



Staff Report Item 19

TO: East Bay Community Energy Board of Directors

FROM: Alex DiGiorgio, Public Engagement Manager

SUBJECT: Inclusion of New Communities (Action Item)

DATE: November 20, 2019

Recommendations

Receive update and analysis on including new jurisdictions within EBCE's service area;

- A) Adopt a Resolution to include the Cities of Tracy, Pleasanton, and Newark within EBCE's Joint Powers Authority and service area, with customer enrollments to begin in 2021;
- B) Direct staff to update Exhibit A ("List of Parties") of EBCE's Joint Powers Agreement to reflect the inclusion of new member jurisdictions;
- C) Direct staff to update Exhibits B ("Annual Energy Use") and C ("Voting Shares Vote") of EBCE's Joint Powers Agreement with 2018 PG&E electric load data and to reflect the inclusion of new member jurisdictions; and
- D) Adopt a Resolution to authorize staff to update EBCE's Implementation Plan to reflect the inclusion of new member jurisdictions, and to submit the updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of calendar year 2019.

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 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 an ordinance to implement a community choice aggregation program by joining EBCE's JPA, pursuant to Public Utilities Code Section 366.2; **2)** EBCE's Board must pass a resolution authorizing the membership of the prospective jurisdiction; **3)** the prospective jurisdiction must execute the EBCE Joint Powers Agreement; and **4)** EBCE must update its Joint Powers Agreement 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 city councils of the cities of Tracy, Pleasanton, and Newark have already adopted the required resolutions requesting join EBCE and ordinances pursuant to Public Utilities Code Section 366.2. The next step towards Tracy, Pleasanton, and Newark becoming member cities of EBCE is for the Board of Directors to adopt the proposed Resolution authorizing the cities to join EBCE, with customer enrollments to begin in 2021.

Section 3.1 of the Joint Power Agreement also provides for the satisfaction of other "conditions" for JPA membership (e.g. "membership payments" or "membership fees"), which are subject to the discretion of EBCE's Board. To date, the EBCE Board has not imposed such conditions on membership.

One potential condition a Board member asked to consider is the extent to which, if any, new member jurisdictions would be eligible to participate in a ‘Voting Shares’ vote of the Board of Directors, if such a vote is requested before the new customer enrollments are completed. According to *Section 4.12.2* of EBCE’s Joint Powers Agreement, a ‘Voting Shares’ vote may be requested following an affirmative ‘Percentage Vote’ (a simple majority of the Directors, typically) when three or more Directors request it, or when there is a tied vote. Voting Shares votes are assigned to each jurisdiction according to its electric load data. Please refer to JPA Exhibits B and C (attached).

To date, no *Section 4.12.2* Voting Shares votes have occurred. Nevertheless, since new member jurisdictions would be entitled to a seat on EBCE’s Board in 2020 (following CPUC certification of EBCE’s updated Implementation Plan) but would not begin service until 2021, the Board could decide to limit the Voting Shares votes of new parties to “0%” until new community enrollments are completed. If the Board determines that this or other conditions are appropriate to impose on EBCE membership, those conditions should be added to the Resolution.

Requirements: Update JPA Exhibits A, B, & C

As a separate but related item, the Board should consider updating 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 Cities of Tracy, Pleasanton, and Newark, the names of these cities must be added to Exhibit A listed in alphabetical order (draft Attached).

Recommendation: Pending Board authorization to include the Cities of Tracy, Pleasanton, and Newark, approve a motion to update Exhibit A to include these jurisdictions 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.¹ This procedure is 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). To date, the Voting Shares Vote provision of the JPA has never been invoked.

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.” Since EBCE’s formation, Exhibit B has relied on 2014 PG&E load data.

December 1, 2019 marks the three-year anniversary of EBCE’s initial launch date. As articulated in *Section 1.2.23*, the load data used to calculate Exhibits B and C is to transition from PG&E’s 2014 load data to EBCE’s most current, post-enrollment load data. However, due to the phased implementation of EBCE’s initial customer enrollments, a full calendar year of post-enrollment EBCE load data is not yet available—which means transitioning away from PG&E load data at this time would skew each jurisdiction’s “Annual Energy Use” as set forth in Exhibit B (as well as the corresponding Voting Shares in Exhibit C).

¹ *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*.

For this reason, EBCE staff recommends the Board consider updating Exhibit B using the most recent PG&E load data available (i.e., from calendar year 2018).² 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 (perhaps by March 2020, based on EBCE’s 2019 load data). To better understand the reasoning behind this recommendation, the table below outlines the ‘pros’ and ‘cons’ using different years and energy providers (i.e., PG&E vs. EBCE) to update Exhibit B:

Load Year and Energy Provider options for update to Exhibit B

Year	Energy Provider	Pro	Con
2014	PG&E	Currently in use, per the JPA	Data is five years old / out of date
2017	PG&E	EBCE has data for all members + Tracy, Pleasanton, Newark	Data is two years old / out of date; Doesn’t account for opt outs
2018	PG&E	EBCE has data for all members + Tracy, Pleasanton	EBCE doesn’t have data for Newark; Doesn’t account for opt outs
2018	EBCE	EBCE has data for all original members	Data only accounts for <ul style="list-style-type: none"> • 6 months commercial load • <2 months residential load
2019	EBCE	Most accurate load data for original members	Will not have full year of data until March 2020, multiple updates

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 2018 PG&E load data, Exhibit C will be adjusted accordingly to reflect the Voting Shares percentage of each member jurisdiction.

Absent any additional Board action, new member jurisdictions would likewise have a Voting Share based on their 2018 PG&E load data. This would result in the new members having greater Voting Shares than some current members, despite there being no enrolled accounts within their jurisdictions. As noted earlier, however, JPA *Section 3.1* authorizes current member jurisdictions to set “conditions” for new membership. To preserve what we believe was the intent behind the Voting Shares

² The most recent PG&E load data available to EBCE is from calendar year 2018 for all jurisdictions, except the City of Newark. Currently, the most recent PG&E load data available to EBCE for Newark is from calendar year 2017.

Vote described in *Sections 1.1.23* and *4.12.2*, the Board could consider assigning new members a Voting Share of 0% until their EBCE enrollments are complete. This would mean new member jurisdictions would be entitled to a seat on EBCE's Board beginning in 2020, following the CPUC's certification of EBCE's updated Implementation Plan, and each have one vote in standard Board decisions; but if *Section 4.12.2* is invoked, these jurisdictions would not have a Voting Share above 0% until their EBCE enrollments are complete.

Post enrollment, the Board should consider whether new members to the JPA would be assigned a Voting Shares vote based on updated city-wide PG&E load data; or whether new members would continue to have a Voting Share of 0% until there is a full year of EBCE enrollment data for their usage (presumably 2022 or 2023).

By approximately March of 2020, a full calendar year of post-enrollment EBCE load data will be available for 2019. At that time, EBCE's Board could consider updating Exhibits B and C to reflect EBCE-only data (i.e. the load would not include customers who have opted out of EBCE service). In this scenario, new member jurisdictions would continue to have a Voting Share of 0%, since their communities will not yet be enrolled. Once Tracy, Pleasanton, and Newark complete their EBCE enrollments and have a full calendar year's-worth of usage data, their Voting Shares percentages will be quantifiable, and Exhibits B and C can be updated accordingly.

Lastly, it is worth noting potential drawbacks to conditioning EBCE membership in this way (i.e., by temporarily assigning new JPA members a Voting Shares Vote of 0%). New Board members and/or the communities they represent could perceive they are being "sidelined" or excluded from certain aspects of Board decision-making, even if a Voting Shares Vote is never called. This could create doubt and/or undermine a sense of cohesion among the Board. Hypothetically, it could lead some Councils to reconsider their decision to join EBCE. This seems unlikely, however, since a Voting Shares Vote has never been called before and potential new members are not currently required to pay any fee to join EBCE, which could become a future condition of membership. For these reasons, the Board is encouraged to proceed cautiously when considering conditions on new membership.

Recommendation: Update Exhibit B using 2018 PG&E load data for "Annual Energy Use" and "Total Energy Use," excepting for the City of Newark which will use 2017 PG&E load data (unless 2018 load data becomes available in time for EBCE to meet CPUC deadlines). Update Exhibit C's Voting Shares to correspond to updated numbers in Exhibit B. Consider updating Exhibits B and C again in 2020 using either 2019 EBCE load data, or 2019 PG&E load data, when such data becomes available.

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 2021, must complete the process of joining EBCE's JPA by the end of 2019. Otherwise, enrollment with EBCE will not be possible until 2022 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 2021. Please see attached: "Steps to Joining East Bay Community Energy (EBCE)."

Date	Event
Aug-Sept 2019	City completes PG&E load data request forms/non-disclosure agreements.
Sept-Oct 2019	City passes Resolution, Ordinance to join EBCE.
Sept-Oct 2019	EBCE conducts quantitative analysis to evaluate inclusion request(s).
Oct-Nov 2019	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.
Nov-Dec 2019	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.
2020	New communities entitled to Board seat(s); community outreach within new jurisdictions begins.
2021	Enrollment begins in new jurisdiction(s).

New Community Inclusion: Eligible Communities

The City Councils of the following jurisdictions have approved Resolutions requesting to join EBCE and Ordinances to implement the CCA program:

- 1) City of Tracy (San Joaquin County);
- 2) City of Pleasanton (Alameda County); and
- 3) City of Newark (Alameda County)

Fiscal Impact

The prospect of including three new cities within EBCE’s Joint Powers Authority and service area presents considerable financial implications for the Agency. For this reason, EBCE staff conducted a Quantitative Analysis (QA) to evaluate the cost of service to the prospective new member jurisdictions.

Based on the QA, the combined additional electric load of Tracy, Pleasanton, and Newark is estimated to yield annual net revenues of approximately \$15.3 million to EBCE, or 17.4% above the cost of service to these jurisdictions. 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 half a percentage point (i.e., from 14% to 14.6%). 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:

	Tracy	Pleasanton	Newark	<i>T+P+N Combined</i>	EBCE 2019	EBCE w/T+P+N 2022
Accounts	29,300	30,700	15,700	75,700	552,400	628,100
Load (MWh/yr)	399,000	450,000	263,000	1,113,000	6,104,000	7,217,000
Net Rev %	+16.5%	+18%	+17.6%	+17.4%	+14%	+14.6%
Net Rev \$	\$5.2M	\$6.5M	\$3.6M	\$15.3M	\$68.1M	\$83.5M

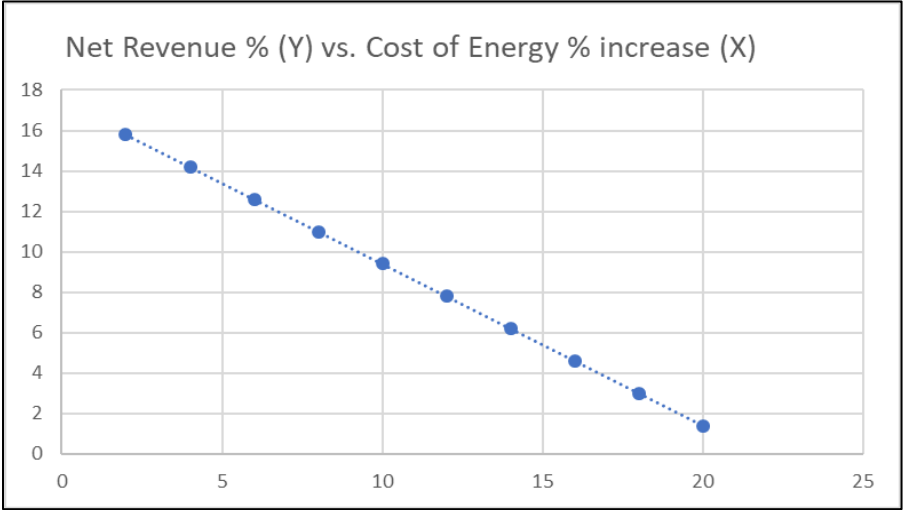
NOTES:

- *Assumes 5% opt out rate (slightly above current EBCE opt out rate for load);
- *Applies EBCE’s 2019 rates from 2019-20 budget development;
- *Data excludes ineligible loads (e.g. BART, Direct Access, Standby);
- *2018 PG&E load data for Tracy & Pleasanton; 2017 data for Newark;
- *PG&E data had 148 Pleasanton accounts ‘unclassified’ (~85,000 MWh)

Financial Stress Test: 20% Increase to Cost of Energy; or 20% Opt-Out of Load

To help the Board evaluate the financial risk associated with including the prospective new member jurisdictions, the QA included a “20/20 Financial Stress Test.” This test measured the impact of **1)** a 20% increase in wholesale energy costs; and (separately) **2)** a 20% opt out rate by load on the prospective new communities’ combined net position.

1) The graph below represents the financial impact of a 20% increase in wholesale energy costs on the combined net position of the prospective new communities:

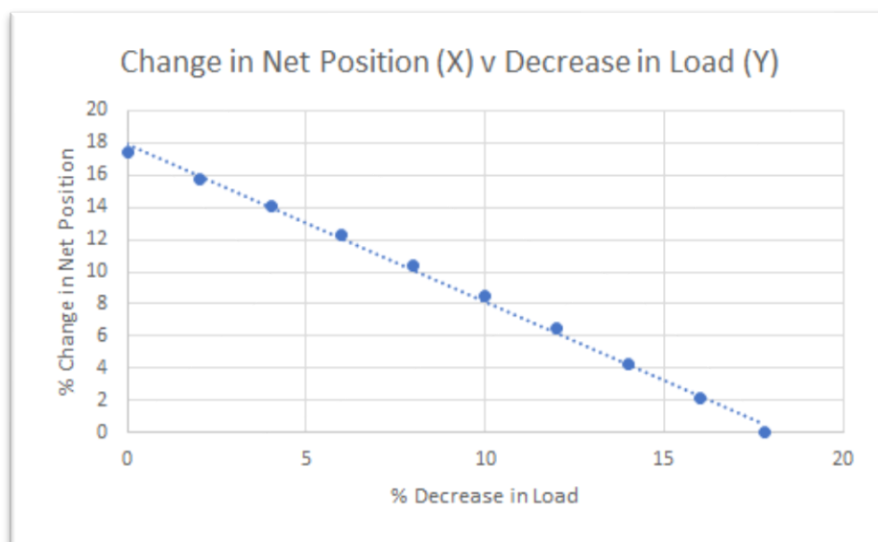


Assumptions:

- Cost of energy estimated to be the percentage of additional load multiplied by 2019-20 budgeted energy expenses;
- Does not include initial customer notification costs (e.g., four mailed enrollment notices, staff time, event fees, travel, etc.);
- Cost increase persists for an entire year;

According to the QA, for every 1% increase in the cost of energy, there is a 0.8% reduction in net position for the inclusion of the prospective new communities. In other words, for each percent increase in energy costs, the net position reduces by \$709,000. Correspondingly, at a 4% energy cost increase the net position reduces from \$15.3M/year to \$12.5M/year; and a 20% energy cost increase would reduce the net position to \$1.2M/year.

2) The graph below represents the financial impact of a 20% opt out of load on the combined net position of the prospective new communities:



As the graph indicates, for each 1% opt out in load, there is approximately 1% decrease in net position (i.e., approximately \$153,000). As such, a 22.8% total opt out of load represents the ‘break-even point’ for the cost of including the combined load of the prospective new jurisdictions. *This appears as 17.8% on the graph because the QA already assumed a 5% opt out rate to generate the net position.* At a 25% opt out rate, the net loss to EBCE is estimated to be less than \$1M. It is worth noting that EBCE’s current opt out rate of load is less than 5%.

Anticipated Additional Greenhouse Gas (GHG) Emissions Reductions

Among the most compelling reasons to include new jurisdictions within EBCE’s service area is the prospect of further reducing energy-related greenhouse gas (GHG) emissions as quickly as possible.

A central facet of EBCE’s mission is to provide less carbon-intensive electricity to consumers at competitive rates. By procuring electricity from more renewable sources and developing innovative customer programs to accelerate the deployment of distributed energy resources, electric vehicles, battery storage, etc., EBCE can further advance this objective.

The 2018 emissions factor for EBCE’s aggregated energy service options (i.e., Bright Choice, Brilliant 100 and Renewable 100) is 82 lb-CO₂e/MWh, pending verification from third parties (e.g., [The Climate Registry](#)). To date, PG&E has not yet published the 2018 emissions factor for its energy supply. As such, it is not currently possible to make an ‘apples-to-apples’ comparison between EBCE and PG&E’s respective emissions factors. Nevertheless, if one were to compare EBCE’s 2018 emissions factor to PG&E’s 2017 emissions factor (reported at 210 lb-CO₂e/MWh), and apply this to the

combined load of the prospective new jurisdictions, it would yield a net GHG reduction of approximately 64,000 metric tons of CO₂e/year.

It should be noted that PG&E's 2018 emissions factor is expected to be substantially lower than that of 2017. This may be largely due to 1) the growing CCA market share in PG&E service area and 2) PG&E's reliance on nuclear power.

Since the first CCA in California launched service in 2010, the market share of CCA programs in PG&E's service area have grown exponentially. In effect, this reduces the overall load PG&E serves; which allows the percentage of renewable and/or carbon free resources within PG&E's supply portfolio to increase – even if PG&E does not enter into new contracts for renewable energy. Indeed, the transition of load from PG&E to CCAs within its service area complicates and confounds comparisons between their respective emissions factors.

Similarly, the percentage of PG&E's energy supply that is generated by nuclear power increases relative to its overall, diminishing load. While nuclear power may arguably be characterized as 'carbon free,' it will not likely be powering the electricity needs of future Californians, since the State's last nuclear power plant (PG&E's Diablo Canyon facility) is scheduled to close by 2025.

Staff Recommendation

1. Receive update and analysis on including new jurisdictions within EBCE's service area;
2. Adopt a Resolution to include the Cities of Tracy, Pleasanton and Newark within EBCE's Joint Powers Authority and service area, with customer enrollments to begin in 2021;
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 new member-jurisdictions.
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 2018 PG&E electric load data, and to reflect the inclusion of new member jurisdictions;
5. Adopt a Resolution to authorize staff to update the Implementation Plan to reflect the inclusion of new member jurisdictions, and to submit the updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of calendar year 2019.

Attachments

- A. Steps to Joining East Bay Community Energy;
- B. Presentation: New Community Inclusion and Quantitative Analysis;
- C. City of Tracy signed Ordinance and Resolution to join EBCE;
- D. City of Pleasanton signed Ordinance and Resolution to join EBCE;
- E. City of Newark signed Ordinance and Resolution to join EBCE;
- F. Resolution to include the cities of Tracy, Pleasanton and Newark;
- G. Current EBCE Joint Powers Agreement Exhibits A, B and C;
- H. Proposed Updates to Exhibits A, B and C - including Tracy, Pleasanton and Newark; and
- I. Resolution authorizing EBCE staff to update EBCE's Implementation Plan and submit it to the CPUC by the end of calendar year 2019.



Steps to joining East Bay Community Energy (EBCE)

- 1) In-person meeting(s) with City staff and local elected officials;
 - Request PG&E data release forms (Forms 79-1030 & 79-1031);
 - i. May take up to eight weeks to receive accurate data from PG&E;
 - Expedited timeline due to CPUC Res. E-4907;
- 2) Two or three presentations to Council:
 - Discussion item;
 - Vote #1 on Ordinance & Resolution to join EBCE's Joint Powers Authority (JPA) Agreement;
 - Vote #2 on Ordinance – *Best if completed by Oct 2019 for 2021 enrollment*;
- 3) EBCE staff conducts quantitative analysis;
 - Evaluates cost of service to prospective new community (e.g., impact on EBCE's revenues/net revenues and GHG emissions reductions);
- 4) EBCE Board and Community Advisory Committee review quantitative analysis corresponding membership request(s); Board considers Resolution to include prospective new community;
- 5) Pending Board approval, EBCE updates Joint Powers Agreement and files amended Implementation Plan with CPUC before 12/31/19;

2020: Community outreach in new community;

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

2021: EBCE enrollment of electricity accounts begins in new community



New Community Inclusion

Presenter: Alex DiGiorgio

Date: 11/20/19



Inclusion Process: Order of Operations

Prospective new communities must complete JPA inclusion process by 12/31/19 to enroll by 2021 (per CPUC Res. E-4907)

1) Communicate w/City staff and/or local elected officials;

- Request PG&E load data forms (Forms 79-1030 & 79-1031)
- Emphasize time-sensitivity due to CPUC Res. E-4907

2) Two or three presentations to Council;

- Discussion item
- Vote #1 on Ordinance + Resolution to join EBCE
- Vote #2 on Ordinance

3) EBCE conducts Quantitative Analysis using PG&E load data;

- Evaluates EBCE's cost of service to prospective new communities;

Inclusion Process: Order of Operations

- 4) **Oct. 25:** Executive Committee receives inclusion update and preliminary findings of Quantitative Analysis;
- 5) **Nov. 18:** CAC receives inclusion update;
- 6) **Nov. 20:** Board considers Resolution to include new communities;
→ Pending approval, Board provides direction to update:
 - 1) JPA Exhibits A, B, & C; and
 - 2) EBCE's Implementation Plan
- 7) EBCE submits updated Imp. Plan to CPUC before **12/31/19**;
→ New communities receive Board seat: **2020** (pending CPUC confirmation)
→ EBCE conducts community outreach: **2020/2021** (depending on enrollment month)
→ EBCE enrollments begin: **2021**

Recommendations:

- 1) Receive the Inclusion Update & Quantitative Analysis;
- 2) Consider Resolution to include new member jurisdictions;
- 3) Pending approval, update JPA Exhibit A ('List of Parties');
- 4) Update JPA Exhibits B & C ('Annual Energy Use' & 'Voting Shares');
- 5) Provide direction to update EBCE Implementation Plan.

Inclusion Update & Quantitative Analysis

Prospective Member Jurisdictions

- **City of Tracy (San Joaquin)**

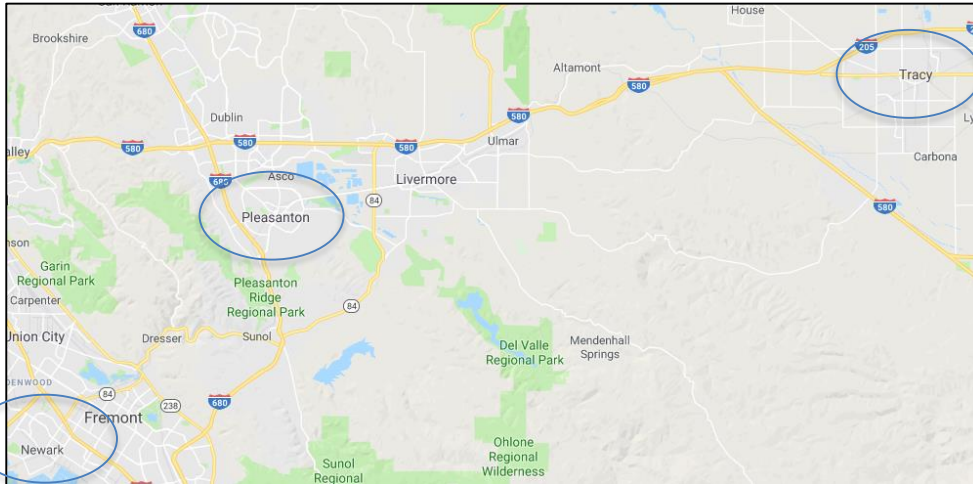
- **Aug. 20:** Unanimous City Council vote to pursue EBCE membership;
- **Sept. 17:** Approved 1st reading of Ordinance & Resolution to join EBCE by unanimous vote;
- **Oct. 1:** Approved 2nd reading of Ordinance by unanimous vote

- **City of Pleasanton (Alameda)**

- **Sept. 17:** Unanimous City Council vote to pursue EBCE membership;
- **Oct. 1:** Approved 1st reading of Ordinance & Resolution to join EBCE by unanimous vote;
- **Oct. 15:** Approved 2nd reading of Ordinance by unanimous vote

- **City of Newark (Alameda)**

- **Oct. 24:** Council unanimously approved 1st reading of Ordinance & Resolution to join EBCE
- **Nov. 14:** Approved 2nd reading of Ordinance by unanimous vote



Quantitative Analysis

Evaluates EBCE's cost of service to prospective new member jurisdictions:

- Forecast additional electric load;
 - New/combined retail demand & cost of corresponding wholesale power procurement needs;
- Maintain EBCE's value proposition: 1.5% Bright Choice rate savings;
- Impact on 1) Net revenues and 2) GHG emissions

Quantitative Analysis

	Tracy	Pleasanton	Newark	<i>T+P+N Combined</i>	EBCE 2019	EBCE w/T+P+N 2022
Accounts	29,300	30,700	15,700	75,700	552,400	628,100
Load (MWh/yr)	399,000	450,000	263,000	1,113,000	6,104,000	7,217,000
Net Rev %	+16.5%	+18%	+17.6%	+17.4%	+14%	+14.6%
Net Rev \$	\$5.2M	\$6.5M	\$3.6M	\$15.3M	\$68.1M	\$83.5M

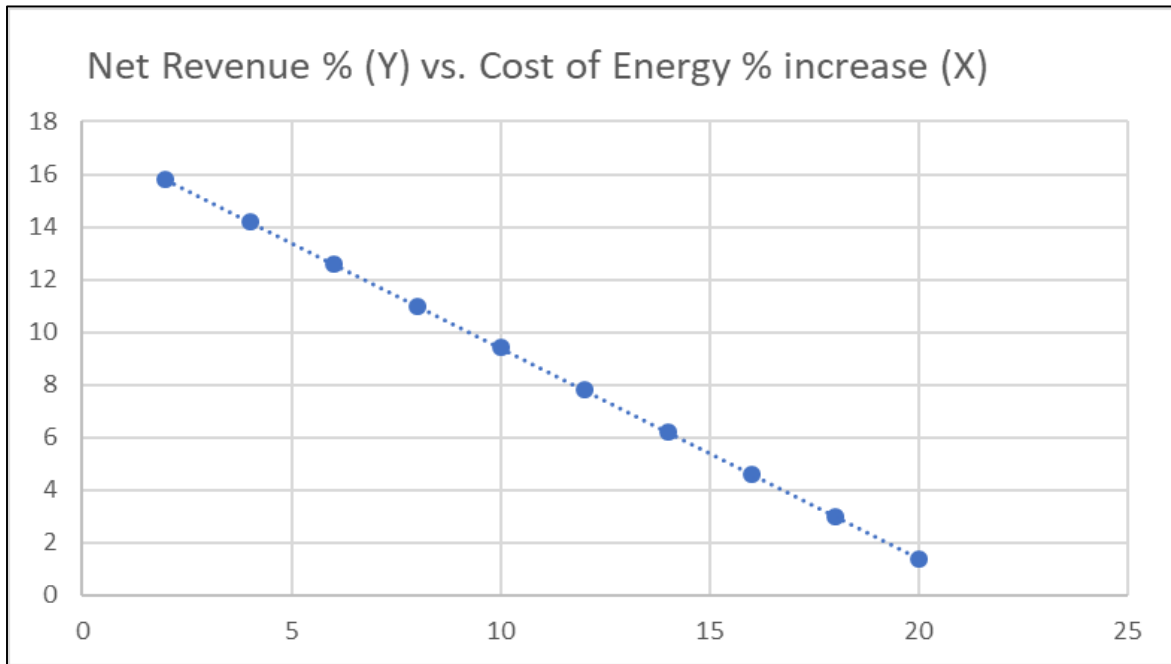
- *Assumes 5% opt out rate (slightly above current EBCE opt out rate for load);
- *Applies EBCE's 2019 rates from 2019-20 budget development;
- *Data excludes ineligible loads (e.g. BART, Direct Access, Standby);
- *2018 PG&E load data for Tracy & Pleasanton; 2017 data for Newark;
- *PG&E data had 148 Pleasanton accounts 'unclassified' (~85,000 MWh)

20/20 Stress Test

- A. 20% increase to the cost of electricity
- B. 20% opt out in new communities



Energy Costs Increase ~20%



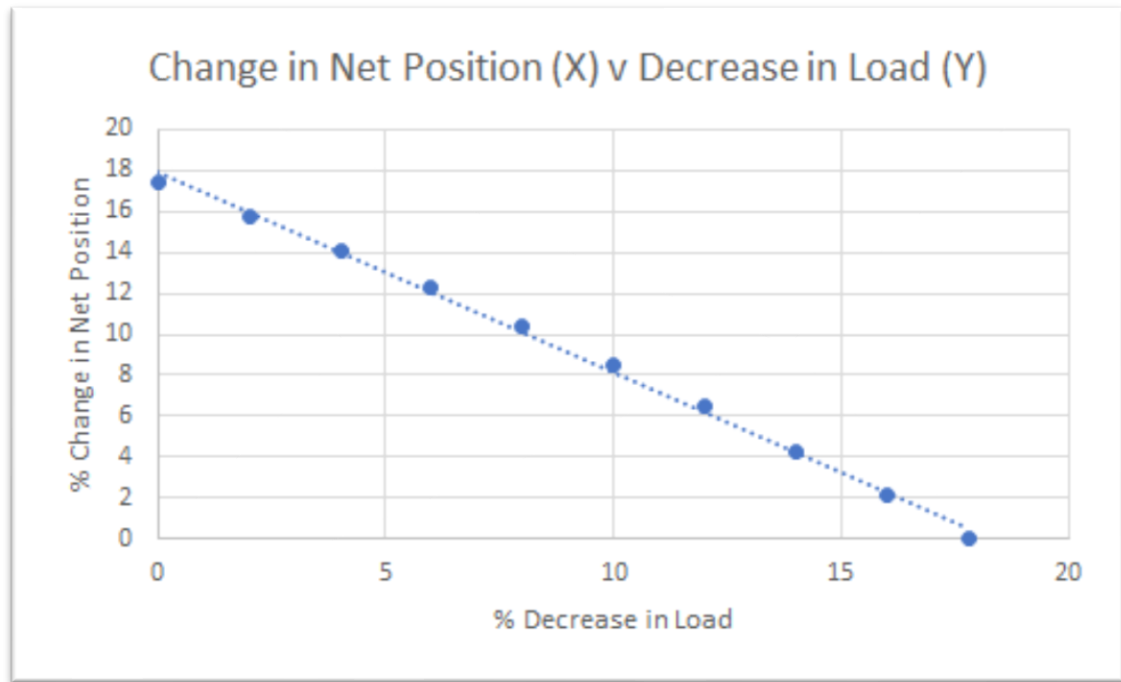
Assumptions:

- Cost of energy is estimated as % additional load multiplied by 2019-20 budgeted energy expenses;
- Does not include initial customer notification costs (e.g., four enrollment notices);
- Cost increase persists for an entire year;

Every **1%** increase in cost of energy = **0.8%** reduction net position (**\$709,000**)

From **\$15.3M** to **\$12.5M** @ **4%** energy cost increase; & to **\$1.2M** @ **20%** cost increase;

Opt-Outs reach ~20% of incoming load



- Assumes 20% opt out rate is average for Tracy, Pleasanton and Newark enrollments;
→ Current EBCE opt out rate is less than 5%

- For each 1% opt out in load, there is approximately 1% decrease in net position (\$153,000);
- 22.8% total opt out is the 'break-even' point
 - 17.8 on the graph b/c analysis assumed a 5% opt out rate;
- At 25% opt out, net loss is less than \$1M to EBCE;
- SMUD and PG&E services are charged per account (i.e., opt outs present no service cost risk beyond initial, pre-enrollment power purchases);
- Initial enrollment is likely the period of highest risk, due to expected energy pre-purchases;

Anticipated GHG reductions

- EBCE emissions factor (2018) = **82 lb-CO₂e/MWh** (pending; aggregate of all EBCE products);
- PG&E emissions factor (2017) = **210 lb-CO₂e/MWh** (most recently reported)

Tracy + Pleasanton + Newark = **1,113,000 MWh/year**

~64,000 MTs of CO₂e/year



Update to JPA Exhibits

A: ‘List of Parties’

B: ‘Annual Energy Use’;

C: ‘Voting Share’ (JPA Sec. 4.12.2)

JPA Updates: Exhibits A, B, & C

Pending Board Approval, JPA Exhibits updated to reflect membership of new member jurisdictions:

A: List of Parties -- EBCE member jurisdictions

B: Annual Energy Usage -- Each jurisdiction's load (currently 2014)

C: Voting Shares -- Each jurisdiction's voting % (Sec. 4.12.2)

Recommended updates to Exhibits B & C:

- *Use 2018 PG&E county/city-wide load data*
- *Consider Sec. 4.12.2 'Voting Shares' vote for new jurisdictions*

Exhibit B Load Year & Provider options

Year	Energy Provider	Pro	Con
2014	PG&E	Currently in use, per the JPA	Data is five years old / out of date
2017	PG&E	EBCE has data for all members + Tracy, Pleasanton, Newark	Data is two years old / out of date; Doesn't account for opt outs
2018	PG&E	EBCE has data for all members + Tracy, Pleasanton	EBCE does not yet have Newark data; Doesn't account for opt outs
2018	EBCE	EBCE has data for all members	Data only accounts for - 6 months commercial load - <2 months residential load
2019	EBCE	Most accurate load data for original members	Will not have full year of data until March 2020, multiple updates

Exhibit C: Voting Shares (Prospective)

Jurisdictions:

2018 PG&E load data
(2017 load data for Newark)

A

- ALBANY - 0.7%
- BERKELEY - 5.5%
- DUBLIN - 3.2%
- EMERYVILLE - 2.1%
- FREMONT - 18.1%
- HAYWARD - 10.7%
- LIVERMORE - 5.5%
- **NEWARK - 4.6%**
- OAKLAND - 21.3%
- PIEDMONT - 0.3%
- **PLEASANTON - 5.7%**
- SAN LEANDRO - 6.0%
- **TRACY - 5.7%**
- UNINCORPORATED - 6.1%
- UNION CITY - 4.2%

Total - 100%

B

- ALBANY - 0.8%
- BERKELEY - 6.6%
- DUBLIN - 3.8%
- EMERYVILLE - 2.6%
- FREMONT - 21.6%
- HAYWARD - 12.7%
- LIVERMORE - 6.6%
- **NEWARK - 0%**
- OAKLAND - 25.4%
- PIEDMONT - 0.4%
- **PLEASANTON - 0%**
- SAN LEANDRO - 7.2%
- **TRACY - 0%**
- UNINCORPORATED - 7.3%
- UNION CITY - 5.0%

Total - 100%

Additional Slides

Additional Electricity Load

Customer Class	Tracy + Pleasanton + Newark		Existing EBCE		All Combined	
	MWh	Accounts	MWh	Accounts	MWh	Accounts
Small Commercial (A1)	138,641	6,862	892,984	45,525	1,031,625	52,387
Large Commercial (A10)	193,757	732	930,324	4,493	1,124,082	5,224
Agricultural	490	19	25,741	137	26,231	156
Residential	418,989	67,335	2,210,914	497,736	2,629,903	565,071
E19	150,853	256	1,248,304	2,761	1,399,157	3,016
E20	109,498	22	723,402	86	832,900	108
Street Lights	4,781	346	38,216	1,858	42,997	2,204
Unclassified	94,020	148	1	4	94,021	152
Total	1,111,029	75,719	6,069,886	552,600	7,180,916	628,319

Source: 2017/2018 PG&E Data

Assumptions:

1. Source of Data is PG&E Item 16 reports for Tracy (2018), Pleasanton (2018) and Newark (2017).
2. Load Figures exclude ineligible load (standby, BART) as well as Direct Access Load.
3. Unclassified load appears to be an artifact of the Pleasanton Item 16 file - to be reviewed by PG&E.
4. Assumes a 5% opt out rate across all jurisdictions (by load and by count)

New Community Inclusion

Value Proposition:

Advance EBCE's mission by including new customers & communities;

- Reduce GHGs & supply more renewable energy to more electricity accounts;
- Expand public access to competitively-priced renewable energy options and innovative policies & programs;
- Enhance EBCE's financial strength (i.e., net revenues & reserves);
- Empower local communities w/more democratic representation within CA's energy economy (i.e., before the CPUC & CA Legislature);
 - Gain more representative leverage in Sacramento (i.e., via new Assembly & Senate members);

New Community Inclusion*

Value Proposition:

Advance EBCE's mission by including new customers & communities;

- Diversify EBCE's service area (i.e., link urban/rural; affluent/low-income);
 - Account demographics (e.g., include more Ag customers);
 - Local development opportunities via local resources
- Balance EBCE's load profile (potentially);
- Inspire neighboring communities to explore CCA;
- Validate CCA movement generally; EBCE specifically

**JPA Sec. 3.1 "Addition of Parties"*

Inclusion Process: Required Documents

- City Manager:
 - PG&E load data request docs & non-disclosure agreement (Forms 79-1030 & 79-1031)
- City Council:
 - Ordinance, Resolution, JPA signature page
- EBCE:
 - Quantitative Analysis; Board Resolution; updated JPA & Implementation Plan
 - Analysis evaluates cost of service to new community (e.g., impact on net position & GHGs emissions)

ORDINANCE 1272

AN ORDINANCE OF THE CITY OF TRACY ELECTING TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM BY AND THROUGH THE EAST BAY COMMUNITY ENERGY AUTHORITY

WHEREAS, The City of Tracy 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 power agreement structure reduces the risks of implementing a CCA program by immunizing the financial assets of participants. To this end, since 2014, Alameda County completed a feasibility study and evaluated a potential CCA program for the County and the cities within Alameda County; and

WHEREAS, The Alameda County feasibility study and evaluation showed that implementing the 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. Increasing regional energy self-sufficient; and
8. Encouraging local economic and employment benefits through energy conservation and efficiency projects.

WHEREAS, Representatives from the 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

Ordinance 1272
Page 2

utility. Upon the California Public Utilities Commission 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 do so at any time, and

WHEREAS, The Authority made a presentation to City Council at its August 20, 2019 meeting and showed interest in exploring potential services to the City of Tracy. The City Council authorized staff to pursue participation in the CCA program with the Authority, and

WHEREAS, Concurrent with the introduction of this ordinance, the City Council considered a resolution approving the East Bay Community Energy Authority Joint Powers Agreement;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF TRACY DOES ORDAIN 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 Tracy’s jurisdiction by and through the East Bay Community Energy Authority.

SECTION 2: California Environmental Quality Act. The City Council finds that this Ordinance is exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines sections 15061(b)(3) because it is not a project which has the potential for causing a significant effect on the environment.

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 either (1) be published once in a newspaper of general circulation, within 15 days after its final adoption, or (2) be published in summary form and posted in the City Clerk’s office at least five days before the Ordinance is adopted and within 15 days after adoption, with the names of the Council Members voting for and against the Ordinance. (Govt. Code § 36933).

SECTION 5. Effective Date. This ordinance shall take effect 30 days after its adoption.

* * * * *

Ordinance 1272
Page 3


The foregoing Ordinance 1272 was introduced at a regular meeting of the Tracy City Council on the 17th day of September 2019, and finally adopted on the 1st day of October 2019, by the following vote:

AYES: COUNCIL MEMBERS: ARRIOLA, RANSOM, VARGAS, YOUNG, RICKMAN

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE


MAYOR


ATTEST:

CITY CLERK

Exhibit A

East Bay Community Energy Authority

- Joint Powers Agreement -

Effective December 1, 2016

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 Oakland

City of Piedmont

City of San Leandro

City of Union City

December 1, 2016

EAST BAY COMMUNITY ENERGY AUTHORITY

JOINT POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”), effective as of 12/1/2016 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. The person appointed and designated as the alternate Director shall also be a member of the governing body of the Party.

- 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 **Terms 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 any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date 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, none of whom may be voting members of the Board. 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 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-year terms (the first term of three of the members shall be two years, and four years

thereafter), which may be renewed. A member 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 and/or be entitled to reimbursement for 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. At the first meeting held by the Board in each calendar 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 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 the Party that the person represents; (b) the Party that the person represents removes the person as its representative on the Board, or (c) the Party that he or she 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 depository 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. The Business Plan shall be completed by the Authority no later than eight (8) months after the seating of the Authority Board of Directors. 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: _____

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

[Signature]
Isabelle Crumpley

Office of the City Attorney

[Signature]
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-Bedley*

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 Hogan
City Clerk

ATTEST for the City of Berkeley

Ann-Monica Hogan
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 12th Street, Suite 1500
Oakland, CA 94607

if to [PARTY No. ____]

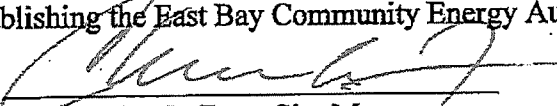
Office of the City Clerk

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: 
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

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: 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.

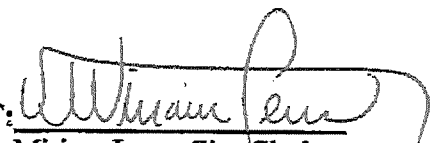
CITY OF HAYWARD, A Municipal Corporation

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: 

Name: Marc Roberts

Title: City Manager

Date: 1/4/2017

Party: City of Livermore

APPROVED AS TO FORM:



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. OGAWA PLAZA
OAKLAND, CA 94612

Office of the City Manager/Administrator
1 FRANK H. OGAWA 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:  BR SRL

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 Wiele

Name: Jeffrey Wiele

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

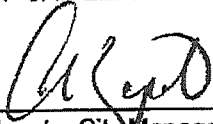
Office of the City Clerk
835 East 14th Street
San Leandro, CA 94577

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

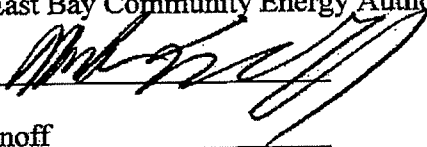
if to The City of Union City [PARTY No. 12]

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

EXHIBIT A

-LIST OF THE PARTIES

(This draft exhibit is based on the assumption that all of the Initial Participants will become Parties. On the Effective Date, this exhibit will be revised to reflect the Parties to this Agreement at that time.)-

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 Oakland

City of Piedmont

City of San Leandro

City of Union City

DRAFT EXHIBIT B
-ANNUAL ENERGY USE

This Exhibit B is effective as of December 1, 2016.

Party	kWh (2014)
Albany	57,726,000
Berkeley	684,454,000
Dublin	297,219,000
Emeryville	203,591,000
Fremont	1,306,714,000
Hayward	813,048,000
Livermore	498,219,000
Oakland	2,005,389,000
Piedmont	32,768,000
San Leandro	516,830,000
Unincorporated	513,917,000
Union City	356,019,000
<u>Total</u>	<u>7,285,894,000</u>

*Data provided by PG&E

DRAFT EXHIBIT C**- VOTING SHARES**

This Exhibit C is effective as of December 1, 2016.

Party	kWh (2014)	Voting Share Section 4.12.2
Albany	57,726,000	.80%
Berkeley	684,454,000	9.39%
Dublin	297,219,000	4.08%
Emeryville	203,591,000	2.80%
Fremont	1,306,714,000	17.93%
Hayward	813,048,000	11.16%
Livermore	498,219,000	6.83%
Oakland	2,005,389,000	27.52%
Piedmont	32,768,000	.46%
San Leandro	516,830,000	7.09%
Unincorporated	513,917,000	7.05%
Union City	356,019,000	4.89%
<u>Total</u>	<u>7,285,894,000</u>	<u>100%</u>

*Data provided by PG&E

RESOLUTION 2019-190

APPROVING A JOINT POWERS AGREEMENT WITH THE EAST BAY COMMUNITY ENERGY (EBCE) AUTHORITY TO PROVIDE ELECTRIC SERVICES TO THE CITY OF TRACY

WHEREAS, The City of Tracy 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

WHEREAS, 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 Tracy is Pacific Gas & Electric Co., and

WHEREAS, CCA has the potential to reduce greenhouse gas emissions related to the use of power in the City of Tracy; 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

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

WHEREAS, Alameda County and cities in Alameda County have developed the EBCE Authority Joint Powers Agreement (JPA) which creates the East Bay Community Energy Authority (Authority) which will govern and operate the CCA program, and

WHEREAS, the Authority provides alternate electric services to consumers under a JPA with Alameda County and the vast majority of all cities in that county, and

WHEREAS, The Authority is interested in providing potential services to the City of Tracy and made a presentation to City Council at its regular meeting of August 20, 2019, and

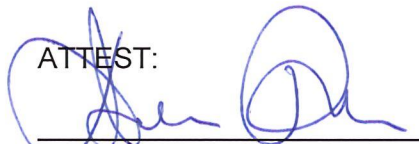
WHEREAS, On August 20, 2019, City Council authorized staff to pursue services with EBCE, and

WHEREAS, A standard JPA Agreement must be executed with the Authority to participate in the CCA program;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tracy approves a Joint Powers Agreement with the East Bay Community Energy (EBCE) Authority to provide Electric Services to the City of Tracy.

The foregoing Resolution 2019-190 was adopted by the Tracy City Council on the 17th day of September, 2019, by the following vote:

AYES:	COUNCIL MEMBERS: ARRIOLA, RANSOM, YOUNG, RICKMAN
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: VARGAS
ABSTAIN:	COUNCIL MEMBERS: NONE

ATTEST: 

 CITY CLERK



 MAYOR

ORDINANCE NO. 2198**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANTON
AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION
PROGRAM**

WHEREAS, the County of Alameda (“County”) has been actively investigating options to provide electricity supply services to constituents within the County with the intent of 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”).

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 power agreement structure reduces the risks of implementing a CCA program by immunizing the financial assets of participants. To this end, since 2014, the County has been evaluating a potential CCA program for the County and the cities within Alameda County; and

WHEREAS, the County Board of Supervisors voted unanimously in June 2014 to allocate funding to explore the creation of a CCA Program and directed County staff to undertake the steps necessary to evaluate its feasibility. To assist in the evaluation of the CCA program within Alameda County, the County established a Steering Committee in 2015, that has met monthly, advising the Board of Supervisors on the possibility of creating a CCA Program; and

WHEREAS, the Technical Feasibility Study completed in June of 2016 shows that implementing a Community Choice Aggregation program would likely provide multiple benefits to the citizens of Alameda County, including the following: Providing customers a choice of power providers; Increasing local control over energy rates and other energy-related matters; Providing electric rates that are competitive with those provided by the incumbent utility; Reducing greenhouse gas emissions arising from electricity use; Increasing local and regional renewable generation capacity; Increasing energy conservation and efficiency projects and programs; Increasing regional energy self-sufficiency; and Encouraging local economic and employment benefits through energy conservation and efficiency projects; and

WHEREAS, representatives from the County and Alameda County cities have developed the East Bay Community Energy Authority Joint Powers Agreement (“Joint Powers Agreement”). The Joint Powers Agreement creates the East Bay Community Energy Authority (“Authority”), which will govern and operate the CCA program. The County and the Alameda County cities that elect to participate in the CCA Program shall do so by approving the execution of 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). In December of 2016, the County and Alameda County cities joined the Joint Powers Agreement; and

WHEREAS, the Authority has entered into agreements with electric power suppliers and other service providers and, based upon these agreements, the Authority provides electrical power to residents and businesses at rates that are competitive with those of the incumbent utility and the Authority plans to enter more agreements in the future.

WHEREAS, the California Public Utilities Commission approved the implementation plan prepared by the Authority, and the Authority now provides service to customers within its member jurisdictions and 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, and customers who wish to continue to receive service from the incumbent utility will be able to do so at any time.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 2. Elects to implement a Community Choice Aggregation program within Alameda County by and through the City's participation in the East Bay Community Energy Authority.

SECTION 3. Finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment; therefore directs that a Notice of Exemption be filed with the Alameda County Clerk in accordance with the CEQA guidelines.

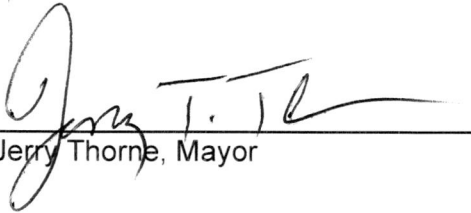
SECTION 4. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance and declares that it would have passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 5. A summary of this ordinance shall be published once within fifteen (15) days after its adoption in "The Valley Times," a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk's office within fifteen (15) days after its adoption.

SECTION 6. This ordinance shall be effective thirty (30) days after its passage and adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on October 1, 2019 and adopted at a regular meeting of the City Council of the City of Pleasanton on October 15, 2019 by the following vote.

Ayes: Councilmembers Brown, Narum, Pentin, Testa, Mayor Thorne
Noes: None
Absent: None
Abstain: None



Jerry Thorne, Mayor

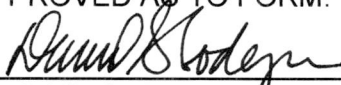
ATTEST:



Karen Diaz, City Clerk

Dated: 10/23/18

APPROVED AS TO FORM:



Daniel G. Sodergren, City Attorney

RESOLUTION NO. 19-1113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLEASANTON, APPROVING AN AGREEMENT TO PARTICIPATE IN A JOINT POWERS AGENCY FOR COMMUNITY CHOICE AGGREGATION PROGRAM IN ALAMEDA COUNTY

WHEREAS, the City of Pleasanton has demonstrated its commitment to an environmentally sustainable future through its policy goals and actions, including energy reduction, and expansion of clean energy programs; and

WHEREAS, the City has adopted a Climate Action Plan, and is in the process of developing a Climate Action Plan 2.0, to reduce greenhouse gas emissions; and

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

WHEREAS, CCA has the potential to reduce greenhouse gas emissions related to the use of power in the City of Pleasanton; provide electrical power and other forms of energy 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 promote long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources; and

WHEREAS, staff has examined and identified Community Choice Aggregation as a key strategy to meet local clean energy goals and projected greenhouse gas reduction targets; and

WHEREAS, the Board of Supervisors of Alameda County directed the Alameda County Community Development Agency (CDA) to determine if a Community Choice Aggregation (CCA) program is feasible for cities in Alameda County; and

WHEREAS, CDA staff prepared a "Technical Study for Community Choice Aggregation Program in Alameda County" (Technical Study, July 2016); and

WHEREAS, take comprehensively, the Technical Study suggests that an Alameda County CCA would be feasible, could operate economically, could provide ratepayers reductions on their electric bills, and could both increase renewable energy and reduce greenhouse gas emissions if the right balance is achieved by a joint powers agreement; and

WHEREAS, if a municipality is to form a CCA with other municipalities, it must become part of a Join Powers Agency (JPA) as required by the legislation that permits CCAs' and

WHEREAS, a JPA agreement prepared by the Office of the County Counsel has been reviewed by City Attorneys of Alameda County cities and the membership of the Steering Committee over the course of several months. The JPA agreement was approved and signed by Alameda County and a majority of Alameda County cities in December of 2016.

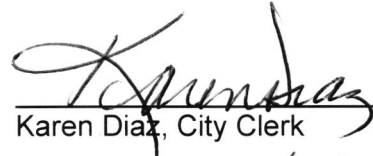
NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES RESOLVE, DECLARE, DETERMINE AND ORDER THE FOLLOWING:

SECTION 1. The City Council of the City of Pleasanton does hereby approve 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 Alameda County municipalities, and authorizes the City Manger of his designee to execute the agreement.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Pleasanton at a regular meeting held on the 1st day of October 2019.

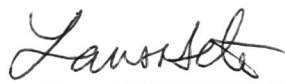
I, Karen Diaz, City Clerk of the City of Pleasanton, California, certify that the foregoing resolution was adopted by the City Council at a regular meeting held on the 1st day of October 2019, by the following vote:

Ayes: Councilmembers Brown, Narum, Pentin, Testa, Mayor Thorne
Noes: None
Absent: None
Abstain: None



Karen Diaz, City Clerk
Dated: 10/8/19

APPROVED AS TO FORM:



for Daniel G. Sodergren, City Attorney

ORDINANCE NO. 517

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE IMPLEMENTATION OF A
COMMUNITY CHOICE AGGREGATION PROGRAM
PURSUANT TO CALIFORNIA PUBLIC UTILITIES CODE
SECTION 366.2

WHEREAS, the County of Alameda (“County”) and Alameda County cities, including the City of Newark, have been actively investigating options to provide electricity supply services to constituents within the County with the intent of 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 power agreement structure reduces the risks of implementing a CCA program by immunizing the financial assets of participants. To this end, since 2014, the County has been evaluating a potential CCA program for the County and the cities within Alameda County; and

WHEREAS, the County Board of Supervisors voted unanimously in June of 2014 to allocate funding to explore the creation of a CCA Program and directed County staff to undertake the steps necessary to evaluate its feasibility. To assist in the evaluation of the CCA program within Alameda County, the County established a Steering Committee in 2015 comprised of city and stakeholder representatives, that met monthly, advising the Board of Supervisors on the possibility of creating a CCA Program; and

WHEREAS, the Technical Feasibility Study completed in June of 2016 shows that implementing a Community Choice Aggregation program would likely provide multiple benefits to the citizens of Alameda County, including the following:

1. Providing customers a choice of renewable energy 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. Increasing regional energy self-sufficiency; and

8. Encouraging local economic and employment benefits through energy conservation and efficiency projects; and

WHEREAS, representatives from the County and Alameda County cities have developed the East Bay Community Energy Authority Joint Powers Agreement (“Joint Powers Agreement”). The Joint Powers Agreement creates the East Bay Community Energy Authority (“Authority”), which will govern and operate the CCA program. The County and the Alameda County cities that elect to participate in the CCA Program shall do so by approving the execution of 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). In December 2016, the County and Alameda County cities entered into the Joint Powers Agreement; and

WHEREAS, the County and the Alameda County cities that elect to participate in the CCA Program shall do so by approving the execution of 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 provides electrical power to residents and businesses at rates that are competitive with those of the incumbent utility. The California Public Utilities Commission approved the implementation plan prepared by the Authority, and the Authority now provides 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 do so at any time.

The City Council of the City of Newark does ordain as follows:

Section 1: Recitals and Implementation of a Community Choice Aggregation Program. The above recitals are true and correct and made a part of this Ordinance. The City Council of the City of Newark hereby elects to implement a Community Choice Aggregation program within Alameda County by and through the City’s participation in East Bay Community Energy Authority, pursuant to the authority provided by the California Public Utilities Code.

Section 2: CEQA. The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15378(b)(5), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project. A Project does not include “Organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment.” Forming or joining a CCA presents no foreseeable significant adverse impact to the environment over the existing condition because state regulations such as the Renewable Portfolio Standard (RPS) and Resource Adequacy (RA) requirements apply equally to CCAs as they do to private utilities.

Section 3: Severability. Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

Section 4: Codification. This Ordinance shall not be codified in the Newark Municipal Code.

Section 5: Publication and Effective Date. This Ordinance shall take effect thirty (30) days from the date of its adoption. Before expiration of fifteen (15) days after its adoption, this Ordinance shall be published in The Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

The foregoing ordinance was introduced and read before the City Council of the City of Newark by Council Member Hannon at the regular meeting of the City Council of the City of Newark held on October 24, 2019.

This ordinance was read at the regular meeting of the City Council held November 14, 2019. Council Member Hannon moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.


AYES: Council Members Bucci, Freitas, Hannon, Vice Mayor Collazo and Mayor Nagy

NOES: None


ABSENT: None

SECONDED: Council Member Bucci


APPROVED:


s/ALAN L. NAGY
Mayor

ATTEST:


s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:


s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

RESOLUTION NO. 10,996

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING AN AGREEMENT TO PARTICIPATE
IN A JOINT POWERS AGENCY FOR COMMUNITY CHOICE
AGGREGATION PROGRAM IN ALAMEDA COUNTY

WHEREAS, the City of Newark has demonstrated its commitment to an environmentally sustainable future through its policy goals and actions, including energy reduction, clean energy programs, and the expansion of local renewable power supply; and

WHEREAS, the City Council adopted a Climate Action Plan to reduce greenhouse gas emissions; and

WHEREAS, Community Choice Aggregation is a mechanism by which local governments assume responsibility for providing electrical power for residential and commercial customers in their jurisdiction in partnership with local commercial energy purveyors and owners of transmission facilities, which in the case of the City of Newark is Pacific Gas & Electric Company; and

WHEREAS, Community Choice Aggregation has the potential to reduce greenhouse gas emissions related to the use of power in the City of Newark; provide electric power and other forms of energy 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 promote long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources; and

WHEREAS, City staff has examined and identified Community Choice Aggregation as a key strategy to meet local clean energy goals and projected greenhouse gas reduction targets; and

WHEREAS, the Alameda County Board of Supervisors directed the Alameda County Community Development Agency (CDA) to determine if a Community Choice Aggregation program is feasible for cities in Alameda County; and

WHEREAS, CDA staff prepared a Technical Study for Community Choice Aggregation Program in Alameda County; and

WHEREAS, taken comprehensively, the Technical Study suggests that an Alameda County CCA would be feasible, could operate economically, could provide ratepayers reductions on their electric bills, and could both increase renewable energy and reduce greenhouse gas emissions if the right balance is achieved by a joint powers agreement; and

WHEREAS, if a municipality is to form a CCA with other municipalities, it must become a part of a Joint Powers Agency (JPA) as required by the legislation that permits CCAs; and

WHEREAS, a draft JPA Agreement has been prepared by the Office of the County Counsel, has been reviewed by City Attorneys across Alameda County, and the membership of the Steering Committee. The JPA Agreement, a copy of which is attached hereto as Exhibit A, was approved and executed by Alameda County and a majority of Alameda County cities in December 2016.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves the agreement entitled, "East Bay Community Energy Authority - Joint Powers Agreement" in order to participate with other signatories in a CCA Joint Powers Authority for Alameda County municipalities, and authorizes the City Manager and/or his designee to execute said agreement and any amendments or related documents.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on October 24, 2019, by Council Member Hannon who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

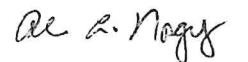
AYES: Council Members Freitas, Hannon and Mayor Nagy

NOES: None

ABSENT: Council Member Bucci and Vice Mayor Collazo

SECONDED: Council Member Freitas


APPROVED:


s/ALAN L. NAGY
Mayor

ATTEST:


s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:


s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

RESOLUTION NO. __

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CITIES OF
TRACY, PLEASANTON, AND NEWARK TO BECOME PARTIES TO THE JOINT POWERS
AGREEMENT AND MEMBERS 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, 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 17, 2019, through a unanimous vote of its City Council, the City of Tracy 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, on October 1, 2019, through a unanimous vote of its City Council, the City of Pleasanton 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, on October 24, 2019, through a unanimous vote of its City Council, the City of Newark 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 Cities of Tracy, Pleasanton, and Newark, which indicated positive financial and environmental benefits from their membership to the prospective cities 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 2019 in order to begin customer enrollments in EBCE's service options by 2021; 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 Tracy 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 Tracy becoming effective.
- (b) The execution of the Agreement by the duly authorized official of the City of Tracy.

Section 2. The City of Pleasanton 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 Pleasanton becoming effective.

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

Section 3. The City of Newark 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 Newark becoming effective.

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

ADOPTED AND APPROVED this 20th day of November, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

EXHIBIT A

-LIST OF THE PARTIES

(This draft exhibit is based on the assumption that all of the Initial Participants will become Parties. On the Effective Date, this exhibit will be revised to reflect the Parties to this Agreement at that time.)-

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 Oakland

City of Piedmont

City of San Leandro

City of Union City

DRAFT EXHIBIT B
-ANNUAL ENERGY USE

This Exhibit B is effective as of December 1, 2016.

Party	kWh (2014)
Albany	57,726,000
Berkeley	684,454,000
Dublin	297,219,000
Emeryville	203,591,000
Fremont	1,306,714,000
Hayward	813,048,000
Livermore	498,219,000
Oakland	2,005,389,000
Piedmont	32,768,000
San Leandro	516,830,000
Unincorporated	513,917,000
Union City	356,019,000
<u>Total</u>	<u>7,285,894,000</u>

*Data provided by PG&E

DRAFT EXHIBIT C**- VOTING SHARES**

This Exhibit C is effective as of December 1, 2016.

Party	kWh (2014)	Voting Share Section 4.12.2
Albany	57,726,000	.80%
Berkeley	684,454,000	9.39%
Dublin	297,219,000	4.08%
Emeryville	203,591,000	2.80%
Fremont	1,306,714,000	17.93%
Hayward	813,048,000	11.16%
Livermore	498,219,000	6.83%
Oakland	2,005,389,000	27.52%
Piedmont	32,768,000	.46%
San Leandro	516,830,000	7.09%
Unincorporated	513,917,000	7.05%
Union City	356,019,000	4.89%
<u>Total</u>	<u>7,285,894,000</u>	<u>100%</u>

*Data provided by PG&E

EXHIBIT A
LIST OF THE PARTIES

This Exhibit A is effective as of [Month] [Day], 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 [Month] [Day], 2019.

Party	kWh (2018)
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	564,393,280
Union City	387,369,206
Total	9,194,712,002

All data provided by PG&E
 *2017

EXHIBIT C
VOTING SHARES

This Exhibit C is effective as of [Month] [Day], 2019.

Party	kWh (2018)	Option A Voting Shares Section 4.12.2	Option B Voting Shares Section 4.12.2
Albany	63,772,461	0.7%	0.8%
Berkeley	508,448,567	5.5%	6.6%
Dublin	297,210,239	3.2%	3.8%
Emeryville	197,077,013	2.1%	2.6%
Fremont	1,665,481,673	18.1%	21.6%
Hayward	984,424,723	10.7%	12.7%
Livermore	509,943,277	5.5%	6.6%
Newark*	419,357,962	4.6%	0.0%
Oakland	1,962,783,117	21.3%	25.4%
Piedmont	30,163,670	0.3%	0.4%
Pleasanton	520,214,314	5.7%	0.0%
San Leandro	556,074,739	6.0%	7.2%
Tracy	527,997,761	5.7%	0.0%
Unincorporated	564,393,280	6.1%	7.3%
Union City	387,369,206	4.2%	5.0%
Total	9,194,712,002	100%	100%

All data provided by PG&E
*2017

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 NEW MEMBER JURISDICTIONS 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, the Board of Directors has approved Resolution **XX** to authorize the Cities of Tracy, Pleasanton, and Newark to become members of EBCE, with enrollments expected to begin in 2021;

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 Tracy, Pleasanton and Newark by 2021, EBCE must submit to the CPUC an updated Implementation Plan and Statement of Intent ("Implementation Plan") reflecting the inclusion of these new member jurisdictions before the end of the 2019 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 Cities of Tracy, Pleasanton, and Newark.

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, 2019.

ADOPTED AND APPROVED this 20th day of November 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board