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(e) *Benchmark Unavailability Period.* Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Borrowing of Term SOFR Rate Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Loans that bear interest at the Base Rate. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR.

*Section 2.20. Compensation for Losses.* In the event of (a) the payment of any principal of any Term SOFR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Term SOFR Rate Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), or (c) the failure to borrow, convert, continue or prepay any Term SOFR Rate Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrower shall compensate each Lender for any loss, cost and expense attributable to such event, including any loss, cost or expense arising from the liquidation or redeployment of funds. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

### ARTICLE 3

#### CONDITIONS

*Section 3.1. Conditions Precedent to Effectiveness.* The obligation of Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* Lender shall have received from Borrower's legal counsel an opinion, addressed to Lender and dated as of the Closing Date, as to the due authorization, execution and delivery of this Agreement and the other Basic Documents, and as to the validity and enforceability with respect to the Authority of this Agreement and the other Basic Documents, the pledge of Net Revenues securing the Obligations constituting a valid pledge, and such other matters as Lender may reasonably request, in form and substance satisfactory to Lender and its counsel.

(b) *Documents.* (i) Lender has received executed copies of the Basic Documents executed by Borrower on the Closing Date or prior to the Closing Date if certified by the Secretary of Borrower, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date.

(ii) Lender has received a certified copy of the Joint Powers Agreement, representative examples satisfactory to it of PPAs entered into as of the Closing Date, and the Resolution.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of Borrower set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement, each as certified to by an Authorized Representative of the Board.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of Borrower, threatened (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting Borrower, the result of which could have a Material Adverse Effect.

(e) *No Material Adverse Change.* Since the date of the audited financial statements dated as of June 30, 2021, (i) no Material Adverse Change has occurred in the status of the business, operations or condition (financial or otherwise) of Borrower or its ability to perform its obligations under the Basic Documents and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent Lender from fulfilling its obligations under this Agreement or the Letters of Credit.



(f) *Certificate.* Lender has received (i) certified copies of all proceedings of Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by Borrower pursuant hereto or thereto, on which certification Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* Lender has received all fees and expenses due and payable to Lender and/or its legal counsel pursuant to the Fee Agreement.

(h) *Financial Statements.* Lender has received the audited and unaudited financial statements dated as of June 30, 2021 and June 30, 2022, respectively, internally prepared quarterly budget reports of Borrower for the most recent fiscal quarter end, if not previously provided, in form and substance satisfactory to Lender.

(i) *Budget.* Lender has received copies of the current financial information, budgets, or projections, as requested by Lender.

(j) *Other Matters.* Lender has received such other statements, certificates, agreements, documents and information with respect to Borrower and matters contemplated by this Agreement as Lender may have requested.

*Section 3.2. Conditions Precedent to each Credit Event.* The obligation of Lender to make a Loan on the occasion of any Borrowing, and of Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of Borrower set forth in Article 4 of this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) It has provided Lender with a completed Borrowing Request substantially in the form of Exhibit B hereto.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

In order to induce Lender to make Loans and issue the Letters of Credit, Borrower represents and warrants to Lender as follows:

*Section 4.1. Organization, Powers, Etc.* Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified could not reasonably be expected to have a Material Adverse Effect. Borrower has the agency power to (i) execute, deliver and perform its obligations under the Basic Documents; (ii) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) has complied with all Laws in all matters related to such actions of Borrower as are contemplated by the Basic Documents.

*Section 4.2. Authorization, Absence of Conflicts, Etc.* The execution, delivery and performance by Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to Borrower which violation would result in a Material Adverse Effect and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which Borrower is a party or by which Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect.

*Section 4.3. Binding Obligations.* The Basic Documents are valid and binding obligations of Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

*Section 4.4. Governmental Consent or Approval.* No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of Borrower for execution, delivery and performance by Borrower of the Basic Documents.

*Section 4.5. Absence of Material Litigation.* There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of Borrower, threatened against or

affecting Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by Borrower of the Basic Documents or any proceeding taken or to be taken by Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Effect, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as “*Material Litigation*”).

*Section 4.6. Financial Condition.* The most recent audited financial statements of the Borrower delivered (or deemed delivered) to Lender (the “*Audited Financial Statements*”) were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to Lender were prepared on a consistent basis and in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the System as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended..

*Section 4.7. Incorporation of Representations and Warranties.* The representations and warranties of Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of Lender.

*Section 4.8. Accuracy and Completeness of Information.* The Basic Documents and all certificates, financial statements, documents and other written information furnished to Lender by or on behalf of Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

*Section 4.9. No Default.* (a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” with respect to Borrower, or, to the actual knowledge of Borrower, with respect to any other party, has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not

limited to, any PPA) to which Borrower is a party or which purports to be binding on Borrower or on any of the property of Borrower.

*Section 4.10. No Proposed Legal Changes.* There is no amendment or, to the knowledge of Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

*Section 4.11. Compliance with Laws, Etc.* Borrower is in compliance with the Investment Policy and all Laws applicable to Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect. In addition, no benefit plan maintained by Borrower for its employees is subject to the provisions of ERISA, and Borrower is in compliance with all Laws in respect of each such benefit plan.

*Section 4.12. Environmental Matters.* Borrower contracts for all of Products necessary for the operation of the System. Borrower has not taken any action in the operation of the System that would constitute a violation of any Environmental Laws and which violation could reasonably be expected to result in a Material Adverse Effect.

*Section 4.13. Regulation U.* Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

*Section 4.14. Liens.* This Agreement creates a valid Lien on and pledge of Net Revenues to secure the payment and performance of Borrower's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of Borrower, Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement, there is no pledge of or Lien on Net Revenues.

*Section 4.15. Sovereign Immunity.* Borrower is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or its revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Basic Document, and no such immunity (whether or not claimed) may be attributed to Borrower or its revenues.

*Section 4.16. Usury.* The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

*Section 4.17. Insurance.* As of the Closing Date, Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

*Section 4.18. ERISA/CALPERS.* Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA. Borrower does plan to offer retirement benefits to its employees pursuant to the California Public Employees' Retirement System, which is a government funded plan that is not subject to ERISA.

*Section 4.19. Sanctions Concerns and Anti-Corruption Laws.* Borrower and its respective officers and directors and to the knowledge of Borrower, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) Borrower, any of its directors or officers or employees, or (b) to the knowledge of Borrower, any agent of Borrower that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Basic Documents will violate Anti-Corruption Laws or applicable Sanctions.

*Section 4.20. Debt of Borrower.* As of the Closing Date, Borrower has not incurred or issued any Debt of Borrower other than the Debt of Borrower created under this Agreement.

## ARTICLE 5

### COVENANTS

*Section 5.1. Affirmative Covenants.* Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, Borrower covenants and agrees with Lender that:

(a) *Accounting and Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to Lender:

(i) as soon as available, and in any event within **[forty-five (45)]<sup>2</sup>** days after each fiscal quarter of Borrower, an unaudited balance sheet of Borrower, as of the last day of the quarterly period then ended and the statements of income, retained earnings and cash flows of Borrower for the four (4) fiscal quarters period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each Fiscal Year of Borrower, a copy of the audited balance sheet of Borrower, as of the last day of the Fiscal Year then ended and the statements of income, retained earnings and cash flows of Borrower for the Fiscal Year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the

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<sup>2</sup> To be discussed.

effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, and in any event within forty-five (45) days of adoption, Borrower shall provide Lender its annual budget;

(vi) reserved;

(vii) promptly after receipt thereof, representative copies of each PPA entered into by Borrower;

(viii) reserved;

(ix) immediately upon any such occurrence, written notice as to the dissolution of the Lockbox Account and/or termination of the Security Agreement; and

(x) promptly after the request therefor, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit A hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default and, in connection with the financial statements furnished to Lender pursuant to subsection (a)(i), compliance with Section 5.1(q).

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, Borrower shall permit Lender or any of its agents or representatives to visit and inspect any of the properties of Borrower and the other assets of Borrower, to examine the books of account of Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*

(i) Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, Lender is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of Lender, and Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. Borrower shall give prior written notice to Lender of any action referred to in this subparagraph (i).

(ii) Borrower will enter into, perform and maintain such contractual relationships and PPAs as are necessary for Borrower to provide Product and such other services and resources as are necessary for the operation of the System.

(d) *Defaults.* Borrower shall notify Lender of any Default or Event of Default of which Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* Borrower shall comply in all material respects with all Laws binding upon or applicable to Borrower (including Environmental Laws) and material to the Basic Documents. Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Reserved.*

(g) *Notices.* Borrower shall promptly give notice to Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of Borrower to perform its obligations under any Basic Document.

(h) *Reserved.*

(i) *Further Assurances.* Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Additional Notices.* Borrower shall promptly furnish, or cause to be furnished, to Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under (x) any Basic Document (other than this Agreement and the Fee Agreement), or (y) any event of default under a PPA that could have a Material Adverse Effect, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other Debt of Borrower which are not restricted or prohibited from being shared with Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed modification to any Lockbox Security Document, (iv) notice of any proposed substitution of any Letter of Credit, and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect.

(k) *Maintenance of Insurance.* Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however,* that Borrower may maintain self-insurance coverage from a California public agency risk pool. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as Borrower. Borrower shall, upon request of Lender, furnish evidence of such insurance to Lender. Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(l) *Preservation of Security.* Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.



(m) *Rates.* Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be set in accordance with applicable law and shall be sufficient to provide Borrower with Revenues in each Fiscal Year sufficient to pay, to the extent not paid from other available moneys, any and all amounts Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year (including, without limitation, all Obligations when due hereunder).

(n) *Budget.* Borrower shall include in each annual budget of Borrower all amounts reasonably anticipated to be necessary to pay all obligations due to Lender hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to Lender during the course of the Fiscal Year to which such annual budget applies.

(o) *Payment of Taxes, Etc.* Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(p) *Lockbox Security Documents and PPAs.* Borrower shall perform and comply with all its agreements and covenants set forth in the Lockbox Security Documents and the PPAs. Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing) any Lockbox Security Document in any manner that could reasonably be expected to have a materially adverse effect on the interests of Lender without the prior written consent of Lender, and Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by Lender to strictly enforce the obligations of the other parties to any of the Lockbox Security Documents, as well as each of the covenants set forth therein. Borrower shall give prior written notice to Lender of any proposed action referred to in this subparagraph (p).

(q) *Debt Service Coverage.* Borrower shall maintain a Debt Service Coverage Ratio for each fiscal quarter of Borrower of not less than 1:00:1.00. The Debt Service Coverage Ratio shall be tested on a rolling last twelve-month basis. Borrower shall determine the Debt Service Coverage Ratio at each fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to Lender as soon as practicable following the end of a fiscal quarter and in any event no later than forty-five (45) calendar days following the end of such fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Reserve Policy.* Borrower shall comply with the terms of its Reserve Policy in all respects and shall not amend such Reserve Policy without the prior written consent of Lender, which such consent shall not be unreasonably withheld.

(s) *Use of Proceeds.* (i) The proceeds of the Loans will be used only for the purposes expressly provided for in this Agreement. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. Letters of Credit will be issued only for the purposes described in Section 2.17(a).

(ii) Borrower will not request any Borrowing or Letter of Credit, and Borrower shall not use, and shall procure that its directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(u) *Reserved.*

(v) *Operating Accounts.* Borrower shall (i) no later than ninety (90) days after the Closing Date, open an operating account with the Lender, (ii) cause its Lockbox Account to be swept to such operating accounts held by Lender on a monthly basis pursuant to documents satisfactory to Lender, and (iii) upon any dissolution of Borrower's Lockbox Account, immediate transfer of all funds in the Lockbox account to Borrower's primary operating accounts with Lender.

(x) *Operating Account.* Borrower shall promptly direct funds received from the Collateral Agent pursuant to Section 6.02(iv) of the Security Agreement to the Operating Account.

*Section 5.2. Negative Covenants.* Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, Borrower covenants and agrees with Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of Borrower to pay when due amounts owing to Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues as security for the

Obligations or the priority of payments from Net Revenues provided in this Agreement; or (iii) the rights or remedies of Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State. Borrower shall not permit the termination of the Joint Powers Agreement or the cessation of Borrower's CCA Program (as defined in the Joint Powers Agreement).

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues or the proceeds thereof other than the Liens (i) created by this Agreement or the Lockbox Security Documents, or (ii) securing Debt permitted to be issued under Section 5.2(i) hereof.

(f) *Sovereign Immunity.* To the fullest extent permitted by applicable law, with respect to its obligations arising under this Agreement or any other Basic Document, Borrower irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

(g) *Preservation of Existence, Etc.* Take any action to accomplish a merger, consolidation or combination of the System with any other entity or enterprise.

(h) *Use of Proceeds.* Use the Letters of Credit for any purpose other than the uses set forth in Section 2.17(a). Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure Borrower's obligations under PPAs, collateral postings with the California Independent System Operator and the posting of collateral for regulatory obligations pursuant to the requirements of the California Public Utilities Commission, (ii) to repay in whole or in part

any LC Disbursement, or (iii) for general working capital and operational purposes. For the avoidance of doubt, Loan Proceeds may not be used for long-term expenditures other than long term purchases of Products pursuant to PPA. Use the proceeds of any Loan or any Letter of Credit in violation of any Sanctions or Anti-Corruption Laws.

(i) *Debt of Borrower.* Not issue, incur or assume to exist any Parity Debt or Subordinate Debt unless Borrower shall deliver a written certification to Lender, including a reasonably detailed calculation in support thereof, certifying that, after giving pro forma effect to the incurrence of such Debt:

(i) Net Revenues for the immediately preceding twelve month period and estimated Net Revenues for the next three consecutive fiscal years of Borrower;

(ii) Annual Debt Service for the immediately preceding twelve-month period and estimated Annual Debt Service for the next three consecutive fiscal years of Borrower;

(iii) (A) Net Revenues (including any fund balances of Borrower which were available for the payment of Annual Debt Service) for the immediately preceding twelve month period were equal to or greater than 1.00 times the Annual Debt Service for the immediately preceding twelve month period; and

(B) Estimated Net Revenues (together with any fund balances of Borrower which were available for the payment of Annual Debt Service) in each of the next three consecutive fiscal years are at least 1.00 times the Annual Debt Service for each respective fiscal year.

(j) *Reserved.*

(k) *Swap Agreements.* Not enter into any Swap Agreement without prior approval from the Lender, except (a) Swap Agreements entered into to hedge or mitigate risks to which Borrower has actual exposure, and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of Borrower, and, in each case, the payments under which are not secured by any Lien on any portion of Borrower's Net Revenues securing any termination payment pursuant to any Swap Agreement to be pari passu or senior to the Lien on Borrower's Net Revenues securing the payment of Obligations hereunder or under the Fee Agreement, provided, however, that it is understood that PPAs are regularly entered into to hedge against pricing and supply risks in connection with energy requirements and Regulatory Compliance Products, and such PPA counterparties may participate in the Lockbox Security Documents.

(l) *Amendments.* Amend, modify or supplement in any manner whatsoever the Basic Documents, the Joint Powers Agreement, the PPAs, or the Lockbox Security

Documents, in each case, in a manner which could reasonably be expected to have a Material Adverse Effect.

## ARTICLE 6

### DEFAULTS

*Section 6.1. Events of Default and Remedies.* If any of the following events occur, each such event will be an “*Event of Default*”:

(a) Borrower fails to pay, or cause to be paid, as and when due, (i) any principal of or any interest on any Loan or Reimbursement Obligation, or (ii) any other Obligation hereunder or under the Fee Agreement and, in the case of clause (ii), such failure continues for five (5) Business Days.

(b) any representation or warranty made by or on behalf of Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(a), 5.1(c), 5.1(d), 5.1(e), 5.1(g), 5.1(j), 5.1(k), 5.1(l), 5.1(m), 5.1(q), 5.1(r)(i), 5.1(s) or 5.2 hereof;

(d) Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) hereof;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) hereof is instituted against Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of Borrower by Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by Borrower, or Borrower publicly contests the validity or enforceability of any obligation to pay Debt of Borrower, or Borrower repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to Debt of Borrower;

(i) dissolution or termination of the existence of Borrower;

(j) Borrower (i) defaults on the payment of the principal of or interest on any Debt of Borrower beyond the period of grace, if any, *provided* in the instrument or agreement under which such Debt of Borrower was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Debt of Borrower, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Debt of Borrower to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt of Borrower; or

(k) any final, non-appealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$500,000 are entered or filed against Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days.

(l) any “event of default” occurs under any of the Basic Documents.

*Section 6.2. Remedies.* Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f) hereof), and at any time thereafter during the

continuance of such event, Lender may by notice to Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) require cash collateral for the LC Exposure in accordance with Section 2.17(g) hereof and (iii) declare all Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f) hereof, the Commitment shall automatically terminate and the principal of the Loans then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

**ARTICLE 7**

**MISCELLANEOUS**

*Section 7.1. Amendments, Waivers, Etc.* No amendment or waiver of any provision of this Agreement, or consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender and an Authorized Representative of Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

*Section 7.2. Notices.* Except as otherwise will provided herein, notices and communications between Borrower and Lender with respect to reporting obligations, draw requests and other day to day implementation of this Agreement may be made via facsimile or Electronic System. All formal notices, including notices of default, provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), as follows:

- (a) if to Borrower:

East Bay Community Energy Authority  
Attention: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

(b) if to Lender:

MUFG Union Bank, N.A.  
445 South Figueroa Street  
Floor 16  
Los Angeles, California 90071  
Attention: Nicholas Boyle

with a copy to:

MUFG Union Bank, N.A.  
Commercial Loan Operations  
1980 Saturn Street, 1<sup>st</sup> Floor  
MC V01-120  
Monterey Park, California 91755

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, be effective when deposited with the courier, addressed as aforesaid, except that requests for LC Disbursements submitted to Lender will not be effective until received by Lender.

*Section 7.3. Survival of Covenants; Successors and Assigns.* (a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of Lender. Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of Lender. Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of Borrower (which consent may not be withheld unreasonably); *provided* that Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of Borrower and Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, Lender will be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of Lender's rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of Borrower. In the event of any such grant by Lender of a Participation to a Participant, Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and Borrower may continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement,



under the Fee Agreement and under the Letters of Credit. Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and *provided, further*, that Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14 hereof) will not in any event exceed that liability which Borrower would owe to Lender but for such participation.

*Section 7.4. Liability of Lender; Indemnification.* (a) To the extent permitted by the laws of the State, Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty or the California Independent System Operator, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by Lender against presentation of requests for LC Disbursements or requests which Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that Borrower is not required to indemnify Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent that a court of competent jurisdiction has determined by a final, non-appealable judgment were caused by the gross negligence or willful misconduct of Lender.

(b) To the extent permitted by the laws of the State, Borrower indemnifies and holds harmless Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which Lender may incur (or which may be claimed against Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided* that Borrower is not required to indemnify Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between Borrower, any PPA Counterparty (including, without limitation, the California Independent System Operator) or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, Borrower shall not assert, and waives, any claim against Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as

a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of Borrower under this Section 7.5 will survive the termination of this Agreement.

*Section 7.5. Expenses.* Upon receipt of a written invoice, Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents, (iii) the fees and disbursements of counsel to Lender with respect to advising Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to Lender. In addition, and notwithstanding the foregoing, Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by Lender in enforcing any obligations or in collecting any payments due from Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of Borrower under this Section 7.6 will survive the termination of this Agreement.

*Section 7.6. No Waiver; Conflict.* Neither any failure nor any delay on the part of Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between Borrower and Lender.

*Section 7.7. Modification, Amendment Waiver, Etc.* No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

*Section 7.8. Dealings.* Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with Borrower and/or any PPA Counterparty (including, without limitation, the California Independent System Operator) regardless of the capacity of Lender hereunder or under any Letter of Credit.

*Section 7.9. Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting

the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

*Section 7.10. Counterparts; Integration; Effectiveness; Electronic Execution.* (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Basic Documents and any separate letter agreements with respect to fees payable to Lender constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by Lender and when Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 7.2), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an “*Ancillary Document*”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (i) to the extent Lender has agreed to accept any Electronic Signature, Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Lender and Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal

effect, validity and enforceability as any paper original, (B) Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against Lender-Related Person for any Liabilities arising solely from Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

*Section 7.11. Table of Contents; Headings.* The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

*Section 7.12. Entire Agreement.* This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

*Section 7.13. Governing Law Waiver of Jury Trial.* (a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A

TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) Each of the parties hereto hereby submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction in the State and sitting in the County of San Francisco for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement or any other Basic Document; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 7.2 hereof.

(d) The covenants and waivers made pursuant to this Section 7.13 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

*Section 7.14. USA PATRIOT Act.* Lender notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act. Borrower agrees to provide such documentary and other evidence of Borrower’s identity as may be requested by Lender at any time to enable Lender to verify Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

*Section 7.15. Assignment to Federal Reserve Bank.* Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by Borrower to Lender in accordance with the terms of this Agreement will satisfy Borrower’s obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release Lender from its obligations hereunder.

*Section 7.16. Acknowledgement Regarding Any Supported QFCs.* To the extent that the Basic Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support “*QFC Credit Support*” and each such QFC a “*Supported QFC*”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “*U.S. Special Resolution Regimes*”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Basic Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “*Covered Party*”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such

Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Basic Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Basic Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

*Section 7.17. Arm's Length Transaction.* The transaction described in this Agreement is an arm's length, commercial transaction between Borrower and Lender in which: (i) Lender is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) Lender is not acting as a municipal advisor or financial advisor to Borrower; (iii) Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether Lender or any of its affiliates has provided other services or is currently providing other services to Borrower on other matters); (iv) the only obligations Lender has to Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) Lender is not recommending that Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, Borrower should discuss the information contained herein with Borrower's own legal, accounting, tax, financial and other advisors, as Borrower deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Agreement as of the date first written above.

EAST BAY COMMUNITY ENERGY AUTHORITY

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

MUFG UNION BANK, N.A.

By: \_\_\_\_\_  
Name: Jacob Ulevich  
Title: Director

**EXHIBIT A**

**FORM OF COMPLIANCE CERTIFICATE**

This Compliance Certificate (this “*Certificate*”) is furnished to MUFG Union Bank, N.A. (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of September [\_\_\_], 2022 (together with all amendments and supplements thereto, the “*Agreement*”), by and between the East Bay Community Energy Authority (including its successors and assigns, the “*Borrower*”) and Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section [5.1(a)(i)] [5.1(a)(ii)] of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Borrower in accordance with GAAP as of the date and for the period covered thereby.

*[#5 below to be delivered quarterly together with financial statements delivered pursuant to Section 5.1(a)(i)]*

5. Schedule 1 attached hereto sets forth financial data and computations evidencing the Borrower’s compliance with Section 5.1(q) of the Agreement for the trailing twelve month period. To the extent there is a discrepancy between the terms set forth in Schedule 1 and the terms set forth in the Agreement with respect to calculating the Debt Service Coverage Ratio, the Agreement shall control.

**[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Borrower has taken, is taking, or proposes to take with respect to each such condition or event:**



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[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

EAST BAY COMMUNITY ENERGY AUTHORITY

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

**SCHEDULE 1  
TO COMPLIANCE CERTIFICATE**

Debt Service Coverage (Section 5.1(q))

4-QUARTERS  
\_/\_/\_\_\_

A. NET REVENUES:

\$\_\_\_\_\_

B. ANNUAL DEBT SERVICE:

\$\_\_\_\_\_

C. ROW A DIVIDED BY ROW B, EXPRESSED AS RATIO

\_\_\_\_\_

IS THE RATIO IN ROW C GREATER THAN OR EQUAL TO 1.00?

Y/N

**EXHIBIT B**

**FORM OF BORROWING REQUEST**

\_\_\_\_\_, 20\_\_

MUFG Union Bank, N.A.  
445 South Figueroa Street  
Floor 16  
Los Angeles, California 90071  
Attention: Nicholas Boyle

With respect to requests for Revolving Loans:

MUFG Union Bank, N.A.  
Commercial Loan Operations  
1980 Saturn Street, 1<sup>st</sup> Floor  
MC V01-120  
Monterey Park, California 91755  
Attention: Rhonda Brooks

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of September [\_\_\_], 2022 (together with any amendments or supplements thereto, the “*Agreement*”), by and between East Bay Community Energy Authority (with its successors and assigns, the “*Borrower*”) and MUFG Union Bank, N.A. (with its successors and assigns, the “*Lender*”) (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the “*Proposed Loan*”):

1. The Business Day of the Proposed Loan is \_\_\_\_\_, 20\_\_ (the “*Issuance Date*”).
2. The Proposed Loan shall be a Term SOFR Rate Loan for an Interest Period of one month.
3. The principal amount of the Proposed Loan is \$\_\_\_\_\_, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Commitment as of the Issuance Date, and the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.

4. The interest rate with respect to the Proposed Loan shall be the Term SOFR Rate.

5. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects (or in the case of any representation qualified by materiality, in all respects) on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing; and

(c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect.

6. The proceeds for Proposed Loan are being used for the following purposes:

**[(a) qualified expenditures]**

**[(b) working capital and general purposes]**

7. The Proposed Loan shall be made by Lender by wire transfer of immediately available funds or deposited **[in the amount of \$\_\_\_\_\_]** into Borrower's account at Lender in accordance with the instructions set forth in the Agreement or to or on behalf of Borrower in accordance with the instructions set forth below and Borrower hereby confirms that Lender is authorized to make said disbursements:

**[Insert wire instructions and amounts]**

EAST BAY COMMUNITY ENERGY AUTHORITY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved by Lender:

MUFG UNION BANK, N.A.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**

**[FORM OF PROMISSORY NOTE]**

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION. THIS NOTE IS SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AS PROVIDED IN SECTION 7.3 OF THE HEREIN DEFINED AGREEMENT.

**UNITED STATES OF AMERICA  
STATE OF CALIFORNIA  
EAST BAY COMMUNITY ENERGY AUTHORITY**

Dated Date: [\_\_\_\_\_], 2022

For value received, the EAST BAY COMMUNITY ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*EBCEA*”) hereby promises to pay to the order of MUFG Union Bank, N.A., and its successors and assigns, as their respective interests may appear (the “*Lender*”) located at Commercial Loan Operations, 1980 Saturn Street, 1<sup>st</sup> Floor, MC V01-120, Monterey Park, California 91755, the aggregate unpaid principal amount of all Loans made by Lender from time to time pursuant to the Revolving Credit Agreement, dated as of [\_\_\_\_\_], 2022 (together with any amendments or supplements thereto, the “*Agreement*”), by and between Borrower and Lender, plus interest thereon, on the dates, in the amounts and in the manner provided for in the Agreement.

The unpaid principal amount of all Loans from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness (including the Loans) incurred under, and is subject to the terms and provisions of, the Agreement to which reference is hereby made for a statement of said terms and provisions, including those under which this Note may be paid or become due prior to its due date. This Note is the promissory note referred to in Section 2.6(c) of the Agreement and is entitled to the benefits thereof and of the Basic Documents referred to therein. This Note is subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

This Note dated [\_\_\_\_\_], 2022 (the “*Note*”) has been issued pursuant to the Agreement.

Reference is hereby made to the Agreement for a description of the terms on which this Note is issued and all of the terms of the Agreement are hereby incorporated herein and constitute a contract between Borrower and the holder of this Note, and by acceptance hereof the holder of this Note assents to said terms and conditions.

This Note is an obligation of Borrower payable from and secured by a pledge of and a senior lien and charge upon Borrower's Net Revenues.

This Note is payable as to principal and interest thereof, exclusively from Borrower's Net Revenues.

This Note and the interest hereon are senior to all other debt incurred and payable from Borrower's Net Revenues.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Note have been duly authorized by the Resolution duly adopted by Borrower. Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.



IN WITNESS WHEREOF, the East Bay Community Energy Authority has caused this Note to be signed as of the Dated Date specified above.

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Name:

Title:

**TRANSACTIONS ON NOTE**

DATE	COMMITMENT	INTEREST RATE	AMOUNT OF PRINCIPAL PAID	DATE TO WHICH INTEREST PAID	NOTATION MADE BY
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**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
Please insert Social Security or  
Taxpayer Identification Number of Transferee  
/\_\_\_\_\_/

\_\_\_\_\_  
(Please print or typewrite name and address, including zip code, of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_  
attorney to register the transfer of the within Note on the books kept for registration thereof, with  
full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a  
member or participant of a signature guarantee  
program

\_\_\_\_\_  
NOTICE: The signature above must correspond with  
the name of the Owner as it appears upon the front  
of this Note in every particular, without alteration or  
enlargement or change whatsoever.

**EXHIBIT D**

**ACCOUNT CONTROL AGREEMENT**

[to be provided]

**EXHIBIT E**

**INTERCREDITOR AGREEMENT**

[to be provided]

**EXHIBIT F**  
**SECURITY AGREEMENT**

[to be provided]

## FEE AGREEMENT

This FEE AGREEMENT dated September [\_\_\_], 2022 (as amended, modified or restated from time to time, this “*Fee Agreement*”), is by and between the EAST BAY COMMUNITY ENERGY AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 *et. seq.* (together with its successors and assigns, “*Borrower*”), and MUFG UNION BANK, N.A. (together with its successors and permitted assigns, the “*Lender*”).

Reference is made to the Revolving Credit Agreement, dated as of September [\_\_\_], 2022 (as amended, modified, extended or restated from time to time, the “*Agreement*”), entered into between Borrower and Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between Borrower and Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

## ARTICLE I

### FEES

*Section 1.1. Undrawn Fees.* Borrower agrees to pay to Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), quarterly in arrears on the first Business Day of each January, April, July and October until the Commitment End Date, and on the Commitment End Date (each, a “*Payment Date*”), a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) the rate per annum corresponding to the Level specified below associated with the applicable Rating (the “*Undrawn Fee Rate*”), (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

LEVEL	S&P RATING	UNDRAWN FEE RATE
Level 1	A or above	0.25% (25 basis points)
Level 2	A-	0.35% (35 basis points)
Level 3	BBB+	0.50% (50 basis points)

LEVEL	S&P RATING	UNDRAWN FEE RATE
Level 4	BBB	0.70% (70 basis points)
Level 5	Below BBB	2.20% (220 basis points)

The term “Unutilized Commitment” as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day. The term “Rating” as used in this Section 1.1 shall mean the lowest long-term unenhanced debt ratings assigned by S&P to Parity Debt. Any change in the Undrawn Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by S&P and in the event of adoption of any new or changed rating system by the Rating Agency, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of Parity Debt issued by or on behalf of the Borrower in connection with the adoption of a “global” rating scale, each of the ratings from S&P in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Borrower agrees that as of the Closing Date, the Undrawn Fee Rate is that specified above for Level 1. Upon the occurrence and during the continuance of an Event of Default, the Undrawn Fee Rate shall immediately increase by 1.50% per annum over the Undrawn Fee Rate that would otherwise be applicable. In the event any rating as described above is suspended, withdrawn, or otherwise unavailable, the Undrawn Fee Rate shall be the Undrawn Fee Rate specified for Level 5. The Undrawn Fee shall be payable quarterly in arrears, together with interest on the Undrawn Fees from the date payment is due until payment in full at the Default Rate. Such Undrawn Fees shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

*Section 1.2. Amendment Waiver or Consent Fees.* Borrower agrees to pay to Lender on the date on which Borrower requests from Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$5,000, plus, in each case, the reasonable fees and expenses of legal counsel to Lender.

*Section 1.3. Termination Fee; Reduction Fee.* (a) Borrower hereby agrees to pay to Lender a termination fee in connection with any termination of the Commitment by Borrower prior to the first anniversary of the Closing Date, in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit, or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the first anniversary of the Closing Date, and the denominator of which is 360 (the “Termination Fee”), which Termination Fee shall be paid on or before the date of such



termination. No termination in full of the Commitment shall become effective unless and until all amounts payable by Borrower to Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to the first anniversary of the Closing Date, without the payment by Borrower to Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction (without regard to any outstanding Loans, Letters of Credit, or LC Disbursements), (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to but not including the first anniversary of the Closing Date, and the denominator of which is 360. Under no circumstances shall Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction Borrower reduces the Revolving Credit Exposure so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

*Section 1.4. Applicable Margin.* As used in the Agreement and this Fee Agreement, the “Applicable Margin” means the applicable rate per annum under the caption “Applicable Margin” for Revolving Loans as set forth below, in each case, corresponding to the Minimum Amount set forth in the applicable Level as the case may be from time to time:

LEVEL	S&P RATING	APPLICABLE MARGIN
Level 1	A or above	1.40% (140 basis points)
Level 2	A-	1.50% (150 basis points)
Level 3	BBB+	1.65% (165 basis points)
Level 4	BBB	1.85% (185 basis points)
Level 5	Below BBB	3.35% (335 basis points)

The term “*Rating*” as used in this Section 1.4 shall mean the lowest long-term unenhanced debt ratings assigned by S&P to Parity Debt. Any change in the Applicable Margin resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings above are references to rating categories as presently determined by the Rating Agency and in the event of adoption of any new or changed rating system by S&P, including, without limitation, any recalibration or realignment of the long-term unenhanced debt rating of Parity Debt issued by or on behalf of the Borrower in connection with the adoption of a “global” rating scale, each of the ratings from S&P in question referred to above shall be deemed to refer to the rating category under the new rating system which

most closely approximates the applicable rating category as currently in effect. The Borrower agrees that as of the Closing Date, the Applicable Margin is that specified above for Level 1. Upon the occurrence and during the continuance of an Event of Default, the Applicable Margin shall immediately increase by 1.50% per annum over the Applicable Margin that would otherwise be applicable. In the event any rating as described above is suspended, withdrawn, or otherwise unavailable, the Applicable Margin shall be the Undrawn Fee Rate specified for Level 5. The Undrawn Fee shall be payable quarterly in arrears, together with interest on the Undrawn Fees from the date payment is due until payment in full at the Default Rate. Such Undrawn Fees shall be payable in immediately available funds and computed on the basis of a 360-day year and the actual number of days elapsed.

*Section 1.5. Default Rate.* For purposes of this Fee Agreement and the Agreement, “*Default Rate*” means, with respect to any Loans and Letters of Credit, the then applicable Base Rate plus two percent (2.00%).

*Section 1.6. Letter of Credit Fees.* Borrower agrees to pay to Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”), quarterly in arrears on the first Business Day of each January, April, July and October to the LC Termination Date, and on the LC Termination Date (each, a “*LC Payment Date*”), a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) the Applicable Margin, (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The LC Facility Fee shall be calculated from and including one LC Payment Date (or, in the case of the initial LC Facility Fee payment in respect of a Letter of Credit, the date such Letter of Credit is issued) to but excluding the next LC Payment Date (each, a “*LC Payment Period*”), and Lender shall provide Borrower with an invoice for each LC Facility Fee; *provided, however*, that the failure of Lender to do so shall not relieve Borrower from its obligation to pay such LC Facility Fee.

*Section 1.7. Issuance Fees.* Borrower agrees to pay to Lender a non-refundable fee of 25 basis points of the stated amount for each issuance of a Letter of Credit, which fee shall be earned on the issuance date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

## ARTICLE II

### MISCELLANEOUS

*Section 2.1. Legal Fees.* On the Closing Date, Borrower shall pay the reasonable legal fees and expenses of Lender incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount equal to [ \$ \_\_\_\_\_ ] plus disbursements.

*Section 2.2. Amendments.* No amendment to this Fee Agreement will become effective without the prior consent of Borrower and Lender, which consent must be in writing and signed by Lender and an Authorized Representative of Borrower.

*Section 2.3. Governing Law.* THIS FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

*Section 2.4. Counterparts.* This Fee Agreement may be executed in counterparts in accordance with Section 7.11 of the Agreement, which Section 7.11 is incorporated herein by reference.

*Section 2.5. Severability.* Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[Signature Pages To Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

EAST BAY COMMUNITY ENERGY AUTHORITY

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

MUFG UNION BANK, N.A.

By: \_\_\_\_\_  
Name: Jacob Ulevich  
Title: Director

**RESOLUTION NO. R-2022-\_\_**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF THE EBCE AUTHORITY APPROVING AND AUTHORIZING**  
**THE EXECUTION AND DELIVERY OF A NEW REVOLVING CREDIT AGREEMENT WITH**  
**MUFG UNION BANK**

**WHEREAS**, The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020; and

**WHEREAS**, EBCE currently has a Revolving Credit Agreement (the “Existing Agreement”) in place with Barclays Bank PLC, which such Existing Agreement is set to expire in December 2022; and

**WHEREAS**, EBCE sent its Request for Proposals for East Bay Community Energy Authority Revolving Credit Agreement Services to qualified lenders to replace the Existing Agreement and has selected MUFG Union Bank, N.A. (“MUFG”) as having the response best addressing EBCE’s needs to replace the Existing Agreement; and

**WHEREAS**, there has been presented at this meeting a proposed form of Revolving Credit Agreement (“Revolving Credit Agreement”) and a Fee Agreement (the “Fee Agreement”) to be entered into by EBCE and MUFG; and

**WHEREAS**, in compliance with Government Code Section 5852.1, EBCE has obtained from PFM Financial Advisors LLC the certain required good faith estimates, and such estimates have been disclosed at this meeting in the Staff Report accompanying this Resolution; and

**WHEREAS**, all acts, conditions and things required by the Constitution and laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the entry into the Revolving Credit Agreement and the Fee Agreement authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Board of Directors is now duly authorized and empowered, pursuant to each and every requirement of law, to authorize the execution of the Revolving Credit Agreement and the Fee Agreement for the purposes, in the manner and upon the terms provided; and

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EBCE AUTHORITY  
DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The Board of Directors ("Board") hereby specifically finds and declares that the statements, findings and determinations of EBCE set forth above are true and correct, and the Board hereby authorizes entry into the Revolving Credit Agreement and the Fee Agreement permitting borrowings thereunder not to exceed \$200,000,000 outstanding at any time and for an initial borrowing term not to exceed three (3) years for the purposes set forth above.

Section 2. The proposed forms of the Revolving Credit Agreement and the Fee Agreement presented to this meeting and on file with the Secretary are hereby approved, and the Chief Executive Officer is hereby authorized and directed, for and in the name and on behalf of EBCE, to execute and deliver to MUFJ the Revolving Credit Agreement and the Fee Agreement in substantially said forms, with such changes thereto as the Chief Executive Officer, after consultation with other appropriate officers of the Board or EBCE, including, but not limited to, the Chief Operating Officer (each such officer, an "Authorized Representative") and counsel, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Board hereby approves each Authorized Representative, acting singly, to borrow and authorize advances or the issuance of letters of credit from time to time under the Revolving Credit Agreement in such amounts as in their judgment should be borrowed and to provide security for the obligations of EBCE under the Revolving Credit Agreement, including, without limitation, a pledge of the net revenues of EBCE, and to execute and deliver any requests or other documents and agreements as such Authorized Representative may, in her or his discretion, deem reasonably necessary or proper in order to carry into effect the provisions of the Revolving Credit Agreement.

Section 4. The Chief Executive Officer and the Secretary of the Board, and any other Authorized Representative, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of EBCE, to execute and deliver any and all documents, certificates, representations, and Agreements as they, with the advice of counsel, shall approve, and to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, to effectuate the actions that the Board has approved in this Resolution.

Section 5. All actions heretofore taken by the officers and agents of the Board or EBCE with respect to the Revolving Credit Agreement and the Fee Agreement are hereby ratified, confirmed, and approved.

Section 6. This Resolution shall take effect immediately upon its adoption.

ADOPTED AND APPROVED this 21<sup>ST</sup> day of September, 2022.

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Dianne Martinez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board



**Staff Report Item 13**

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

**FROM:** Alec Ward, Associate Policy Manager

**SUBJECT:** Update on EBCE's State and Federal Legislative Process  
(Informational)

**DATE:** September 21, 2022

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**Recommendation**

Receive an informational update on state and federal bills EBCE has been tracking and taking positions on this legislative session.

**Background and Discussion**

The intent of this staff report is to provide an update on the eleven state and federal bills EBCE has taken a position on this legislative session, as well as give an overview of other bills that are relevant to EBCE. The final day for California lawmakers to pass bills this year was August 31<sup>st</sup>.

**Fiscal Impact**

SB 846 may result in additional funding for EBCE energy reliability.  
AB 179 may result in additional funding for EBCE programs.  
AB 209 may result in additional funding for EBCE programs.  
SB 1112 may result in additional funding for lowering TOB financing costs.  
HR 5376 may result in lower renewable energy costs for EBCE and benefits to EBCE customers through energy tax credits and other programs.

**Attachments:**

A. Presentation



SEPTEMBER 21, 2022

# Legislative Update



# Key Deadlines for the 2022 State Legislative Year

Staff Report Item 13A

- 1/3: Legislature reconvened
- 1/10: Governor submitted budget
- 1/31: Deadline to move 2-year bills out of 1<sup>st</sup> house
- 2/18: Bill introduction deadline
- 4/29: Policy cmtes to move fiscal bills to fiscal cmtes (1st house)
- 5/6: Policy cmtes to move nonfiscal bills to floor (1st house)
- 5/20: Fiscal cmtes must move bills to floor (1st house)
- 5/27: Last day for bills to be passed out of 1st house
- 6/15: Budget bill must be passed
- 7/1: Policy cmtes to meet and report bills (2nd house)
- 8/12: Fiscal cmtes to move bills to floor (2<sup>nd</sup> house)
- 8/31: Last day for each house to pass bills
- 9/30: Last day for Governor to sign/veto bills

- **SB 846 (Dodd):**
  - Permits CPUC to extend Diablo Canyon for up to five years
  - Creates a Clean Energy Reliability Investment Plan funded at \$1 billion
- **AB 1279 (Muratsuchi):**
  - Requires CA achieve carbon neutrality by 2045
- **AB 179 (Ting):**
  - \$162 million for equitable building decarb
  - \$235 million for ZEV infrastructure
  - \$45 million for offshore wind
  - \$200 million for transmission
- **AB 209 (Ting):**
  - Expands Demand Side Grid Services Program (\$295 million) to our customers
  - Increases SGIP to \$900 million

# State Bill Tracker - Assembly Staff Report Item 13A

Bill #	Author	Description	Sponsor	Status	EBCE Position
<a href="#">AB 1814</a>	Grayson	Authorizes CCAs to file applications for PUC programs and investments to accelerate widespread transportation electrification.	CaICCA	Author withdrawn	<b>SUPPORT</b>
<a href="#">AB 1960</a>	Villapudua	Encourages the Senate and the Governor to consider permanent residents of northern, southern and the central valley regions of the state to provide more regional diversity among CPUC commissioners.		Vetoed by Gov 6/21	<b>SUPPORT</b>
<a href="#">AB 2061</a>	Ting	Requires data disclosure on EV charging station availability for stations using public or ratepayer money and requires the CEC to assess reliability and equitable access issues.	Flo	Passed 8/30	<b>WATCH</b>
<a href="#">AB 2667</a>	Friedman	Establishes and requires CEC to administer state IDER Fund to incentivize eligible resources to support consumer adoption of clean DERs, creates a system to award incentives.	NRG / EDF	Failed Sen floor vote 8/30	<b>OPPOSE UNLESS AMENDED</b>
<a href="#">AB 2765</a>	Santiago	Creates a new taxpayer-funded fund to cover the costs of CPUC Public Purpose Programs including energy efficiency and conservation, and arrearage management, instead of continuing to rely on customer delivery rates. Reverts to utility ratepayers if fund isn't sufficiently funded by the legislature. Excludes CARE/FERA.	Sempra	Held in Asm Approps Cmte	<b>SUPPORT</b>

# State Bill Tracker - Senate

Staff Report Item 13A

Bill #	Author	Description	Sponsor	Status	EBCE Position
<a href="#">SB 1020</a>	Laird	Sets interim targets for meeting renewable/zero-carbon goals: 90% by end-2035, 95% by end-2040; 100% for state agencies by 2030. State agencies can comply through their LSE, but LSE procurement for the state agency must meet certain criteria. Establishes new fund to support the costs of decarbonization, clean energy, and wildfire mitigation activities with funding sources outside of electricity rates. Establishes new nonprofit public benefit corporation to administer the fund.	Senate Climate Change Working Group	Passed 8/30	SUPPORT IF AMENDED
<a href="#">SB 1063</a>	Skinner	Authorizes the CEC to make standards for energy- and water-efficient appliances effective sooner than one year after adoption if there's a finding of good cause.	CEC	Passed 8/15	SUPPORT
<a href="#">SB 1112</a>	Becker	Requires energy suppliers (including CCAs) offering decarb programs to record a decarb charge notice, then notice of full cost recovery, then notice of charge removal with the project's county.		Passed 8/29	SUPPORT
<a href="#">SB 1136</a>	Portantino	Expedites CEQA if a project uses skilled & trained labor. It also expanded environmental review to "energy efficiency standards" and "performance standards".		Passed 8/31	OPPOSE UNLESS AMENDED
<a href="#">SB 1158</a>	Becker	Changes the Power Source Disclosure rules to require utilities and CCAs to report comparisons of their energy and capacity purchases with their electricity demand on an hourly basis including the associated GHG emissions.		Passed 8/31	WATCH
<a href="#">SB 1385</a>	Cortese	Establishes a new 1,500 MW multifamily housing local solar program that requires each large electrical corporation (IOU) to construct solar and storage systems connected to the distribution system in front of the customers' meters on or near multifamily housing.	CA State Assoc of Electrical Workers / CCUE	Held in Asm Approps Cmte	OPPOSE UNLESS AMENDED
<a href="#">SB 1393</a>	Archuleta	Requires local jurisdictions to consider CEC guidance before mandating that retrofits to a bldg. must upgrade fossil appliances to electric and to file records with CEC.		Held in Asm Approps Cmte	OPPOSE

# Federal Bill Tracker

Staff Report Item 13A

Bill #	Author	Description	Status	Recommended EBCE Position
<a href="#">H.R 5376</a>	Yarmuth	Authorize renewable energy tax breaks including extending and expanding the Investment Tax Credit (ITC) and Production Tax Credit (PTC), as well as other clean energy-friendly provisions including building decarb incentives, electric vehicle tax credits, and environmental justice incentives.	Signed by President 8/16	<b>SUPPORT</b>



## Staff Report Item 14

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

**FROM:** JP Ross, Vice President, Local Development, Electrification & Innovation

**SUBJECT:** Update on EBCE's Electric Vehicle Fast Charging Network Development (Informational)

**DATE:** September 21, 2022

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### Recommendation

Receive an informational update on EBCE's electric vehicle (EV) fast charging network development, including pursuit of a Tolling Partner to help accelerate infrastructure deployment.

### Background and Discussion

EBCE is building a network of EV fast charging hubs on behalf of its customers and JPA member cities. These public fast charging stations will not only help EBCE's service area meet statewide mandates for zero-emission vehicles (ZEVs), but will also help meet the needs of current and future EV drivers, especially renters who do not have access to at-home charging. It is important to note that:

- 47% of all residents in Alameda County are renters
- 90% of all multi-family buildings in Alameda County are 50+ years-old and will therefore need electrical capacity upgrades to accommodate Level 2 (overnight) EV charging
- These critical factors are among several key barriers to renters (nearly half of our population) adopting and benefiting from EVs near-term

Therefore, EBCE's charging network strategy is focused on siting fast charging hubs in areas where there are dense concentrations of multi-family units. EBCE is leveraging its relationship with its JPA member cities whose municipally owned, publicly accessible parking lots and garages will serve as site hosts for these EV fast charging hubs.

- Each project site will have a standard design goal of 10 dual-port fast chargers (20 ports total). This design may be flexible based on site constraints.
- Fast chargers will be capable of charging two EVs simultaneously
- Fast charging hubs will be available 24/7 to EV drivers
- All EV fast charging hubs will be powered by EBCE's Renewable 100 electricity product

### *Multi-Site Approach*

To build a network of EV fast charging hubs across our service area, EBCE's Transportation Electrification program team is identifying sites in each JPA member city. The quantity of sites per city that need EV fast charging hubs to meet the state's ZEV mandates depends on the size of the city and number of vehicle registrations. Critical to EBCE's project development strategy is the identification of viable municipally owned facilities with publicly accessible parking, which will serve as site hosts to EBCE's fast charging hubs. EBCE is working with our JPA member cities to assess these real estate assets for EV fast charging project development. These can be standalone parking facilities or other municipally owned sites that have public parking (e.g., libraries, community centers, etc.). Once municipal sites have been identified, EBCE's Transportation Electrification program team then reviews each in detail to confirm those that meet our priority siting attributes:

- Located in a multi-family "hotspot" (i.e., area with dense concentration of multi-family units)
- Located within walkable distance to desirable driver amenities (e.g., cafes/restaurants, retail, grocery stores, etc.)
- Located in an area with little-to-no existing publicly accessible EV fast charging
- Located in an area with little constraint on PG&E's transmission and distribution system

### *Tolling Structure*

EBCE aims to develop 40-50 public fast charging hubs by 2030. To reach this scale, EBCE is pursuing a tolling structure through which EBCE would contract with a counterparty who will finance, construct, and maintain these charging stations over a 10-year period, and EBCE would pay the counterparty a fixed monthly payment. This Tolling Structure is utilized in the utility industry, including for standalone battery energy storage. This structure is also a similar approach to EBCE's efforts to deploy local, distributed solar and storage on municipal facilities. However, tolling agreements have never been leveraged for EV charging infrastructure, and EBCE will be the first in the U.S. to leverage this financing structure enabling replicability throughout CCAs statewide.

A tolling partnership will enable EBCE to scale its EV fast charging network quickly and cost-effectively by attracting low-cost capital, de-risking technology deployment, and leveraging federal funding opportunities, such as tax credits, to the maximum extent possible.

### *Next Steps*

Staff will come back to the Board later this year seeking approval of an agreement with an EV fast charging tolling partner.

### **Financial Impact**

A tolling agreement would not exceed a net annual expense of the \$3MM already approved in the Local Development budget annually for EV charging.

### **Attachments**

- A. Presentation



SEPTEMBER 21, 2022

# EV Fast Charging Network: Development Update



# EBCE's EV Fast Charging Network

EBCE is building a network of 24/7 publicly accessible electric vehicle (EV) fast chargers to:

- Enable the transition to EVs for *all* residents, especially renters
- Support JPA member cities' Climate Action Plan targets around transportation-related emissions reductions
- Enable our service area to reach CA state mandates for zero-emission vehicles (ZEVs)
  - 1.5 million ZEVs by 2025 → 64k in EBCE service area
  - 5 million ZEVs by 2030 → 200k in EBCE service area
  - 100% of in-state new sales to be ZEV by 2035

EBCE's EV fast charging network targets:

- 40-50 hubs by 2030
- Standard hub design: 10 dual-port fast chargers reaching 20 EVs (i.e., gas station model)

# Partnering with JPA Member Cities

To deliver this network as cost-effectively as possible, EBCE is working with JPA member cities to leverage city-owned real estate parking assets as site hosts. This innovative public-public partnership model will deliver lower EV fast charging project costs (and therefore lower charging costs for drivers).

Cities engaged in Phase I projects:

- Berkeley
- Hayward
- Livermore
- Oakland
- Piedmont
- Pleasanton
- San Leandro

# Site Selection Process

EBCE is identifying sites that meet the following priority attributes:

1. In a multi-unit dwelling (MUD) hotspot
  - 47% of County residents are renters
  - 90% of multi-family housing stock is 50+ yrs old → electrical upgrades required for at-home charging + other barriers for renters
  - DMV registration data shows virtually no uptake of EVs by renters to date
    - Need adoption to reach local GHG reduction and California ZEV targets
    - Convenient, reliable, affordable fast charging near where renters live will enable lower income drivers to benefit from EVs near term
2. Walkable driver amenities (e.g., retail, dining, etc.)
3. Fills gaps in existing fast charging locations (i.e., “charging deserts”)
  - Investing in areas where private sector has not been willing to thus far

# Financing to Scale the Network: Tolling Structure

To deploy 40-50 EV fast charging hubs by 2030, EBCE is pursuing a tolling agreement with a counterparty who will finance, construct, and maintain these charging stations over a 10-year period. Negotiations are currently underway with potential counterparties.

Common structure in utilities (e.g., recent deployment of battery energy storage). Enables EBCE to:

- Attract low-cost capital
- De-risk deployment of an evolving technology
  - No in-house capabilities to own and operate this level of infrastructure assets
- Leverage federal funding opportunities, including tax credits, to the max extent possible through third-party ownership

Financial Impact:

- Will not carry a net annual expense greater than the \$3MM annual budget already approved by the Board for public EV charging infrastructure

# Next Steps

- Staff will come back to the Board later this year seeking approval of an agreement with the selected EV Charging Tolling Partner



## Staff Report Item 15

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

**FROM:** Marie Fontenot, Vice President of Power Resources

**SUBJECT:** Update on timeline and process for EBCE's 2022 Integrated Resource Plan

**DATE:** September 21, 2022

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### Recommendation

Receive an informational update on EBCE's 2022 Integrated Resource Planning (IRP) process in anticipation of a October review of results and request for Board approval of compliance filing.

### Background and Discussion

The IRP proceeding includes two primary components: the biennial study workstream and the mandated procurement workstream. This memo refers only to the biennial study workstream.

The IRP is a long-term planning proceeding intending to evaluate all of the CPUC's electric procurement policies and programs and the reliability and cost-effectiveness of the CPUC-jurisdictional entities'<sup>1</sup> electric supply with the goal of reducing the cost of achieving GHG reductions and other CPUC policy goals. The IRP proceeding looks 10 years forward to determine the least-cost resource mix required to meet these goals while maintaining system reliability.

The IRP also evaluates the contribution of individual entities' resource portfolios to the State's greenhouse gas (GHG) emissions. This IRP cycle, the CPUC is requiring each entity to submit distinct portfolios that achieve their proportional share of two alternative statewide electric sector GHG targets. EBCE will report analysis results and proposed resource portfolios that address the question "what are the desired portfolios of resources based on a statewide electric sector goal of achieving (1) 30 million metric tons (MMT) of GHG emissions by 2030; and (2) a maximum of 25 MMT of GHG emissions by 2030." The inputs and assumptions used

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<sup>1</sup> In context of IRP requirements, includes Investor Owned Utilities (IOUs), Energy Service Providers (ESPs), and Community Choice Aggregators (CCAs).

in the 30 MMT and 25 MMT scenario must be consistent with CPUC-assumptions; the required assumptions are discussed below. Entities are also permitted to submit an alternative portfolio that uses different assumptions, provided those assumptions are identified and justification for the discrepancies are described.

All CPUC-jurisdictional entities are required to file and serve their individual IRPs with the CPUC by November 1, 2022. CPUC Decision 22-02-004, issued February 10, 2022, adopted the 2021 IRP Preferred System Plan and established the November filing deadline. A subsequent Ruling, issued on June 15, 2022 established the final load forecasts and GHG benchmarks for the 2022 IRP Plans. The Ruling also clarified that load serving entity filing must include three documents: (1) a Narrative Template, (2) the Resource Data Template which details the resources in each LSE's proposed portfolio, and (3) the Clean System Power (CSP) Calculator which calculates GHG and other emission results for each LSE's portfolio. Staff will present the results of the 2022 IRP analysis and the recommended portfolio of resources in the October Board meeting. In this meeting, staff will seek the Board approval of the filing prior to the filing, consistent with the CPUC's requirement of IRP filings completed by CCAs.

### **Financial Impact**

None. Informational update only.

### **Attachments**

- A. Presentation



SEPTEMBER, 2022

# Integrated Resource Plan Update



- **Integrated Resources Plan (IRP): a biennial analysis and filing required by CPUC.**
  - Load serving entities (LSEs) submit long-term procurement plans to the CPUC
- **Evaluate LSEs' ability to contribute to emissions reduction while meeting electricity-related compliance obligations.**
- **CPUC evaluates California's resource needs for 10 coming years.**
  - Important: can result in CPUC-mandated procurement

## CPUC

- 1) Analyses based on CPUC-prescribed elements & with EBCE-specified changes
- 2) Narrative - analyses, process, results, lessons learned, procurement targets
- 3) Resource Data Template - conforming and preferred portfolios
- 4) Clean System Power Calculator

## EBCE Board

- 1) All CPUC materials for review and approval pre-filing
- 2) Understand drivers of portfolio costs
- 3) Evaluate macro-level resource ability
- 4) Identify potential threats to EBCE OMMT 2030 portfolio; later develop mitigations

# Timeline

Date	Event
February 2022	Decision Adopting 2021 PSP, Establishing 2022 IRP Schedule
April 20, 2022	ALJ Ruling Proposes 2022 IRP load forecasts & GHG benchmarks
June 28, 2022	Final load forecasts & GHG benchmark inputs
July 15, 2022	Final Clean System Power Calculator (Emission analysis tool)
July 15, 2022	Final Filing Requirements and guides published
Aug 24, 2022	Final Resource Data Template
Aug - Sept 2022	EBCE performs quantitative analyses, develops portfolios
Sept - Oct 2022	EBCE refines portfolio results, prepares filing narrative materials
Oct 19, 2022	Presentation to EBCE Board; staff seeks approval to file
Nov 1, 2022	IRP filing deadline to CPUC

- CPUC-coordinated planning promotes a more stable statewide electricity system
- Alignment with CPUC view of the market; identification of specific differences in respective views
- Evaluation of costs & risks of different portfolios under different potential policy futures
- Identify barriers to EBCE's emission reduction objectives
- Open-source software can expand modeling & analytic capabilities w/in EBCE
  - Potential for EBCE to do future modeling in-house

# Analytical Approach

## Capacity Expansion Model (CEM)

- Zonal modeling explores the tradeoffs between resource types and their suitability to serve California's growing electricity needs
- GridPath modeling software optimizes statewide resource additions to lower emissions while still ensuring sufficient capacity on the system to avoid rolling blackouts

## Production Cost Model (PCM)

- Hourly dispatch modeling of all generators in state determines price environment which EBCE will be operating into the future
- Captures expected shifts in price patterns that may arise from combinations of increased solar resource on the CA grid, electrification efforts, eventual retirement of Diablo Canyon, etc.

## Portfolio Expansion Modeling (PEM)

- In the context of the CA energy system modeled above, EBCE optimizes resource procurement over the next 20 years to minimize the cost purchased energy while achieving state-mandated or locally-driven goals

# Modeling Framework

## Capacity Expansion Model (CEM)

- California Public Utilities Commission (CPUC) requires that all load-service entities (LSEs) submit plans consistent with a 30 million metric tons (MMT) and 25 MMT statewide emissions targets
- Staff considers the 25 MMT case to be our “base case”
- EBCE has developed its own case in which capacity concerns keep Diablo and select natural gas-fired plants on the system beyond the retirement dates specified in the CPUC cases

## Production Cost Model (PCM)

- The base case assumes normal hydro conditions and a return to lower natural gas prices
- Staff will also look at a case in which constrained hydro availability and potential ongoing natural gas supply disruptions put upward pressure on CA electricity prices

## Portfolio Expansion Modeling (PEM)

- The base case assumes no expansion of EBCE territory and that all projects are completed on schedule
- Staff will explore the impact of adding Stockton / San Joaquin County in 2024 (?)
- Staff is also looking at a case in which supply chain disruptions lead to project delays, to understand the magnitude of the market exposure that arises in these cases and consider strategies to mitigate that exposure

# Framing an IRP



## Aisle 1

30 MMT grid emissions \*

25 MMT grid emissions \*

Diablo retirement delayed

O-T-C Gas retirement delayed

Global Supply Chain / new resource delays

## Aisle 2

CPUC Price Assumptions \*

Stable Prices

Extreme (high) Prices

Extreme (low) Prices

Prices Variation

## Aisle 3

CPUC "base" portfolio \*

EBCE Extreme Project Delays

EBCE service territory expansion

EBCE electrification



# Framing an IRP



## Aisle 1

30 MMT grid emissions \*

25 MMT grid emissions \*

Diablo retirement

Delayed retirements

Delayed

Global Supply Chain / new resource delays

## Aisle 2

CPUC Price Assumptions \*

Stable Prices

Extreme (high) Prices

Extreme (low) Prices

Prices Variation

## Aisle 3

CPUC "base" portfolio \*

EBCE Extreme Project Delays

ERCFC service

EBCE load growth

electrification

\* Indicates CPUC requirement

## IRP-Directed Procurement Trend: More capacity procurement, more procurement of specific technologies

- 2018 IRP: CPUC ordered 3,300 MW of incremental procurement online in 2021-2023.
- 2020 IRP: CPUC ordered 11,500 MW of incremental procurement online in 2024-2026, including 1,000 MW of Geothermal and 1,000 MW of Long-Duration Energy Storage.
- 2022 IRP Cycle indicates CPUC interest in Long-Duration Energy Storage (>4 hr) and Off-Shore Wind development.
- IRP Procurement Program proposal could start as early as 2023 with ongoing oversight of LSEs.

## Risk that IRP Procurement Displaces EBCE's Resource Portfolio Design

- IRP-driven procurement may mandate higher volumes of technology-specific procurement such as geothermal, off-shore wind, energy storage, or other resources than EBCE would select on its own.

# Thank You!



Questions? Give us a call:  
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# Appendix