



Staff Report Item 14

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, General Counsel

SUBJECT: Chief Executive Officer - Amended and Restated Employment Agreement

DATE: July 19, 2023

Recommendation

Approve Resolution authorizing the Board Chair, Director Marquez, to sign the attached Amended and Restated Employment Agreement (“Agreement”) with Nicholas Chaset, Chief Executive Officer.

Background and Discussion

EBCE hired Nicholas Chaset in 2017 in the role of Chief Employment Officer. Since that time, his Employment Agreement has been amended multiples times to adjust his salary and terms of employment, as well as to make minor clean-up changes. The original Agreement was set to expire effective July 1, 2023.

Negotiations with CEO Chaset with respect to his employment agreement have been underway since late 2022. The Board’s designated labor negotiators (Chair Marquez and Vice Chair Balch) and CEO Chaset have agreed to a one year extension of the Employment Agreement, incorporated changes to salary and benefits.

Due to the number of amendments that have been made to the agreement since CEO Chaset was retained (there have been six amendments to date), General Counsel opted to frame the Agreement as an “Amended and Restated” in order to avoid having to reference multiple amendments to understand the contract terms; however, the changes made to the agreement since the last amendment are primarily to sections 5 through 6 of the agreement. In addition, the recitals were updated to reflect the history of the Agreement.

A redline showing the proposed changes against the 6th Amendment are attached (the reader should keep in mind that the form of agreement has changed since this is presented as an “Amended and Restated” agreement).

The proposed changes to the contract are as follows:

- **Recitals.** Recitals to the Agreement were revised to reflect the updated Agreement.
- **Term.** The term of the Agreement is being extended to July 1, 2024, adding one year to the Agreement’s previous term which ended July 1, 2023.
- **Salary.** Effective July 1, 2023, the CEO’s salary shall be \$459,000 per year.
- **Bonuses.**
 - **One time bonus.** The CEO will receive a 10% bonus effective upon the same date.
 - **Long term performance bonus.** Effective in Fiscal Year 23/24, CEO will be eligible for a long-term performance bonus of up to 15% of his base salary based on the results of the annual performance view, which is anticipated to be completed by June 2024. This bonus will be paid over three years contingent with the CEO retaining his position with EBCE.
- **Performance evaluation.** The Board of Directors intends to conduct a performance evaluation of CEO around June 2024 and annually thereafter, before or around the start of each new fiscal year.
- **Retention bonus.** The retention bonus previously provided for in 2022 has been fully paid, so that provision was removed from the Agreement.

No further changes were made to the Employment Agreement as it was last amended in 2022. Except as provided above, CEO Chaset’s benefits remain the same under the proposed Agreement.

Fiscal Impact

The proposed changes in the attached Agreement were projected for in the agency’s budget.

Attachments

- A. Resolution Authorizing the Chair to Sign an Amended and Restated Employment Agreement with Chief Executive Officer Nicholas Chaset
- B. Amended and Restated Employment Agreement
- C. Redline showing changes to Employment Agreement since the 6th Amendment approved in 2022

RESOLUTION NO. R-2023-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHAIR TO SIGN AN AMENDED AND RESTATED EMPLOYMENT AGREEMENT WITH NICHOLAS CHASET FOR CHIEF EXECUTIVE OFFICER

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Powers Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the Joint Exercise of Powers Agreement (JPA) in March of 2020. The city of Stockton, located in San Joaquin County was added as a member of EBCE and party to the JPA in September of 2022.

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

WHEREAS On June 17, 2017, the Board appointed Nicholas Chaset as CEO of EBCE.

WHEREAS EBCE desires to retain Nicholas Chaset in this role.

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

Section 1. The Chair is authorized to sign the Amended and Restated Employment Agreement with any minor clerical or clarifying changes requested by the Chair and approved by General Counsel.

Section 2. The Amended and Restated Employment Agreement shall take effect on July 1, 2023.

ADOPTED AND APPROVED this 19th day of July, 2023.

Elisa Márquez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

AMENDED AND RESTATED

EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the East Bay Community Energy Authority, also known as “East Bay Community Energy,” (“EBCE”) and Nicolas Chaset, an individual (“EMPLOYEE”). EBCE and EMPLOYEE are sometimes collectively referred to herein as the “PARTIES.” For identification purposes, this Agreement is dated June 21, 2023.

RECITALS

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

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

B. On December 1, 2016, eleven of the Members entered into an East Bay Community Energy Authority Joint Powers Agreement (the “JPA Agreement”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “Act”) to operate and administer the CCA Program; since that date four additional Members have joined the JPA Agreement.

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

D. On June 21, 2017, EBCE appointed Nicholas Chaset (“EMPLOYEE”) as CEO of EBCE.

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

F. EBCE desires to continue to retain the services of EMPLOYEE as its Chief Executive Officer on the terms provided by this Agreement.

G. The parties further desire to establish, amend, and restate the EMPLOYEE’s conditions of employment. This agreement represents a restatement of the EMPLOYEE’s prior Employment Agreement and previous amendments and supersedes all other agreements as of the effective date.

AGREEMENT

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

1. Incorporation of Recitals. The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. Duties and Authority. EBCE shall employ EMPLOYEE as the Chief Executive Officer of EBCE, with the full power and authority to perform all of the duties of the Chief Executive Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).
3. Restrictions on Outside Business Activities and Conflicts. During his employment, EMPLOYEE shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without EBCE’s prior written consent, tender to other services of any kind for compensation, or engage in any other business activity. Prior to engaging in any outside activity, EMPLOYEE shall obtain approval from an ad hoc committee consisting of the Chair, Vice Chair, and one additional board member to be appointed by the Chair.

In addition, EMPLOYEE shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Chief Executive Officer’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be from the Effective Date of this Agreement until July 1, 2024.
5. Salary. Effective July 1, 2023 (“Effective Date”), EBCE will pay EMPLOYEE an annual base salary of four hundred fifty-nine thousand dollars (\$459,000), prorated and paid on EBCE’s normal paydays, subject to legally permissible or required deductions. EMPLOYEE’s salary is compensation for all hours worked and for all services under this Agreement. EMPLOYEE shall be exempt from overtime pay provisions of California law (if any) and federal law.

EMPLOYEE shall receive an annual bonus of ten percent (10%) of the base salary for the Fiscal Year 2022-2023 to be paid July 1, 2023.

Beginning in Fiscal Year 2023-2024, EMPLOYEE is eligible for a long term performance bonus of up to fifteen percent (15%) of the base salary based on the results of EMPLOYEE’s annual performance review, which is anticipated to be completed by June 2024. The bonus will be paid over three years starting on July 1 of the year after the applicable performance year (i.e. July 1, 2024 for Fiscal Year 2023-2024). The payment schedule is 25% of the bonus in Year 1, 25% of the bonus in Year 2, and 50% of the bonus in Year 3.

6. Evaluation of Performance. The Board shall evaluate the performance of EMPLOYEE before or around the start of each new fiscal year. Evaluations may be conducted more often at the Board's discretion. EMPLOYEE will request and schedule the minimum required evaluations as appropriate under the EBCE's agenda procedures or as otherwise directed by the Board.

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

a. Vacation. EMPLOYEE shall receive 6 weeks of vacation leave annually, of which 3 weeks are refundable. Except as otherwise provided in this Agreement, vacation leave shall be subject to any EBCE vacation policy applicable to employees generally.

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

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

d. Retirement. EMPLOYEE will be eligible to participate in any public retirement program or similar plan for which EBCE employees become eligible to participate. EMPLOYEE is eligible for an employer contribution of up to 15% of EMPLOYEE's salary (subject to IRS limits). EMPLOYEE has established retirement savings accounts under Internal Revenue Codes §§ 401(a), 457(b), and 415(m). In the event that the Total Combined Contribution to EMPLOYEE's 401(a) Retirement Plan reaches or exceeds the annual compensation limit set by

law, any remainder contribution, or portion thereof, which would otherwise be due notwithstanding the annual compensation limit, shall be directed, to the extent allowed by law, and without undue delay, to fund EMPLOYEE's 457(b) Retirement Plan with any excess directed to the 415(m) Retirement Plan. EMPLOYEE may, at his option, direct additional excess funds to any other retirement plan he is eligible for as an EBCE employee.

e. Car Allowance. EMPLOYEE's duties require that he have available exclusive and unrestricted use of an automobile for business purposes and EMPLOYEE agrees to have a personal vehicle available for such use. In consideration of this, EBCE agrees to pay to EMPLOYEE, during the term of this Agreement and in addition to other salary and benefits, a car allowance of Six Hundred Dollars (\$600.00) per month. The car allowance includes reimbursement for an appropriate allocation of vehicle insurance and all other expenses of vehicle ownership, maintenance and operation. EMPLOYEE shall maintain automobile liability insurance limit of at least \$250,000 per person and \$500,000 per accident. EMPLOYEE shall submit proof of insurance on request.

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

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

10. Termination of Agreement.

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

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

c. Termination on Death. If EMPLOYEE dies during the term of this Agreement, this Agreement shall be terminated on the date of EMPLOYEE's death. All warrants or checks for accrued salary, accrued vacation or other items

shall be released to the person designated in writing by EMPLOYEE pursuant to Government Code Section 53245 or, if no designation is made, to EMPLOYEE's estate.

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

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

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

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

(2) Conviction of a felony;

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

(4) Willful abandonment of duties;

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

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

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

d. Any other term of this Agreement notwithstanding, the maximum severance that EMPLOYEE may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event EMPLOYEE is convicted of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the EBCE

for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

12. Miscellaneous Provisions.

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

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

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

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

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

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

Chair Elisa Márquez
East Bay Community Energy Authority

Nicolas Chaset

DATE: _____, 2023

DATE: _____, 2023

APPROVED AS TO FORM:

Inder Khalsa, General Counsel

ATTEST:

Adrian Bankhead, Clerk of the Board

AMENDED AND RESTATED

EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the East Bay Community Energy Authority, also known as “East Bay Community Energy,” (“EBCE”) and Nicolas Chaset, an individual (“EMPLOYEE”). EBCE and EMPLOYEE are sometimes collectively referred to herein as the “PARTIES.” For identification purposes, this Agreement is dated June 21, ~~2017~~2023.

RECITALS

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

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

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

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

D. On June 21, 2017, EBCE appointed Nicholas Chaset (“EMPLOYEE”) as CEO of EBCE.

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

F. ~~E.~~ EBCE desires to continue to retain the services of EMPLOYEE as its Chief Executive Officer on the terms provided by this Agreement.

G. ~~F.~~ The parties further desire to establish, amend, and restate the EMPLOYEE’s conditions of employment. This agreement represents a restatement of the EMPLOYEE’s prior

Employment Agreement and previous amendments and supersedes all other agreements as of the effective date.

AGREEMENT

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

1. Incorporation of Recitals. The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. Duties and Authority. EBCE shall employ EMPLOYEE as the Chief Executive Officer of EBCE, with the full power and authority to perform all of the duties of the Chief Executive Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).
3. Restrictions on Outside Business Activities and Conflicts. During his employment, EMPLOYEE shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without EBCE’s prior written consent, tender to other services of any kind for compensation, or engage in any other business activity. Prior to engaging in any outside activity, EMPLOYEE shall obtain approval from an ad hoc committee consisting of the Chair, Vice Chair, and one additional board member to be appointed by the Chair.

In addition, EMPLOYEE shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Chief Executive Officer’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be from the ~~effective date~~ Effective Date of this Agreement until July 1, ~~2023~~ 2024.

5. Salary. Effective ~~May 18, 2022~~ July 1, 2023 (“Effective Date”), EBCE ~~shall~~ will pay EMPLOYEE an annual base salary of ~~\$425,000~~ four hundred fifty-nine thousand dollars (\$459,000), prorated and paid on EBCE’s normal paydays, subject to legally permissible or required deductions. EMPLOYEE’s salary is compensation for all hours worked and for all services under this Agreement. EMPLOYEE shall be exempt from overtime pay provisions of California law (if any) and federal law. ¶

EMPLOYEE shall receive an annual bonus of ten percent (10%) of the base salary for the Fiscal Year 2022-2023 to be paid July 1, 2023. ¶

Beginning in Fiscal Year 2023-2024, EMPLOYEE is eligible for a long term performance bonus of up to fifteen percent (15%) of the base salary based on the results of EMPLOYEE’s annual performance review, which is anticipated to be completed by June 2024. The bonus will be paid

over three years starting on July 1 of the year after the applicable performance year (i.e. July 1, 2024 for Fiscal Year 2023-2024). The payment schedule is 25% of the bonus in Year 1, 25% of the bonus in Year 2, and 50% of the bonus in Year 3.

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

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

a. Vacation. EMPLOYEE shall receive 6 weeks of vacation leave annually, of which 3 weeks are refundable. Except as otherwise provided in this Agreement, vacation leave shall be subject to any EBCE vacation policy applicable to employees generally.

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

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

d. Retirement. EMPLOYEE will be eligible to participate in any public retirement program or similar plan for which EBCE employees become eligible to participate. EMPLOYEE is eligible for an employer contribution of up to 15% of

EMPLOYEE's salary (subject to IRS limits). EMPLOYEE has established retirement savings accounts under Internal Revenue Codes §§ 401(a), 457(b), and 415(m). In the event that the Total Combined Contribution to EMPLOYEE's 401(a) Retirement Plan reaches or exceeds the annual compensation limit set by law, any remainder contribution, or portion thereof, which would otherwise be due notwithstanding the annual compensation limit, shall be directed, to the extent allowed by law, and without undue delay, to fund EMPLOYEE's 457(b) Retirement Plan with any excess directed to the 415(m) Retirement Plan. EMPLOYEE may, at his option, direct additional excess funds to any other retirement plan he is eligible for as an EBCE employee.

e. Car Allowance. EMPLOYEE's duties require that he have available exclusive and unrestricted use of an automobile for business purposes and EMPLOYEE agrees to have a personal vehicle available for such use. In consideration of this, EBCE agrees to pay to EMPLOYEE, during the term of this Agreement and in addition to other salary and benefits, a car allowance of Six Hundred Dollars (\$600.00) per month. The car allowance includes reimbursement for an appropriate allocation of vehicle insurance and all other expenses of vehicle ownership, maintenance and operation. EMPLOYEE shall maintain automobile liability insurance limit of at least \$250,000 per person and \$500,000 per accident. EMPLOYEE shall submit proof of insurance on request.

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

~~g. Retention Bonus. EMPLOYEE shall be eligible for a one-time retention bonus of Fifty Thousand Dollars (\$50,000.00), if EMPLOYEE remains employed through the contract term of this Agreement. This retention bonus will be paid, less applicable withholdings, in four equal installment payments of \$12,500.00 each on July 1, 2022, October 1, 2022, January 1, 2023, and April 1, 2023. Should EMPLOYEE separate from employment before the end of the contract term, EMPLOYEE shall not be entitled to payment of any installment payments past his separation date, and EMPLOYEE shall repay any previous installment payments already made. EMPLOYEE agrees that repayment of the retention bonus may be deducted from any payment owed to him at the time of separation.~~

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

10. Termination of Agreement.

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

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

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

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

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

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

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

(2) Conviction of a felony;

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

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Board

made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

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

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

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

12. Miscellaneous Provisions.

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

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

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

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

e. Waiver. The failure of either PARTY to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other PARTY

shall not be deemed a waiver of that term, covenant or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

¶

¶

Chair Elisa Márquez Nicolas Chaset
East Bay Community Energy Authority ¶

DATE: _____, 2023 DATE: _____, 2023¶

APPROVED AS TO FORM:¶

¶

Inder Khalsa, General Counsel ¶

ATTEST:¶

¶

Adrian Bankhead, Clerk of the Board

Document comparison by Workshare 10.0 on Wednesday, July 12, 2023
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