

EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the East Bay Community Energy Authority, also known as “East Bay Community Energy,” (“EBCE”) and Nicolas Chaset, an individual (“EMPLOYEE”). EBCE and EMPLOYEE are sometimes collectively referred to herein as the “PARTIES.” For identification purposes, this Agreement is dated June 21, 2017.

RECITALS

This Employment Agreement is entered into on the basis of the following facts, understandings and intentions of the PARTIES:

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

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

C. Section 4.10 of the JPA Agreement provides that the EBCE Board shall appoint a Chief Executive Officer (“CEO”) for the EBCE, who shall be responsible for the day-to-day operation and management of the EBCE and the CCA Program, and provides for the powers and authority of the CEO.

D. EMPLOYEE possesses the skill, experience, ability, background and knowledge to perform the duties and services provided by this Agreement as the CEO of EBCE.

E. EBCE desires to appoint and employ EMPLOYEE as its Chief Executive Officer on the terms provided by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. **Incorporation of Recitals.** The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. **Duties and Authority.** EBCE shall employ EMPLOYEE as the Chief Executive Officer of EBCE, with the full power and authority to perform all of the duties of the Chief Executive

Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).

3. Restrictions on Outside Business Activities and Conflicts. During his employment, EMPLOYEE shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without EBCE’s prior written consent, tender to others services of any kind for compensation, or engage in any other business activity. In addition, EMPLOYEE shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Chief Executive Officer’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be for two years, commencing on the date EMPLOYEE actually reports for work and assumes duties of Chief Executive Officer. In the event this does not occur by August 14, 2017, this agreement shall be considered null and void, unless the PARTIES mutually agree to a later start date.

5. Salary. Effective on the commencement of employment, EBCE shall pay EMPLOYEE an annual salary of \$240,000, prorated and paid on EBCE’s normal paydays, subject to legally permissible or required deductions. EMPLOYEE’s salary is compensation for all hours worked and for all services under this Agreement. EMPLOYEE shall be exempt from overtime pay provisions of California law (if any) and federal law. EMPLOYEE’s salary may be adjusted periodically to reflect cost of living increases and merit increases.

6. Evaluation of Performance. The Board shall evaluate the performance of EMPLOYEE at or about the time of program launch and at each annual anniversary thereafter. Evaluations may be conducted more often at the Board’s discretion. EMPLOYEE will request and schedule the minimum required evaluations as appropriate under the EBCE’s agenda procedures or as otherwise directed by the Board.

7. Benefits. During the Term of this Agreement, EMPLOYEE shall be entitled to participate in any group insurance plan (including medical, dental, vision, life and disability), retirement program or similar plan or program of EBCE established by the Board during the term of this Agreement to the extent EMPLOYEE is eligible under its provisions. In the event EBCE establishes a separate benefit program for executive and management employees, EMPLOYEE shall be entitled to participate only in such benefit program. EBCE may establish additional benefit programs and may modify, reduce or eliminate any benefit plan or program in its discretion, in accordance with applicable law. In addition, EMPLOYEE shall be entitled to the following benefits:

a. Transition Health Benefit. EBCE will reimburse Employee for the full COBRA premiums EMPLOYEE pays to maintain group health coverage for himself and eligible family members until EBCE establishes its own medical insurance program. This transition health benefit will end as soon as EBCE

establishes group health coverage for which EMPLOYEE is eligible, regardless of the terms or whether it duplicates the coverage EMPLOYEE has under COBRA with his prior employer. It will also end in the event EMPLOYEE becomes ineligible for coverage under COBRA with his prior employer.

b. Vacation. EMPLOYEE will accrue vacation leave at the rate of 120 hours (3 weeks) annually, prorated and credited each pay period. EMPLOYEE may accrue vacation to a limit of 1.5 times the annual accrual. Once EMPLOYEE reaches the maximum accrual limit he will not accrue any additional vacation time until his accrued balance falls below the maximum limit. Except as otherwise provided in this Agreement, vacation leave shall be subject to any EBCE vacation policy applicable to employees generally.

c. Sick Leave. EMPLOYEE shall be entitled to sick leave in the amount of one day per month, a total of 96 hours annually, prorated and credited each pay period. Except as otherwise provided in this Agreement, sick leave shall be subject to any EBCE sick leave policy applicable to full-time employees generally. This benefit will be interpreted and applied consistent with the minimum requirements of California law requiring paid sick leave.

d. Holiday Leave. EMPLOYEE shall be entitled to the following paid holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Friday after Thanksgiving, Christmas Day. In the event a holiday falls on a weekend or another question arises in the administration of a holiday, the holiday will be administered in a manner similar to the benefit applied to executives in Alameda County until such time as EBCE adopts its own holiday policy applicable to employees generally. In addition, on July 1 of each year, EMPLOYEE will be credited with four floating holidays for use during the year from July 1 – June 30. EMPLOYEE must be employed on July 1 to be eligible to receive any floating holidays, floating holidays are not prorated.

e. Retirement. EMPLOYEE will be eligible to participate in any public retirement program or similar plan for which EBCE employees become eligible to participate. Until the time that an agreement for participation in such a program or plan is established, EBCE will provide EMPLOYEE with the opportunity to participate in a 401(a) plan. After 3 months of employment, assuming EMPLOYEE is participating in the 401(a) plan, EMPLOYEE will be eligible for an employer matching contribution of 50%, up to 6% of EMPLOYEE's salary (subject to IRS limits). In the event a 401(a) plan is not immediately available, EMPLOYEE will be included in mandatory Social Security, per the requirements of federal law.

f. Car Allowance. EMPLOYEE's duties require that he have available exclusive and unrestricted use of an automobile for business purposes and EMPLOYEE agrees to have a personal vehicle available for such use. In consideration of this, EBCE agrees to pay to EMPLOYEE, during the term of this

Agreement and in addition to other salary and benefits, a car allowance of Three Hundred Fifty Dollars (\$350.00) per month. The car allowance includes reimbursement for an appropriate allocation of vehicle insurance and all other expenses of vehicle ownership, maintenance and operation. EMPLOYEE shall maintain automobile liability insurance limit of at least \$250,000 per person and \$500,000 per accident. EMPLOYEE shall submit proof of insurance on request.

g. Professional Organizations. Subject to availability of funds and with prior approval, EBCE agrees to pay or to reimburse EMPLOYEE for any budgeted, reasonable and necessary membership dues in professional organizations.

9. Expenses. During the employment term, and subject to the availability of funds, EBCE shall reimburse EMPLOYEE for budgeted and reasonable out-of-pocket expenses incurred in connection with EBCE's business, including reasonable expenses for travel, food, and lodging while away from home, subject to such policies as EBCE may from time-to-time reasonably establish for its employees. Additionally, EMPLOYEE shall be entitled to Board-approved or budgeted and reasonable reimbursement for continuing education expenses, and for attendance at conventions, and conferences. EMPLOYEE may, upon request and prior approval by the EBCE Board, be reimbursed for budgeted and reasonable expenses incurred in attending additional events that are appropriate to EBCE's goals.

10. Termination of Agreement.

a. Termination by EBCE. EMPLOYEE is employed at the pleasure of the Board, and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

b. Termination on Resignation. EMPLOYEE may terminate the Agreement by giving EBCE at least 60 days (or more if possible) prior written notice. EBCE may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

c. Termination on Death. If EMPLOYEE dies during the term of this Agreement, this Agreement shall be terminated on the date of EMPLOYEE's death. All warrants or checks for accrued salary, accrued vacation or other items shall be released to the person designated in writing by EMPLOYEE pursuant to Government Code Section 53245 or, if no designation is made, to EMPLOYEE's estate.

11. Severance. EBCE shall pay EMPLOYEE for all services through the effective date of termination. EMPLOYEE shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits.

a. If EBCE terminates this Agreement (thereby terminating EMPLOYEE's Employment) without cause, EBCE shall pay EMPLOYEE a lump sum severance benefit equal to three months of his then applicable base salary.

b. If EBCE terminates this Agreement (thereby terminating EMPLOYEE's Employment) with cause, EMPLOYEE shall not be entitled to any severance. As used in this Agreement, cause shall mean termination due to:

(1) A conviction, plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission involving any felony, intentional tort, crime of moral turpitude or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest;

(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of EMPLOYEE's duties under this Agreement and involving a willful or intentional violation of law;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

(6) Any other action or inaction by EMPLOYEE that materially and substantially harms EBCE's interests, materially and substantially impedes or disrupts the performance of EBCE or that is detrimental to employee safety or public safety.

c. If EMPLOYEE terminates this Agreement (thereby terminating EMPLOYEE's Employment), EMPLOYEE shall not be entitled to any severance.

d. Any other term of this Agreement notwithstanding, the maximum severance that EMPLOYEE may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event EMPLOYEE is convicted of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the EBCE for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

12. Miscellaneous Provisions.

a. Integration. Subject to all applicable Government code sections, the Agreement contains the entire agreement between the PARTIES and supersedes all prior oral and written agreements, understandings, commitments and practices between the PARTIES before the date of this Agreement. No amendments to this Agreement may be made except in writing signed by the PARTIES.

b. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances it shall nevertheless remain in full force and effect in all other circumstances.

c. Notices. Any notices required or permitted under this Agreement must be in writing and shall be deemed effective on the earlier of personal delivery (including personal delivery by facsimile or similar means intended to provide actual delivery on the same day) or the third day following mailing by first class mail to the recipient. Notice to EBCE shall be addressed to the Secretary of the Board of Directors at the EBCE's then principal place of business. Notice to EMPLOYEE shall be addressed to his home address, as then shown in EBCE's files.

d. Agreement is Binding. This Agreement shall be binding upon and inure to the benefit of EBCE, its successor and assigns, and shall be binding upon EMPLOYEE, his administrators, executors, legatees, heirs, and assigns.

e. Waiver. The failure of either PARTY to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other PARTY shall not be deemed a waiver of that term, covenant or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

Scott Haggerty, Chair
East Bay Community Energy Authority

Nicolas Chaset

DATE: _____, 2017

DATE: _____, 2017

APPROVED AS TO FORM:

Inder Khalsa, Interim General Counsel

ATTEST:

Stephanie Cabrera, EBCE Secretary