



## Staff Report Item 11

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

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

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

**DATE:** September 20, 2023

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### **Recommendations**

Receive staff report and analysis on including the City of Lathrop within EBCE's service area and take the following actions:

- A) Adopt a Resolution to authorize the City of Lathrop to join the EBCE as a member agency and signatory to the JPA Agreement, with customer enrollments to begin in 2025, and to direct staff to update Exhibit A ("List of Parties"), Exhibit B ("Annual Energy Use"), and Exhibit C ("Voting Shares Vote") of EBCE's Joint Powers Agreement to reflect the inclusion of Lathrop.
  
- B) Adopt a Resolution to authorize staff to update EBCE's Implementation Plan to reflect the inclusion of the City of Lathrop, and to submit the updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of calendar year 2023.

### **Background and Discussion**

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

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

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

#### ***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) must pass a Resolution requesting to join EBCE and agreeing to become a signatory of the EBCE JPA Agreement; and pass an ordinance to implement a community choice aggregation program pursuant to Public Utilities Code Section 366.2; **2)** EBCE's Board must pass a Resolution authorizing the addition of the prospective jurisdiction as a new member and directing staff to update the JPA Agreement Exhibits; and **3)** finally, EBCE must 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 Lathrop City Council has already adopted the required Resolution agreeing to become a signatory to EBCE's JPA Agreement and join EBCE; and it has passed the required two readings of a corresponding ordinance pursuant to Public Utilities Code Section 366.2 (please see attachments). The next step in Lathrop's EBCE membership process is for the EBCE Board of Directors to adopt the proposed Resolution adding Lathrop to the JPA Agreement to add the City to EBCE's membership, with customer enrollments to begin in 2025.

*Section 3.1* of the JPA Agreement also provides for the satisfaction of other "additional conditions" for JPA membership, including "membership payment" or "membership fee," which are subject to the discretion of EBCE's Board. To date, the EBCE Board has not imposed such conditions on membership for new parties. Lathrop's elected leaders, City staff, and community members expect the City to be able to join EBCE's JPA and participate in its governance under the same conditions as all current members. If these expectations are not met, it could lead Lathrop and/or future, prospective new member-jurisdictions in San Joaquin County or elsewhere to become less interested in joining EBCE. For these reasons, the Board is encouraged to proceed cautiously when considering conditions on new membership.

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

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

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

**Exhibit A: “List of Parties”**

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

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

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

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

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

The Board voting procedures are set forth in *Section 4.12* of the JPA Agreement. According to *Section 4.12.1*, most Board decisions require a simple majority vote of all the Directors, with each jurisdiction having one equal vote.<sup>1</sup> This procedure is referred to as a “Percentage Vote.” Additionally, *Section 4.12.2* creates a “Voting Shares Vote” procedure, which may immediately follow an affirmative or a tied Percentage Vote if requested by three or more Directors. Under a Voting Shares Vote, each jurisdiction’s vote is essentially ‘weighted’ according to the size of its annual energy usage as compared to EBCE’s total annual energy (i.e., the collective, community-wide electricity demand within its borders). Historically, the Board has allowed new members to participate in ‘Voting Shares’ at their entry into EBCE,

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

rather than waiting until service to the new community is launched.<sup>2</sup> Staff recommends the Board continue following this precedent, rather than risk alienating prospective new member-jurisdictions.

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

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

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

At the time of EBCE’s formation, Exhibit B relied on 2014 PG&E load data. From 2019 to 2021, Exhibit B relied on 2018 PG&E load data.<sup>3</sup> Since 2022, Exhibit B has relied on 2021 PG&E load data. Staff’s recommendation is to continue updating Exhibit B to reflect more current load data.

Specifically, EBCE staff recommends the Board update Exhibit B using the most recent PG&E load data available (i.e., from calendar year 2022).<sup>4</sup> This provides an ‘apples-to-apples’ comparison for each member jurisdiction and does not preclude the Board from transitioning to EBCE’s post-enrollment load data once a full calendar year of EBCE usage becomes available for the cities of Stockton and Lathrop.<sup>5</sup>

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<sup>2</sup> When EBCE’s Board voted in 2019 to include the cities of Newark, Pleasanton, and Tracy; and the City of Stockton in 2022, it did so with the intention of allowing those new member-jurisdictions to participate in Voting Shares Votes based on their respective, citywide PG&E load data if/when such votes were to occur. Staff recommends the current EBCE Board follow this precedent.

<sup>3</sup> From 2019 to 2021, Exhibit B relied on 2017 PG&E load data for the City of Newark. This was due to the lengthy time required to receive Newark’s requested 2018 load data from PG&E before the end of the 2019 calendar year.

<sup>4</sup> The most recent PG&E load data available to EBCE is from calendar year 2022 for all jurisdictions, including the City of Lathrop.

<sup>5</sup> The City of Stockton’s EBCE enrollment was delayed until January 1<sup>st</sup>, 2025, by CPUC Resolution E-5258.

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 2022 PG&E load data, Exhibit C will be adjusted accordingly to reflect the Voting Shares percentage of each member jurisdiction.

**Recommendation:** Update Exhibit B using 2022 PG&E load data for "Annual Energy Use" and "Total Energy Use," for all current EBCE member-jurisdictions and the City of Lathrop. Update Exhibit C's Voting Shares to correspond to updated numbers in Exhibit B. Consider updating Exhibits B and C again in 2024 using 2023 EBCE load data, when such data becomes available for EBCE member-jurisdictions.

### ***Timing of new enrollments***

In February of 2018, the CPUC passed [Resolution E-4907](#), which delays the timeline by which California cities and counties may begin service with Community Choice Aggregation (CCA) agencies, like EBCE. In effect, cities and counties must wait a full calendar year between the time they form or join a CCA and when electricity customers within their borders may be enrolled in the CCA's service. As a result, any jurisdiction that requests to begin service with EBCE by 2025, must complete the process of joining EBCE's JPA by the end of calendar year 2023. Otherwise, enrollment with EBCE will not be possible until 2026 or later.

In April of 2023, the CPUC passed [Resolution E-5258](#), which delayed the City of Stockton's EBCE enrollment until January 1, 2025 (as well as the enrollments of other California cities that had been preparing to join CCAs in 2024). In brief, E-5258 retroactively applied additional conditions to CCAs that were planning to expand their service to new communities. These conditions focused on the timing of Resource Adequacy ("RA") procurement and compliance requirements. EBCE has since adjusted its RA planning to account for these requirements and does not expect similar delays to impact the Lathrop's EBCE enrollment should the Board approve the City's JPA membership. As a result, pending the Board's approval, Lathrop's anticipated start of EBCE service would begin in January 2025, along with Stockton.

### ***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 2025. Please see attached: "Steps to Joining East Bay Community Energy (EBCE)."

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

Date	Event
Oct ‘22-March ‘23	EBCE staff meet with Lathrop City staff at City’s invitation. EBCE staff continue to engage and communicate with City staff.
March-May 2023	City completes PG&E load data request forms/non-disclosure agreements. EBCE staff receives load data from PG&E.
July-August 2023	City Council passes Resolution, Ordinance to join EBCE (attached). City Manager executes JPA signature page (attached).
August 2023	EBCE conducts quantitative analysis to evaluate City’s JPA membership request (attached).
Sept-Oct 2023	Earliest opportunities for EBCE Executive Committee (Exec Com), Board of Directors (BoD) and Community Advisory Committee (CAC) to consider quantitative analysis, inclusion request(s), and updates to JPA Agreement Exhibits A, B and C.
Oct-Dec 2023	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.
2024	City of Lathrop entitled to a seat on EBCE’s Board of Directors; EBCE’s community outreach to new communities begins. Some EBCE programs may become available to Lathrop’s electricity customers (e.g. technical assistance w/energy resilience at critical municipal facilities).
2025	EBCE customer account enrollments begin in Lathrop (and Stockton)

### Fiscal Impact

The prospect of including a new city within EBCE’s Joint Powers Authority and service area—particularly one as rapidly growing and demographically diverse as Lathrop<sup>6</sup>—presents considerable financial implications for the Agency. For this reason, EBCE staff conducted a Quantitative Analysis (QA) using the City’s annual PG&E load data (from calendar year 2022) to evaluate the cost of service to this prospective new member jurisdiction. The results of this analysis are included as an attachment to this report.<sup>7</sup>

<sup>6</sup> Lathrop has been identified by the State Department of Finance as one of the fastest growing cities in California: <https://www.abc10.com/article/news/local/lathrop-growth-surge/103-245febe8-8751-4dea-9ce2-a3b6909095c6> & <https://www.mantecabulletin.com/news/local-news/lathrop-californias-fastest-growing-city/>

For an overview of Lathrop’s demographics and community profile for 2022/23, please refer here: [https://www.ci.lathrop.ca.us/sites/default/files/fileattachments/economic\\_development/page/10081/lathrop\\_smart\\_community\\_profile\\_2022-23.pdf](https://www.ci.lathrop.ca.us/sites/default/files/fileattachments/economic_development/page/10081/lathrop_smart_community_profile_2022-23.pdf)

<sup>7</sup> Please refer to the attached “Presentation: Lathrop EBCE Membership: Quantitative Analysis”

In short, the purpose of the QA was to help answer the following, basic question: *Can EBCE include Lathrop within its growing service area, while providing the same level of service (or better) offered to current JPA member-jurisdictions and their communities?* This level of service (also known as EBCE’s “value proposition”) offers customers competitive electricity rates with greater access to non-nuclear, carbon-free energy resources compared to standard PG&E service.<sup>8</sup>

Based on the results of the QA, staff is confident the answer to this question is ‘yes’.

According to the QA, the additional electric load of Lathrop in 2022 would have yielded approximately \$1.77 million to EBCE’s net revenues, or an additional 1.6% to EBCE’s overall net position for that year. For 2025, the QA estimates the addition of Lathrop would contribute an additional 0.9% to EBCE’s overall net position. This would represent a small, but positive fiscal impact on EBCE and its existing communities and customer base. 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:

	Lathrop 2022	EBCE 2022	EBCE w/Lathrop (and Stockton*) 2025
<b>Accounts</b>	<b>7,300</b>	<b>642,400</b>	<b>766,000</b>
<b>Annual Load<sub>(GWh/yr)</sub></b>	<b>184</b>	<b>6,552</b>	<b>8,220</b>
<b>Peak Load<sub>(MW)</sub></b>	<b>49</b>	<b>1,636</b>	<b>2,237</b>
<b>Net Position %</b>	<b>+1.6%</b>	<b>+14.5%</b>	<b>+8%</b> <i>(+0.9% specifically due to Lathrop)</i>
<b>Net Position \$</b>	<b>\$1.77M</b>	<b>\$109.99M</b>	<b>\$197.99M</b>

\*Stockton’s EBCE enrollment was delayed until 2025 by CPUC Res E-5258

**NOTES:**

\*Based on current overhead costs and 10-year average market values/forecasts;

<sup>8</sup> EBCE currently offers customers a Bright Choice electric rate discount of 5% (previously 3%); and a Renewable 100 premium of ¼ a penny per kilowatt-hour (previously \$0.01/kWh), compared to PG&E standard rates. Meanwhile, draft power content forecasts for 2022 (the most recent year for which data is available) indicate that EBCE’s non-nuclear carbon-free power will be more than 71% of total supply; while PG&E’s is expected to be approximately 47%. Please refer to the Emissions Overview developed for EBCE’s Board in June 2023:

<https://cdn.sanity.io/files/pc49kbjr/production/0b9774744b54508e7a00353085d003d475fdabe1.pdf>

- \*Assumes 7% account opt out rate (slightly above EBCE's current service area-wide opt out rate);
- \*Applies EBCE's 2023 rates from 2023-24 budget development;
- \*Data excludes ineligible loads (e.g. BART, Direct Access, Standby);
- \*Uses 2022 PG&E load data for Lathrop;

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

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

For example, a financial scenario could include a sustained wholesale energy price environment in which prices remain at EBCE's median forecasted levels, while the PCIA increases dramatically (e.g., the PCIA climbing to the 5<sup>th</sup> percentile in cost,). Per the Board's rate-setting policies, EBCE absorbs the cost of the PCIA to ensure its value proposition to customers (i.e., Bright Choice customers receive a 5% discount compared to PG&E's standard rates; and Renewable 100 customers pay an additional ¼ cent per kilowatt-hour above PG&E rates). In other words, EBCE's rate discount for Bright Choice customers, and the slight premium for Renewable 100 customers, remains consistent, despite any fluctuations in the PCIA. As such, dramatic increases in the PCIA can negatively impact EBCE's financial position.

In these conditions, EBCE could still 'break even' (i.e., the Agency's costs would be roughly equal to revenues during the sample year). Nevertheless, even in circumstances in which the cost to serve Lathrop could exceed the amount EBCE receives in retail rate revenues, EBCE's financial position would very likely remain secure due to Lathrop's relatively small size. In other words, the cost to serve Lathrop's electricity load represents a fraction of EBCE's current, overall costs. Moreover, EBCE could take steps to mitigate the negative financial impacts of this scenario (e.g., by adjusting the Bright Choice discount from 5% to 4%).

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

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



unprecedented natural disaster that destroys or extensively damages vast critical infrastructure, like natural gas pipelines and/or electric transmission networks).

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

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

## Qualitative Considerations

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

- **Diversity, Equity, and Inclusion (DEI)** - By expanding access to competitively priced renewable energy and related programs to growing, frontline communities in California’s Central Valley, EBCE can continue to advance the Agency’s goals around diversity, equity, and inclusion;
- **Environmental Justice** - For a variety of systemic, economic, geographic, topographic, historical, and socio-political reasons, air pollution (among other forms of pollution) in Lathrop and the greater San Joaquin Valley region represents an urgent public health challenge.<sup>11</sup> Pediatric asthma, in particular, is fairly widespread, affecting one in six children.<sup>12</sup> By providing alternatives to fossil fuel-based energy resources in the building, transportation, and agricultural sectors, EBCE can help advance environmental justice and increase the quality of life for local communities;

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<sup>10</sup> The financial stress test assumes cost increase persist for an entire year. It estimates the cost of energy to be the percentage of additional load multiplied by the 2023-24 budgeted energy expenses. It does not include initial customer notification costs (e.g., four mailed enrollment notices, staff time, event fees, travel, etc.)

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

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

- **Local Programs** - Due to its location within a major highway corridor and a global hub for agriculture, industry, and light/medium/heavy-duty trucking and goods transport, Lathrop offers tremendous programmatic opportunities for EBCE's transportation and building electrification endeavors. EBCE staff has identified multiple program areas where collaboration can begin right away;
- **Legislation and Political Influence** - By welcoming new State Assembly/Senate districts and new Federal Congressional districts into EBCE's service area, EBCE's current communities and customers will benefit from greater representation in Sacramento and Washington DC through EBCE's legislative and regulatory advocacy efforts;
- **CCA Proliferation, Public Power, and Energy Democracy** - When fast-growing, demographically diverse cities, like Lathrop, join California's CCA moment, they help catalyze public power and energy democracy throughout California by example. As with the cities of Tracy and Stockton, Lathrop's EBCE membership would likely have a compounding positive impact by influencing neighboring Central Valley jurisdictions to consider CCA generally and/or EBCE membership specifically.

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

### **Staff Recommendation**

1. Receive update and analysis on including the City of Lathrop within EBCE's service area;
2. Adopt a Resolution to approving the inclusion of the City of Lathrop within EBCE's Joint Powers Authority and service area, with customer enrollments to begin in 2025 and direct staff to update Exhibit A ("List of Parties"), Exhibit B ("Annual Energy Use"), and Exhibit C ("Voting Shares Vote").
3. Adopt a Resolution to authorize staff to update the Implementation Plan to reflect the inclusion of the City of Lathrop, and to submit the updated Implementation Plan to the California Public Utilities Commission (CPUC) before the end of calendar year 2023.

### **Attachments**

- A. Steps to Joining East Bay Community Energy;
- B. Presentation: Quantitative Analysis - City of Lathrop EBCE Membership
- C. Presentation: CEO Report - Update re City of Lathrop - 7.19.23 Board mtg
- D. City of Lathrop's signed staff report re EBCE membership
- E. City of Lathrop's signed Resolution to join EBCE;
- F. City of Lathrop's signed Ordinance to join EBCE/implement CCA;
- G. EBCE Resolution to include the City of Lathrop as a JPA member;
- H. Current EBCE Joint Powers Agreement including Exhibits A, B and C;
- I. Proposed updates to JPA Exhibits A, B and C to include the City of Lathrop;
- J. EBCE Resolution authorizing EBCE staff to update EBCE's Implementation Plan and submit it to the CPUC by end of calendar year 2023;
- K. City of Lathrop's signed EBCE JPA signature page
- L. Presentation: City of Lathrop EBCE membership and analysis



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

- 1) In-person meeting(s) with City staff and/or local elected officials;
  - Submit PG&E load data release forms (Forms 79-1030 & 79-1031);
    - i. May take more than four months to receive accurate PG&E data;
  - Expedited timeline due to CPUC Res. E-4907;
- 2) Two or three presentations to Council:
  - Informational/Discussion item;
  - Vote #1: Ordinance & Resolution to join EBCE's Joint Powers Authority (JPA) Agreement;
  - Vote #2: Ordinance – *Completed by August 2023 for 2025 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 2030 Clean Energy Goal);
- 4) EBCE Board and Community Advisory Committee review quantitative analysis and 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 12/31/23;

**2024**: Community outreach in new community;

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

**2025**: EBCE enrollment of electricity accounts begins in new community



# City of Lathrop

August 30, 2023

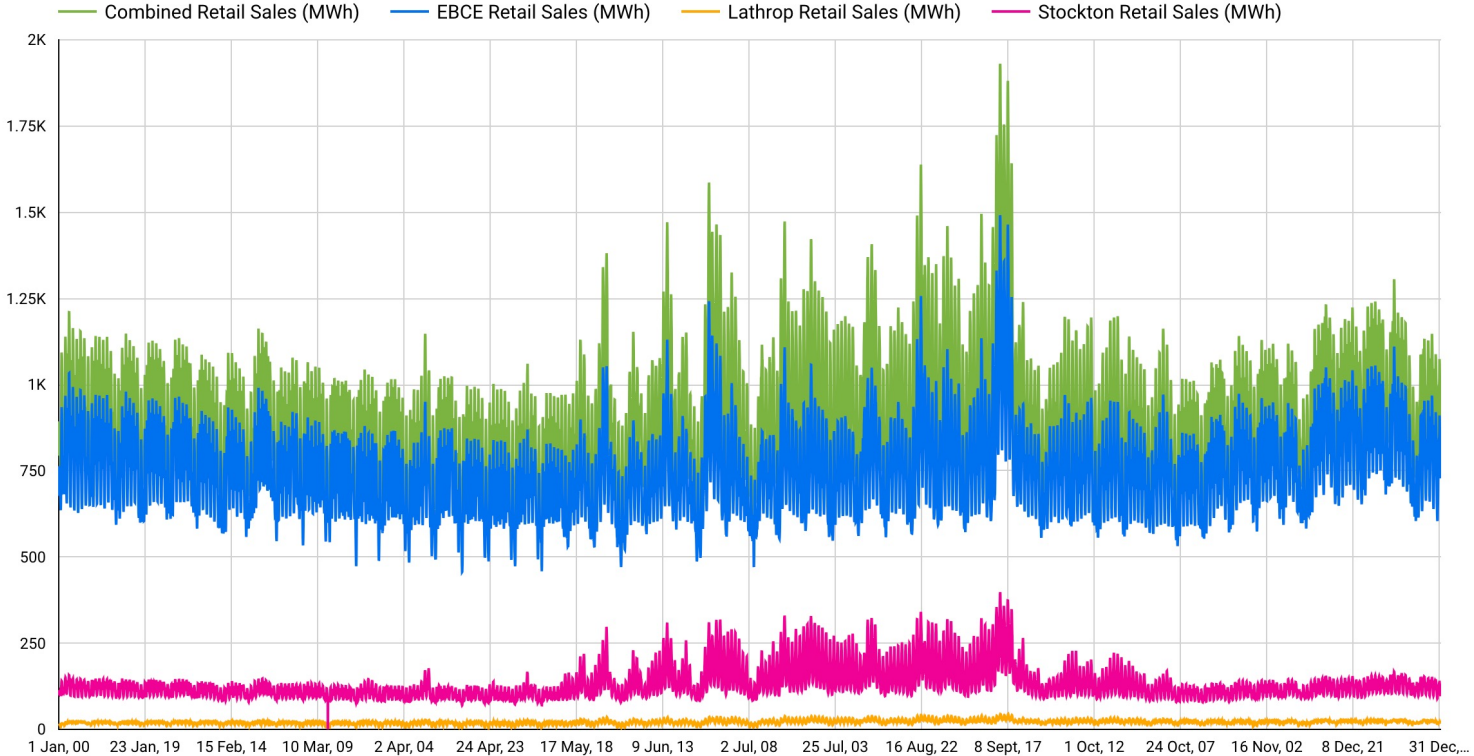


# Summary Data

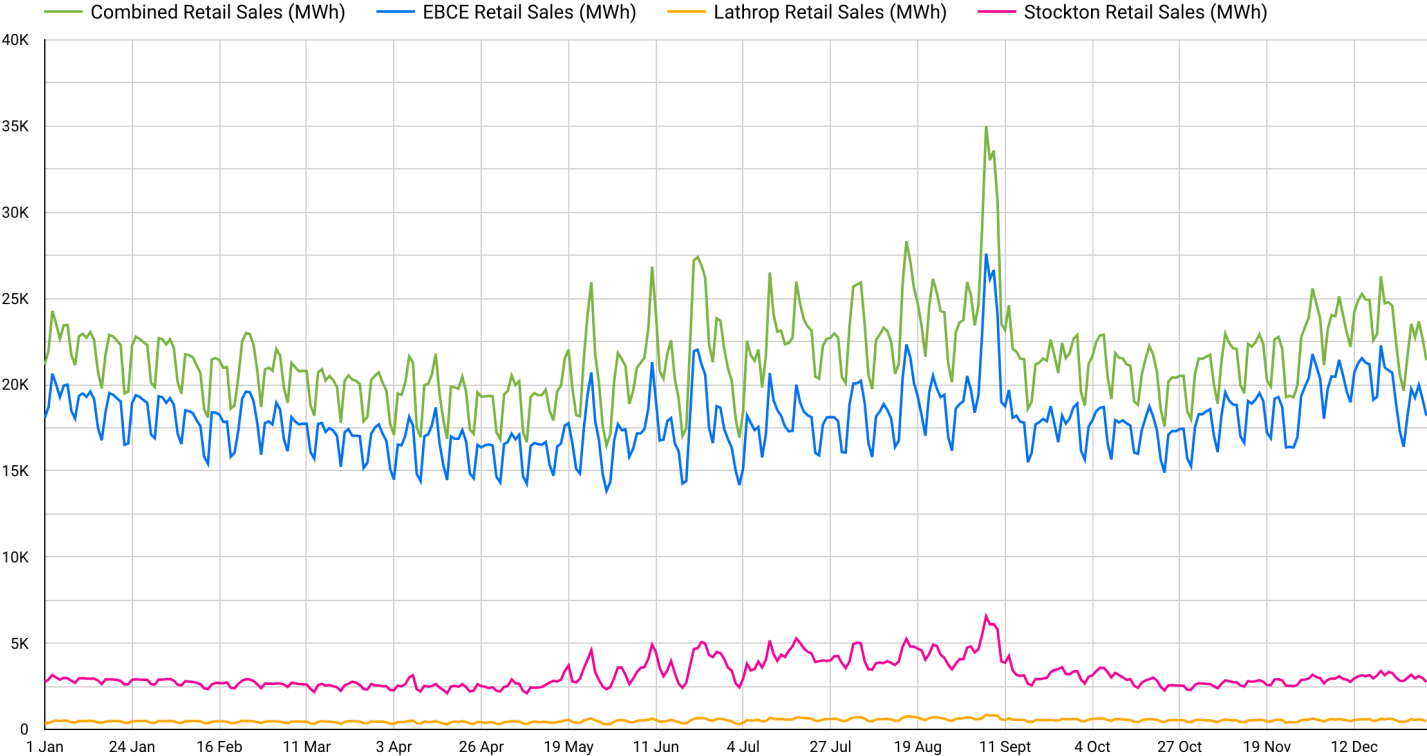
	Customer Count	Annual Load (GWh)	Peak Load (Wholesale MW)	Peak Date & Time (Hour Starting)
EBCE	641,776	6,552	1,636	2022-09-06 16:00
Stockton	111,740	1,154	438	2022-09-06 16:00
Lathrop	7,339	184	49	2022-09-06 17:00
Combined	760,855	7,890	2,120	2022-09-06 16:00

Rate Class	EBCE		Stockton		Lathrop		Combined	
	2022 MWh	%	2022 MWh	%	2022 MWh	%	2022 MWh	%
A1	945,379	14.4%	138,682	12.0%	10,212	5.5%	1,094,273	13.9%
A10	1,035,366	15.8%	159,405	13.8%	19,441	10.6%	1,214,213	15.4%
AGR	49,044	0.7%	1,462	0.1%	682	0.4%	51,189	0.6%
E19	1,316,623	20.1%	168,757	14.6%	55,779	30.3%	1,541,159	19.5%
E20	541,679	8.3%	75,230	6.5%	54,487	29.6%	671,396	8.5%
RES	2,615,021	39.9%	609,383	52.8%	42,344	23.0%	3,266,747	41.4%
LS	41,839	0.6%	97	0.0%	1,157	0.6%	43,092	0.5%
TC	7,070	0.1%	804	0.1%	134	0.1%	8,008	0.1%
<b>Total</b>	<b>6,552,021</b>	<b>100%</b>	<b>1,153,821</b>	<b>100%</b>	<b>184,237</b>	<b>100%</b>	<b>7,890,078</b>	<b>100%</b>

# 2022 Hourly Load



# 2022 Daily Load

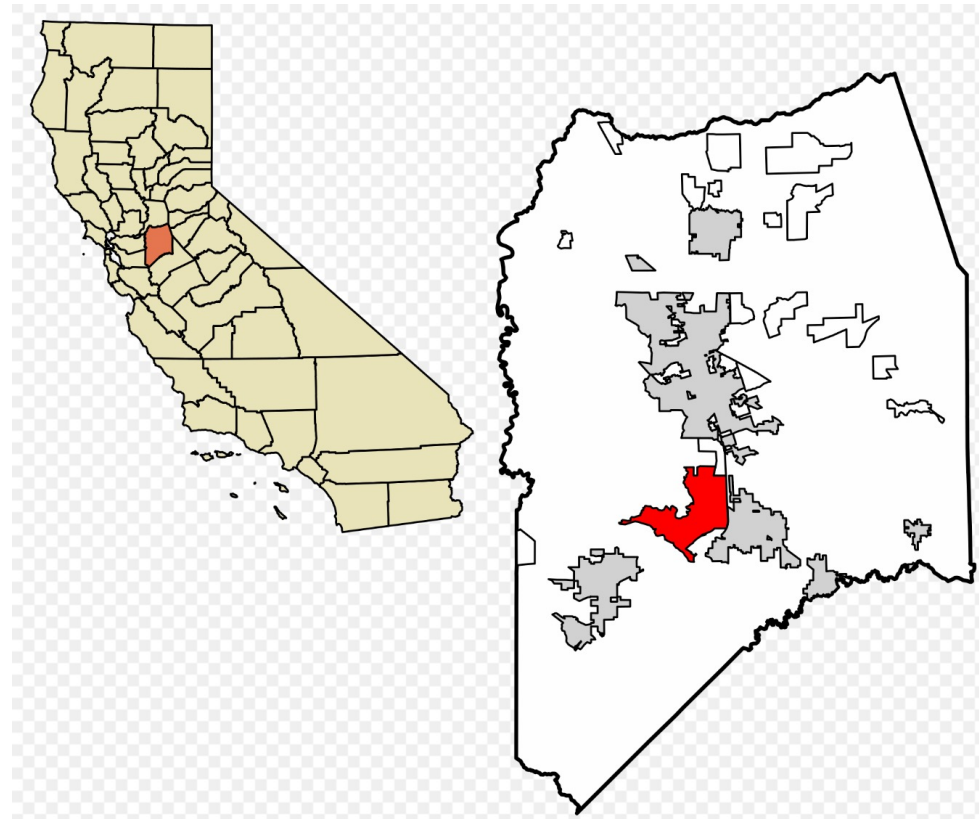




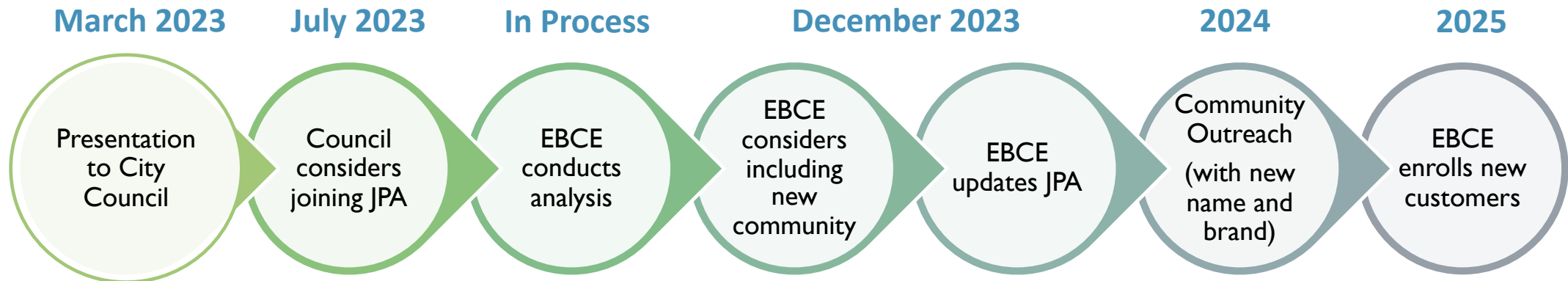
# CITY OF LATHROP, CA



- **San Joaquin County: Between Tracy and Stockton**
  - Pop: 30,700 (2022)
  - Incorporated: 1989
  - Major transit intersection: Interstate 5 and CA State Route 120
  - Top three employers: Tesla, UPS, Army & Air Force Exchange Service
- **Energy-related opportunities**
  - Growing electricity load, particularly commercial & industrial sectors
  - Central location relative to agriculture, logistics, and shipping hubs
  - Interstate transit corridors for EV fast charging; light, medium, and heavy-duty fleets; and other transportation electrification projects



# TIMELINE: LATHROP'S EBCE MEMBERSHIP



# Steps to Joining EBCE

1. Meetings with City staff/elected officials
2. 2-3 presentations to the City Council & Council considers joining JPA
3. EBCE staff conducts quantitative analysis
4. EBCE Board & Community Advisory Committee review analysis and Board considers including new community
5. If Board Approves, EBCE updates JPA and files amended Implementation Plan with the CPUC before 12/31/23

2024: Community outreach in new community

2025: EBCE enrolls customers in new community

**ITEM 5.1**

**CITY MANAGER’S REPORT  
JULY 10, 2023 CITY COUNCIL REGULAR MEETING**

**ITEM: PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER ADOPTING AN ORDINANCE TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM AND ADOPTING RESOLUTION TO APPROVE A JOINT POWERS AGREEMENT WITH EAST BAY COMMUNITY (EBCE) AUTHORITY TO PROVIDE ELECTRIC SERVICES IN THE CITY OF LATHROP**

**RECOMMENDATION: City Council to Consider the Following:**

- 1. Hold a Public Hearing; and**
- 2. First Reading and Introduction of an Ordinance to Implement a Community Choice Aggregation Program to Provide Electric Services in the City of Lathrop**
- 3. Adopt Resolution to Approve a Joint Powers Agreement with East Bay Community (EBCE) Authority to Provide Electric Services in the City of Lathrop**

---

**SUMMARY:**

On March 13, 2023 Council received a presentation from East Bay Community Energy (EBCE) regarding the benefits of implementing a Community Choice Aggregation (CCA) program. The potential benefits include lower electrical rates, local control and investment, and environmental sustainability.

Should Council want to proceed with the implementation of a CCA, the next step is to adopt an ordinance authorizing the City’s implementation of a CCA program through EBCE along with a resolution approving a Joint Powers Agreement (JPA) to join the EBCE Joint Powers Authority.

**BACKGROUND:**

Community Choice Aggregation (CCA) was created in California by AB 117 (2002) and are governed by the California Public Utilities Commission (CPUC). CCAs are governmental entities formed by cities and counties to procure electricity for their residents, businesses, and municipal facilities. CCAs cannot be formed in the jurisdiction of a publicly owned electric utility (POU) that provides electrical service, this includes the Lathrop Irrigation District (LID) that provides electrical power within the River Islands Development.

CCA programs have several unique characteristics. When a CCA launches, investor-owned utility (IOU) electricity customers in the designated service area are automatically opted-in to CCA service, and have to opt out to continue to be served by the IOU.

**CITY MANAGER'S REPORT****PAGE 2****JULY 10, 2023 CITY COUNCIL REGULAR MEETING  
PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER ADOPTING AN  
ORDINANCE TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION  
PROGRAM AND ADOPTING RESOLUTION TO APPROVE A JOINT POWERS  
AGREEMENT WITH EAST BAY COMMUNITY (EBCE) AUTHORITY TO PROVIDE  
ELECTRIC SERVICES IN THE CITY OF LATHROP**

For the City of Lathrop the IOU is Pacific Gas & Electric Co. (PG&E). Once established, a CCA purchases power for its customers. While the CCA is responsible for procurement, the IOU still provides other services such as transmission, distribution, metering, billing, collection, and customer service. Currently there are 25 CCA programs serving more than 11 million customers in California.

EBCE made a presentation to City Council at its March 13, 2023 meeting regarding participation and implementation of the CCA program to provide alternate electric services to City consumers under a JPA. In 2018, the County of Alameda and 11 of its cities launched EBCE as a not-for-profit public agency that governs this Community Choice Energy service. The Joint Power Agency expanded in 2021. The cities currently served are: Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Tracy, and Union City. The unincorporated areas of Alameda County (including Ashland, Castro Valley, Cherryland, Fairview, San Lorenzo, and Sunol) are also served by EBCE. The City of Stockton will begin EBCE service in 2025.

Section 366.2 of the California Public Utilities Code requires that any agency seeking to implement a CCA in their jurisdiction must do so by ordinance. This item requests that the City Council adopt an ordinance authorizing the City of Lathrop's implementation of a CCA program. The City Council must also adopt a resolution approving a joint powers agreement (JPA) thereby authorizing the EBCE to act as the CCA on the City's behalf.

The JPA contains provisions regarding as EBCE's powers, governance structure, including voting allocations, its obligation to indemnify the members, and the process for withdrawing from the authority, along with other standard JPA terms. As a member of EBCE, the City will have a representative on the EBCE's board of directors. If approved by Council, the JPA would be updated to reference the City of Lathrop.

**REASON FOR RECOMMENDATION:**

Adopting the proposed ordinance and approving the JPA with EBCE has the potential to provide lower electrical rates, local control and investment, and environmental sustainability.

**CITY MANAGER'S REPORT**

**PAGE 3**

**JULY 10, 2023 CITY COUNCIL REGULAR MEETING**

**PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER ADOPTING AN ORDINANCE TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM AND ADOPTING RESOLUTION TO APPROVE A JOINT POWERS AGREEMENT WITH EAST BAY COMMUNITY (EBCE) AUTHORITY TO PROVIDE ELECTRIC SERVICES IN THE CITY OF LATHROP**

**FISCAL IMPACT:**

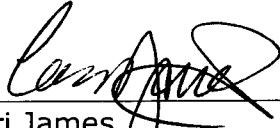
There is no direct fiscal impact associated with adopting an ordinance implementing a Community Choice Aggregation Program or approving a Joint Powers Agreement with the EBCE Authority to provide electric services to the City of Lathrop.

**ATTACHMENTS:**

- A. Ordinance to Implement a Community Choice Aggregation Program to Provide Electric Services in the City of Lathrop
- B. Resolution to Approve a Joint Powers Agreement with East Bay Community (EBCE) Authority to Provide Electric Services in the City of Lathrop
- C. ECBE Joint Powers of Agreement

**CITY MANAGER'S REPORT  
JULY 10, 2023 CITY COUNCIL REGULAR MEETING  
PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER ADOPTING AN  
ORDINANCE TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION  
PROGRAM AND ADOPTING RESOLUTION TO APPROVE A JOINT POWERS  
AGREEMENT WITH EAST BAY COMMUNITY (EBCE) AUTHORITY TO PROVIDE  
ELECTRIC SERVICES IN THE CITY OF LATHROP**

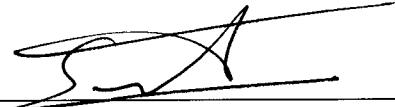
**APPROVALS:**

  
\_\_\_\_\_  
Cari James  
Finance Director


7-5-23  
Date

  
\_\_\_\_\_  
Michael King  
Assistant City Manager

7-5-2023  
Date

  
\_\_\_\_\_  
Salvador Navarrete  
City Attorney

7.3.2023  
Date

  
\_\_\_\_\_  
Stephen J. Salvatore  
City Manager

7.5.23  
Date

**RESOLUTION NO. 23-5338**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP TO APPROVE A JOINT POWERS AGREEMENT WITH EAST BAY COMMUNITY (EBCE) AUTHORITY TO PROVIDE ELECTRIC SERVICES IN THE CITY OF LATHROP**

**WHEREAS**, the City of Lathrop has an interest in achieving greater local involvement over the provision of electricity supply services, competitive electric rates, local control and investment, and environmental sustainability; and

**WHEREAS**, Assembly Bill 117 codified as Public Utilities Code Section 366.2 (the "Act"), authorizes any California city or county whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation (CCA); and

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

**WHEREAS**, on March 13, 2023 Council received a presentation from East Bay Community Energy (EBCE) regarding the benefits of implementing a CCA program; and

**WHEREAS**, implementing a CCA program will likely provide multiple benefits to the residents, including lower electrical rates, local control and investment, and environmental sustainability; 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 Lathrop; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Lathrop does hereby approve a Joint Powers Agreement with East Bay Community (EBCE) Authority to provide electric services in the City of Lathrop.



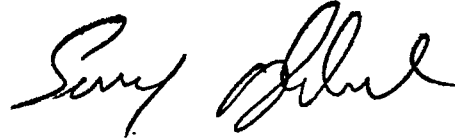
The foregoing resolution was passed and adopted this 10<sup>th</sup> day of July 2023, by the following vote of the City Council, to wit:

AYES: Akinjo, Diallo, Torres-O'Callaghan, and Dhaliwal

NOES: None

ABSENT: Lazard

ABSTAIN: None



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Sonny Dhaliwal, Mayor

**ATTEST:**



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Teresa Vargas, City Clerk

**APPROVED AS TO FORM:**



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Salvador Navarrete, City Attorney

**ORDINANCE NO. 23-447**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP TO IMPLEMENT A COMMUNITY CHOICE AGGREGATION PROGRAM TO PROVIDE ELECTRIC SERVICES IN THE CITY OF LATHROP**

**WHEREAS**, The City of Lathrop has an interest in achieving greater local involvement over the provision of electricity supply services, competitive electric rates, local control and investment, and environmental sustainability; and

**WHEREAS**, Assembly Bill 117 codified as Public Utilities Code Section 366.2 (the "Act"), authorizes any California city or county whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation (CCA); and

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

**WHEREAS**, implementing a CCA program will likely provide multiple benefits to the residents, including lower electrical rates, local control and investment, and environmental sustainability; 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; and

**WHEREAS**, proper notice of this public hearing was given to all respects as required by law; and

**WHEREAS**, the City Council has reviewed all written evidence and oral testimony presented to date.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LATHROP DOES HEREBY 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 Lathrop's jurisdiction by and through the East Bay Community Energy Authority.

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care toward persons and property within or without the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**Section 2 Environmental.**

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

**Section 3. Severability**

If any provisions of this Ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not effect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the validity of any particular portions thereof.

**Section 4. Effective Date**

This Ordinance shall take legal effect and be in force thirty (30) days from and after the date of its passage.

**Section 5. Publication**

Within fifteen (15) days after its final passage, the City Clerk shall cause a copy of this Ordinance to be published in full accordance with Section 36933 of the Government Code.

**THIS ORDINANCE** was introduced at a regular meeting of the City Council of the City of Lathrop on the 10<sup>th</sup> day of July 2023, and was **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Lathrop on the 14<sup>th</sup> day of August, 2023 by the following vote, to wit:

AYES: Diallo, Lazard, Torres-O'Callaghan, and Akinjo  
NOES: None  
ABSENT: Dhaliwal  
ABSTAIN: None



Paul Akinjo, Vice Mayor

**ATTEST:**



Teresa Vargas, City Clerk

**APPROVED AS TO FORM:**



Salvador Navarrete, City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF SAN JOAQUIN       ) ss.  
CITY OF LATHROP                )

I, Teresa Vargas, City Clerk of the City of Lathrop, California, do hereby certify that the foregoing Ordinance No. 23-447 was duly and regularly introduced at a regular meeting of the City Council on the 10<sup>th</sup> day of July 2023, and that thereafter said Ordinance was duly and regularly adopted at a regular meeting of the City Council on the 14<sup>th</sup> day of August 2023, by the following vote, to wit:

AYES:           Diallo, Lazard, Torres-O’Callaghan, and Akinjo

NOES:           None

ABSENT:        Dhaliwal

ABSTAIN:       None

This Ordinance was duly published in accordance with State Law (G.C. 40806).

I hereby certify that the foregoing is the original of Ordinance No. 23-447 duly and adopted by the City of Lathrop City Council at its regular meeting held August 14, 2023, and that the Summary of the Ordinance was published on August 1, 2023, and Full Reading on August 18, 2023 in the Manteca Bulletin Newspaper.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Lathrop, California, this 18<sup>th</sup> day of August 2023.

  
TERESA VARGAS, MMC  
CITY CLERK

(SEAL)

**RESOLUTION NO. XX**

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

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

**WHEREAS**, on September 24, 2002, the Governor of California signed into law Assembly Bill 117 (Stat. 2002, Ch. 838; see California Public Utilities Code section 366.2; hereinafter referred to as the “Act”), which authorizes any California city or county, whose governing body so elects, to combine the electricity load of its residents and businesses in a community-wide electricity aggregation program known as Community Choice Aggregation (“CCA”); and

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

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

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

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

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

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

**WHEREAS**, on September 21, 2022, EBCE’s Board of Directors unanimously authorized the City of Stockton to become a new party to the Agreement with EBCE service anticipated to begin in April 2024; and

**WHEREAS**, on December 8, 2022, EBCE submitted an updated “Implementation Plan” to the CPUC reflecting the membership of the City of Stockton to the Agreement and EBCE service area; and

**WHEREAS**, including new member jurisdictions within EBCE’s Joint Powers Authority can benefit EBCE communities, customers, and the general public by 1) expanding access to competitively-priced renewable energy, innovative programs and equitable policies; 2) achieving greater economies of scale while accelerating the reduction of greenhouse gas emissions; 3) enhancing EBCE’s financial strength through increased revenues and reserves; 4) diversifying the Agency’s service area while advancing environmental justice in historically marginalized communities; 5) empowering local stakeholders with more direct representation before State-level regulators and elected officials; and 6) inspiring more cities and counties to explore public power options in California and nationwide; and

**WHEREAS**, on July 10, 2023, through a unanimous vote of its City Council, the City of Lathrop 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 the ordinance was formally adopted on August 14, 2023; and

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

**WHEREAS**, per CPUC rules, prospective member jurisdictions must join EBCE before the end of calendar year 2023 to begin customer enrollments in EBCE’s service options by 2025; 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 Lathrop 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 Lathrop becoming effective.
- (b) The execution of the Agreement by the duly authorized official of the City of Lathrop.

Section 2. Staff are hereby directed to revise Exhibits A, B, and C of the Agreement to include Lathrop as a member of EBCE and to provide updated energy load information. Revised Exhibits are attached to this Resolution and incorporated herein.

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

ADOPTED AND APPROVED this 20<sup>th</sup> day of September, 2023.

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Elisa Márquez, Chair

ATTEST:

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Adrian Bankhead, Secretary

**East Bay Community Energy Authority**

**- Joint Powers Agreement -**

Effective December 1, 2016  
As amended by Resolution No. 2018-23 dated June 20, 2018 and  
Resolution No. 2022-28 dated September 21, 2022

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Stockton

City of Tracy

City of Union City



## EAST BAY COMMUNITY ENERGY AUTHORITY

### JOINT POWERS AGREEMENT

This Joint Powers Agreement (“Agreement”), effective as of December 1, 2016, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 *et seq.*) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit A (“Parties”). The term “Parties” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

#### RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse gas emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 1.1.16 below) entering into this Agreement include securing electrical energy supply for customers in participating jurisdictions, addressing climate change by reducing energy related greenhouse gas emissions, promoting electrical rate price stability, and fostering local economic benefits such as jobs creation, community energy programs and local power development. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to State, regional and local solar and wind energy production.
4. The Parties desire to establish a separate public agency, known as the East Bay Community Energy Authority (“Authority”), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
5. The Initial Participants have each adopted an ordinance electing to implement through the Authority a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program.
6. By establishing the Authority, the Parties seek to:
  - (a) Provide electricity rates that are lower or competitive with those offered by PG&E for similar products;

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

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

### ARTICLE 1 CONTRACT DOCUMENTS

**1.1 Definitions.** Capitalized terms used in the Agreement shall have the meanings specified below, unless the context requires otherwise.

- 1.1.1 “AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.
- 1.1.2 “Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*)
- 1.1.3 “Agreement” means this Joint Powers Agreement.
- 1.1.4 “Annual Energy Use” has the meaning given in Section 1.1.23.
- 1.1.5 “Authority” means the East Bay Community Energy Authority established pursuant to this Joint Powers Agreement.
- 1.1.6 “Authority Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.
- 1.1.7 “Board” means the Board of Directors of the Authority.
- 1.1.8 “Community Choice Aggregation” or “CCA” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.
- 1.1.9 “CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.4 and 5.1.
- 1.1.10 “Days” shall mean calendar days unless otherwise specified by this Agreement.
- 1.1.11 “Director” means a member of the Board of Directors representing a Party, including an alternate Director.
- 1.1.12 “Effective Date” means the date on which this Agreement shall become effective and the East Bay Community Energy Authority shall exist as a separate public agency, as further described in Section 2.1.

- 1.1.13** “Ex Officio Board Member” means a non-voting member of the Board of Directors as described in Section 4.2.2. The Ex Officio Board Member may not serve on the Executive Committee of the Board or participate in closed session meetings of the Board.
- 1.1.14** “Implementation Plan” means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.
- 1.1.15** “Initial Costs” means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of a Chief Executive Officer and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority’s initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. The Board shall determine the termination date for Initial Costs.
- 1.1.16** “Initial Participants” means, for the purpose of this Agreement the County of Alameda, the Cities of Albany, Berkeley, Emeryville, Oakland, Piedmont, San Leandro, Hayward, Union City, Fremont, Dublin, and Livermore.
- 1.1.17** “Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.
- 1.1.18** “Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.
- 1.1.19** “Party” means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.1 such that it is considered a member of the Authority.
- 1.1.20** “Percentage Vote” means a vote taken by the Board pursuant to Section 4.12.1 that is based on each Party having one equal vote.
- 1.1.21** “Total Annual Energy” has the meaning given in Section 1.1.23.
- 1.1.22** “Voting Shares Vote” means a vote taken by the Board pursuant to Section 4.12.2 that is based on the voting shares of each Party described in Section 1.1.23 and set forth in Exhibit C to this Agreement. A Voting Shares vote cannot take place on a matter unless the matter first receives an affirmative or tie Percentage Vote in the manner required by Section 4.12.1 and three or more Directors immediately thereafter request such vote.

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

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

**1.2** **Documents Included.** This Agreement consists of this document and the following exhibits, all of which are hereby incorporated into this Agreement.

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

**1.3** **Revision of Exhibits.** The Parties agree that Exhibits A, B and C to this Agreement describe certain administrative matters that may be revised upon the approval of the Board, without such revision constituting an amendment to this Agreement, as described in Section 8.4. The Authority shall provide written notice to the Parties of the revision of any such exhibit.

## **ARTICLE 2**

### **FORMATION OF EAST BAY COMMUNITY ENERGY AUTHORITY**

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

**2.2** **Initial Participants.** Until December 31, 2016, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(12) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an

incorporated municipality or county desiring to become a Party that is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

**2.3 Formation.** There is formed as of the Effective Date a public agency named the East Bay Community Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing boards of all Parties.

**2.4 Purpose.** The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party and any other powers granted to the Authority under state law to participate as a group in the CCA Program pursuant to Public Utilities Code Section 366.2(c)(12); to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs; and, to exercise all other powers necessary and incidental to accomplishing this purpose.

**2.5 Powers.** The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:

- 2.5.1** to make and enter into contracts, including those relating to the purchase or sale of electrical energy or attributes thereof;
- 2.5.2** to employ agents and employees, including but not limited to a Chief Executive Officer and General Counsel;
- 2.5.3** to acquire, contract, manage, maintain, and operate any buildings, works or improvements, including electric generating facilities;
- 2.5.4** to acquire property by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
- 2.5.5** to lease any property;
- 2.5.6** to sue and be sued in its own name;
- 2.5.7** to incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 *et seq.* and authority under the Act;

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

**2.6 Limitation on Powers.** As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the City of Emeryville and any other restrictions on exercising the powers of the Authority that may be adopted by the Board.

**2.7 Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act ("CEQA").

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

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

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

**ARTICLE 3**  
**AUTHORITY PARTICIPATION**

**3.1 Addition of Parties.** Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption by an affirmative vote of a majority of all Directors of the entire Board satisfying the requirements described in Section 4.12, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(12) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership fee, if any, and (e) satisfaction of any conditions established by the Board.

**3.2 Continuing Participation.** The Parties acknowledge that membership in the Authority may change by the addition and/or withdrawal or termination of Parties. The Parties agree to participate with such other Parties as may later be added, as described in Section 3.1. The Parties also agree that the withdrawal or termination of a Party shall not affect this Agreement or the remaining Parties' continuing obligations under this Agreement.

**ARTICLE 4**  
**GOVERNANCE AND INTERNAL ORGANIZATION**

**4.1 Board of Directors.** The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.

**4.2 Appointment of Directors.** The Directors shall be appointed as follows:

**4.2.1** The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the regular Director shall be a member of the governing body of the Party at the time of appointment but may continue to serve as a Director following his/her term as a member of the Party's governing body until a new Director is appointed pursuant to the timing in Section 4.3. The person appointed and designated as the alternate Director shall also be a member of the governing body of a Party and the alternate may continue to serve



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

- 4.2.2 The Board shall also include one non-voting ex officio member as defined in Section 1.1.13 ("Ex Officio Board Member"). The Chair of the Community Advisory Committee, as described in Section 4.9 below, shall serve as the Ex Officio Board Member. The Vice Chair of the Community Advisory Committee shall serve as an alternate Ex Officio Board Member when the regular Ex Officio Board Member is absent from a Board meeting.
- 4.2.3 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.12 may include rules regarding Directors, such as meeting attendance requirements. No Party shall be deprived of its right to seat a Director on the Board.

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

**4.4 Quorum.** A majority of the Directors of the entire Board shall constitute a quorum, except that less than a quorum may adjourn a meeting from time to time in accordance with law.

**4.5 Powers and Function of the Board.** The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law. Board approval shall be required for any of the following actions, which are defined as "Essential Functions":

- 4.5.1 The issuance of bonds or any other financing even if program revenues are expected to pay for such financing.
- 4.5.2 The hiring of a Chief Executive Officer and General Counsel.
- 4.5.3 The appointment or removal of an officer.
- 4.5.4 The adoption of the Annual Budget.
- 4.5.5 The adoption of an ordinance.
- 4.5.6 The initiation of resolution of claims and litigation where the Authority will be the defendant, plaintiff, petitioner, respondent, cross complainant or cross petitioner, or intervenor; provided, however, that the Chief

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

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

**4.5.8** Termination of the CCA Program.

**4.6** **Executive Committee.** The Board shall establish an Executive Committee consisting of a smaller number of Directors. The Board may delegate to the Executive Committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain Essential Functions, as described in Section 4.5 and the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.12 to adopt and amend the Operating Rules and Regulations or its Essential Functions listed in Section 4.5. After the Executive Committee meets or otherwise takes action, it shall, as soon as practicable, make a report of its activities at a meeting of the Board.

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

**4.8** **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.

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

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

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

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

**4.12 Board Voting.**

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

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

and Regulations. In the event that any one Director has a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter. When a voting shares vote is held, action by the Board requires both an affirmative Percentage Vote and an affirmative Voting Shares Vote. Notwithstanding the foregoing, in the event of a tie in the Percentage Vote, an action may be approved on an affirmative Voting Shares Vote. When a supermajority vote is required by this Agreement or the Operating Rules and Regulations, the supermajority vote is subject to the Voting Share Vote provisions of this Section 4.12.2, and the specified supermajority of all Voting Shares is required for approval of the action, if the provision of this Section 4.12.2 are triggered.

**4.13 Meetings and Special Meetings of the Board.** The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special and Emergency meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956 and 54956.5. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.

**4.14 Officers.**

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

**4.14.2 Secretary.** The Board shall appoint a Secretary, who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.

**4.14.3 Treasurer and Auditor.** The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. The same person may not simultaneously hold both the office of Treasurer and the office of the Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made annually by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the 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. Progress on the implementation of the Business Plan shall be subject to annual public review.

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

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

## **ARTICLE 6** **FINANCIAL PROVISIONS**

**6.1 Fiscal Year.** The Authority's fiscal year shall be 12 months commencing July 1 and ending June 30. The fiscal year may be changed by Board resolution.

**6.2 Depository.**

**6.2.1** All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Party or any other person or entity.

**6.2.2** All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times.

**6.2.3** All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.

**6.3 Budget and Recovery Costs.**

**6.3.1 Budget.** The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of the Authority shall be prepared and approved by the Board in accordance with the Operating Rules and Regulations.

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

electric services to the extent permitted by law, and the County shall be reimbursed from the payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County shall not be entitled to any reimbursement of the Initial Costs.

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

## **ARTICLE 7**

### **WITHDRAWAL AND TERMINATION**

#### **7.1 Withdrawal.**

- 7.1.1 General Right to Withdraw.** A Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 180 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. Withdrawal of a Party shall require an affirmative vote of the Party's governing board.
- 7.1.2 Withdrawal Following Amendment.** Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement provided that the requirements of this Section 7.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in the Authority effective 180 days after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board.
- 7.1.3 The Right to Withdraw Prior to Program Launch.** After receiving bids from power suppliers for the CCA Program, the Authority must provide to the Parties a report from the electrical utility consultant retained by the Authority comparing the Authority's total estimated electrical rates, the estimated greenhouse gas emissions rate and the amount of estimated renewable energy to be used with that of the incumbent utility. Within 30 days after receiving this report, through its City Manager or a person expressly authorized by the Party, any Party may immediately withdraw its membership in the Authority by providing written notice of withdrawal to the Authority if the report determines that any one of the following



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

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

**7.3 Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.

**7.4 Disposition of Property upon Termination of Authority.** Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any Authority Documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

**ARTICLE 8**  
**MISCELLANEOUS PROVISIONS**

**8.1 Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and the Authority shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and the Authority. The Parties agree that each Party may specifically enforce this section 8.1. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 120 days after the demand for mediation is made, any Party and the Authority may pursue any remedies provided by law.

**8.2 Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 *et seq.* Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

**8.3 Indemnification of Parties.** The Authority shall acquire such insurance coverage as the Board deems necessary to protect the interests of the Authority, the Parties and the public. Such insurance coverage shall name the Parties and their respective Board or Council members, officers, agents and employees as additional insureds. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

**8.4 Amendment of this Agreement.** This Agreement may be amended in writing by a two-thirds affirmative vote of the entire Board satisfying the requirements described in Section 4.12. Except that, any amendment to the voting provisions in Section 4.12 may only be made by a three-quarters affirmative vote of the entire Board. The Authority shall provide written notice to the Parties at least 30 days in advance of any proposed amendment being considered by the Board. If the proposed amendment is adopted by the Board, the Authority shall provide prompt written notice to all Parties of the effective date of such amendment along with a copy of the amendment.

**8.5 Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of

proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.

**8.6 Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

**8.7 Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.

**8.8 Execution by Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

**8.9 Parties to be Served Notice.** Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 72 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. In addition, a duplicate copy of all notices provided pursuant to this section shall be provided to the Director and alternate Director for each Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties. All notices required hereunder shall be delivered to:

The County of Alameda

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

With a copy to:

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

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

Office of the City Clerk

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

Office of the City Manager/Administrator

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

Office of the City Attorney

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

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

Office of the City Clerk

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

Office of the City Manager/Administrator

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

Office of the City Attorney

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

**ARTICLE 9**  
**SIGNATURE**

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

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

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

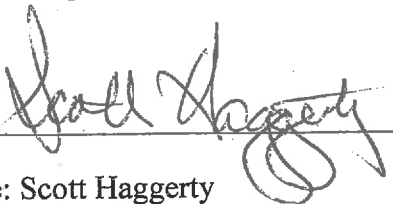
Title: \_\_\_\_\_

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

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

**ARTICLE 9**  
**SIGNATURE**

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

By: 

Name: Scott Haggerty

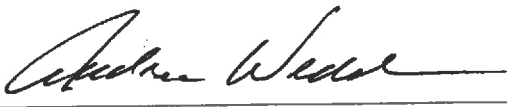
Title: Board President

Date: January 4, 2017

Party: County of Alameda

APPROVED AS TO FORM:

DONNA R. ZIEGLER, COUNTY COUNSEL

By: 

Andrea L. Weddle  
Chief Assistant County Counsel

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

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

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

Office of the City Clerk

Eileen Harrington, Deputy  
Eileen Harrington 12/2/16

Office of the City Manager/Administrator

Delores Crumpley  
Delores Crumpley

Office of the City Attorney

Craig Labadie  
Craig Labadie

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

Office of the City Clerk

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

Office of the City Manager/Administrator

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

Office of the City Attorney

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

**ARTICLE 9**  
**SIGNATURE**

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

By: *D. Williams-Ridley*

Name: *Dee Williams-Ridley*

Title: *City Manager*

Date: *December 1, 2016*

Party: *City of Berkeley*

APPROVED AS TO FORM

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

Registered by:

*Ann-Monica Hagan*  
City Auditor

ATTEST for the City of Berkeley

*Wendy Spurr*  
City Clerk

With a copy to:

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

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

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

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

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

Office of the City Clerk

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Office of the City Manager/Administrator

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Office of the City Attorney

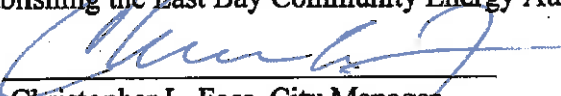
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**ARTICLE 9**  
**SIGNATURE**

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

By:   
\_\_\_\_\_  
Christopher L. Foss, City Manager  
City of Dublin

Date: 12/1/10

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

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

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

if to: City of Emeryville

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

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

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

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

Office of the City Clerk

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Office of the City Manager/Administrator

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---

Office of the City Attorney

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**ARTICLE 9**  
**SIGNATURE**

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

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

APPROVED AS TO FORM:

Michael A. Guina  
Michael A. Guina, City Attorney

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

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

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

City of Fremont

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

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

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

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

Office of the City Clerk

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

Office of the City Manager/Administrator

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

Office of the City Attorney

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

**ARTICLE 9**  
**SIGNATURE**

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

By: 

Name:     **Jessica von Borck**    

Title:     **Assistant City Manager**    

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

Date:     **12-1-16**    

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

**APPROVED AS TO FORM:**



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

The County of Alameda

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

With a copy to:

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

City of Hayward

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

With a copy to:

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

**ARTICLE 9**  
**SIGNATURE**

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

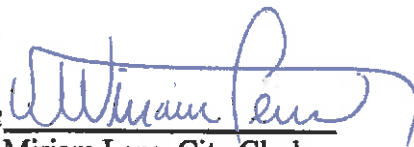
**CITY OF HAYWARD, A Municipal Corporation**

Date of Approval: 12/16/2016



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

ATTEST:



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

**APPROVED AS TO FORM**



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

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

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

if to City of Livermore

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

With a copy to:

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

**ARTICLE 9**  
**SIGNATURE**

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

By: Marc Roberts

Name: Marc Roberts

Title: City Manager

Date: 1/4/2017

Party: City of Livermore

APPROVED AS TO FORM:

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



224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

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

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

Office of the City Clerk  
1 Frank H. Ocasio Plaza  
Oakland, CA 94612

Office of the City Manager/Administrator  
1 Frank H. Ocasio 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:  for SBL

Name: CLAUDIA CAPPIO

Title: ASST CITY ADMINISTRATOR

Date: 12/07/16

Party: CITY OF OAKLAND

**ARTICLE 9**  
**SIGNATURE**

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

By: Jeff Wieler  
Name: Jeffrey Wieler  
Title: Mayor  
Date: 12/19/16  
Party: City of Piedmont

force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

**8.9 Parties to be Served Notice.** Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 72 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. In addition, a duplicate copy of all notices provided pursuant to this section shall be provided to the Director and alternate Director for each Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties. All notices required hereunder shall be delivered to:

The County of Alameda

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

With a copy to:

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

if to the City of San Leandro

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


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


**ARTICLE 9**  
**SIGNATURE**

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

CITY OF SAN LEANDRO

  
\_\_\_\_\_  
Chris Zapata, City Manager

Attest:   
\_\_\_\_\_  
Tamika Greenwood, City Clerk

Approved as to Form:  
  
\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

224 West Winton Ave.  
Hayward, CA 94612

With a copy to:

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

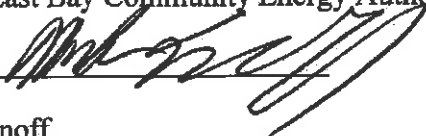
if to The City of Union City [PARTY No. 12]

Office of the City Clerk

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

**ARTICLE 9**  
**SIGNATURE**

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

By: 

Name: Mark Evanoff

Title: Deputy City Manager

Date: December 5, 2016

Party: The City of Union City

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

if to Newark

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

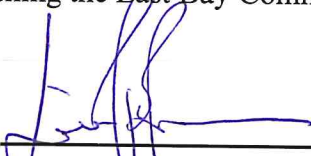
Office of the City Manager/Administrator  
37101 Newark Boulevard  
Newark, CA 94560

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



**ARTICLE 9**  
**SIGNATURE**

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

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

Name: David J. Benoun

Title: City Manager

Date: November 18, 2019

Party: CITY OF NEWARK


**ARTICLE 9**  
**SIGNATURE**

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

**CITY OF PLEASANTON, a municipal corporation**

Date: November 27, 2019

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


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

APPROVED AS TO FORM:

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

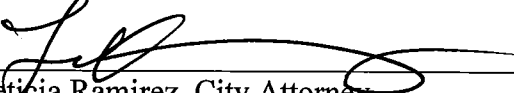
**ARTICLE 9**  
**SIGNATURE**

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


By:   
Name: Robert Rickman  
Title: Mayor  
Date: 11-7-19

Party: City of Tracy

APPROVED AS TO FORM

  
Leticia Ramirez, City Attorney

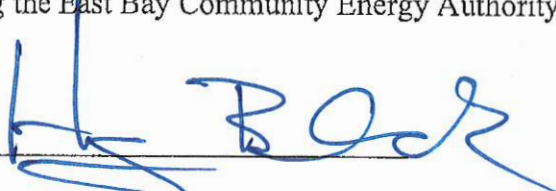
ATTEST

  
Adrienne Richardson, City Clerk

**ARTICLE 9**  
**SIGNATURE**

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

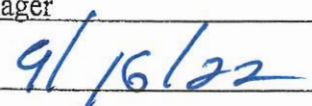
By: \_\_\_\_\_



Name: Harry Black

Title: City Manager

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



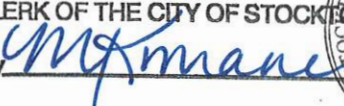
Party: City of Stockton

ATTEST:

CLERK OF THE CITY OF STOCKTON

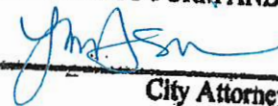
for

By \_\_\_\_\_



APPROVED AS TO FORM AND CONTENT

By \_\_\_\_\_



City Attorney

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

This Exhibit A is effective as of September 21, 2022.

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Stockton

City of Tracy

City of Union City

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

This Exhibit B is effective as of September 21, 2022.

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

All data provided by PG&E

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

This Exhibit C is effective as of September 21, 2022.

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

All data provided by PG&E

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

This Exhibit A is effective as of September 20, 2023.

County of Alameda

City of Albany

City of Berkeley

City of Dublin

City of Emeryville

City of Fremont

City of Hayward

City of Lathrop

City of Livermore

City of Newark

City of Oakland

City of Piedmont

City of Pleasanton

City of San Leandro

City of Stockton

City of Tracy

City of Union City



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

This Exhibit B is effective as of September 20, 2023.

<b>Party</b>	<b>kWh (2022*)</b>
Albany	50,016,072
Berkeley	350,111,874
Dublin	250,811,690
Emeryville	173,586,542
Fremont	1,182,339,971
Hayward	681,289,470
Lathrop	183,070,584
Livermore	428,724,628
Newark	244,335,398
Oakland	1,713,563,058
Piedmont	28,595,451
Pleasanton	394,860,960
San Leandro	414,939,109
Stockton	1,153,820,553
Tracy	412,411,899
Unincorporated County	452,054,476
Union City	261,439,720
Total	8,375,971,455

\*All data provided by PG&E

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

This Exhibit C is effective as of September 20, 2023

<b>Party</b>	<b>kWh (2022*)</b>	<b>Voting Shares Section 4.12.2</b>
Albany	50,016,072	0.6%
Berkeley	350,111,874	4.2%
Dublin	250,811,690	3.0%
Emeryville	173,586,542	2.1%
Fremont	1,182,339,971	14.1%
Hayward	681,289,470	8.1%
Lathrop	183,070,584	2.2%
Livermore	428,724,628	5.1%
Newark	244,335,398	2.9%
Oakland	1,713,563,058	20.5%
Piedmont	28,595,451	0.3%
Pleasanton	394,860,960	4.7%
San Leandro	414,939,109	5.0%
Stockton	1,153,820,553	13.8%
Tracy	412,411,899	4.9%
Unincorporated County	452,054,476	5.4%
Union City	261,439,720	3.1%
<b>Total</b>	<b>8,375,971,455</b>	<b>100%</b>

\*All data provided by PG&E

**RESOLUTION NO. XX**

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

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

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

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

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

**WHEREAS**, on September 21, 2022, EBCE’s Board of Directors unanimously authorized the City of Stockton to become a new party to the Agreement with EBCE service anticipated to begin in April 2024; and

**WHEREAS**, on December 8, 2022, EBCE submitted an updated “Implementation Plan” to the CPUC reflecting the membership of the City of Stockton to the Agreement and EBCE service area; and

**WHEREAS**, the Board of Directors has approved Resolution **XX** to authorize the City of Lathrop to become a member of EBCE, with enrollments expected to begin in 2025;

**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 Lathrop by 2025, EBCE must submit to the CPUC an updated Implementation Plan and Statement of

Intent (“Implementation Plan”) reflecting the inclusion of this new member jurisdiction before the end of the 2023 calendar year.

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

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

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, 2023.

ADOPTED AND APPROVED this 20<sup>th</sup> day of September, 2023.

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Elisa Marquez, Chair

ATTEST:

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Adrian Bankhead, Secretary

if to: City of Lathrop

Office of the City Clerk  
390 Towne Centre Drive  
Lathrop, CA 95330

Office of the City Manager  
390 Towne Centre Drive  
Lathrop, CA 95330

Office of the City Attorney  
390 Towne Centre Drive  
Lathrop, CA 95330


With a copy to:

Department of Public Works  
390 Towne Centre Drive  
Lathrop, CA 95330


**ARTICLE 9  
SIGNATURE**

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

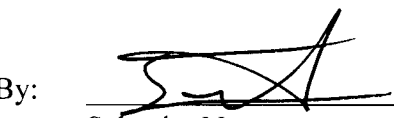
**CITY OF LATHROP,**  
A California municipal corporation of the  
State of California

By:  7.21.23  
Stephen J. Salvatore Date  
City Manager

**ATTEST:**  
City Clerk of and for the City  
of Lathrop, State of California

By:  7/21/23  
Teresa Vargas Date  
City Clerk

**APPROVED AS TO FORM BY THE CITY OF LATHROP CITY ATTORNEY**

By:  7-18-2023  
Salvador Navarrete Date  
City Attorney

September 2023

# Inclusion of New Communities: City of Lathrop



## Located between Tracy and Stockton in San Joaquin County

Pop: 30,700 (2022)

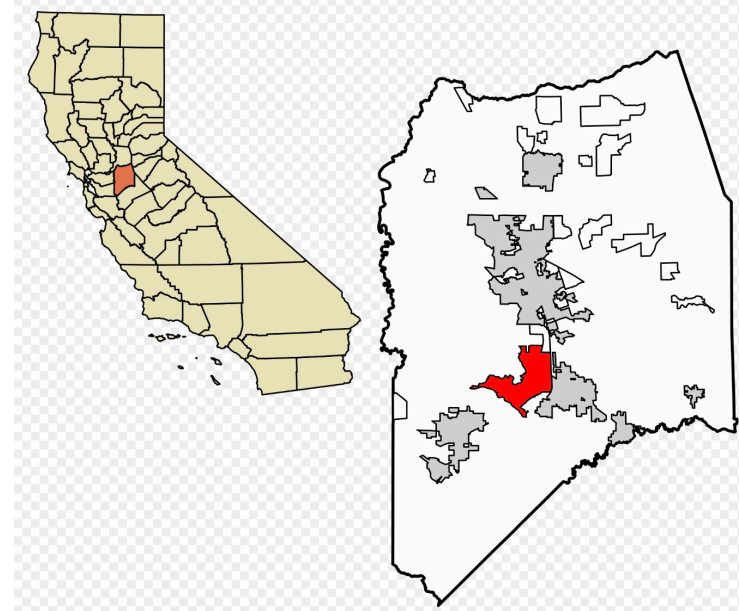
Incorporated: 1989

Major transit intersection: Interstate 5 and CA State Route 120

Top three employers: Tesla, UPS, Army & Air Force Exchange Service

## Energy-related opportunities

- Growing electricity load, particularly commercial & industrial sectors
- Central location relative to agriculture, logistics, and shipping hubs
- Interstate transit corridors for EV fast charging; light, medium, and heavy-duty fleets; and other transportation electrification projects





# Timeline: Lathrop's EBCE Membership



# Lathrop Quantitative Analysis: Summary

## Notable features:

- Lathrop is similar in size to Albany (number of accounts) and Emeryville (citywide load)
- Higher percentage of large commercial & industrial accounts (those with E19/E20 rate classifications)
- Lathrop Irrigation District (LID) serves customers of the River Islands housing development

## Parameters of analysis:

- Based on current EBCE overhead costs and 10-year average energy market values/forecasts;
- Assumes 7% account opt out rate (slightly above EBCE's current service area-wide opt out rate)
- Applies EBCE's 2023 rates from 2023-24 budget development
- Data excludes ineligible loads (e.g., Irrigation District and Direct Access customers);
- Applies 2022 PG&E load data for Lathrop (the most recent available)

# Lathrop Quantitative Analysis: Summary

- Financial ‘Stress Test’ measures impact of two key cost variables:
  - 1) Wholesale energy market prices; and 2) Power Charge Indifference Adjustment (PCIA)
- Routinely performed by EBCE staff for budget development & power procurement modeling

	Lathrop 2022	EBCE 2022	EBCE w/Lathrop and Stockton 2025
Accounts	7,300	642,400	766,000
Annual Load(GWh/yr)	184	6,552	8,220
Peak Load (MW)	49	1,636	2,237
Net Position %	+1.6%	+14.5%	+8% (+0.9% specifically due to Lathrop)
Net Position \$	\$1.77M	\$109.99M	\$197.99M

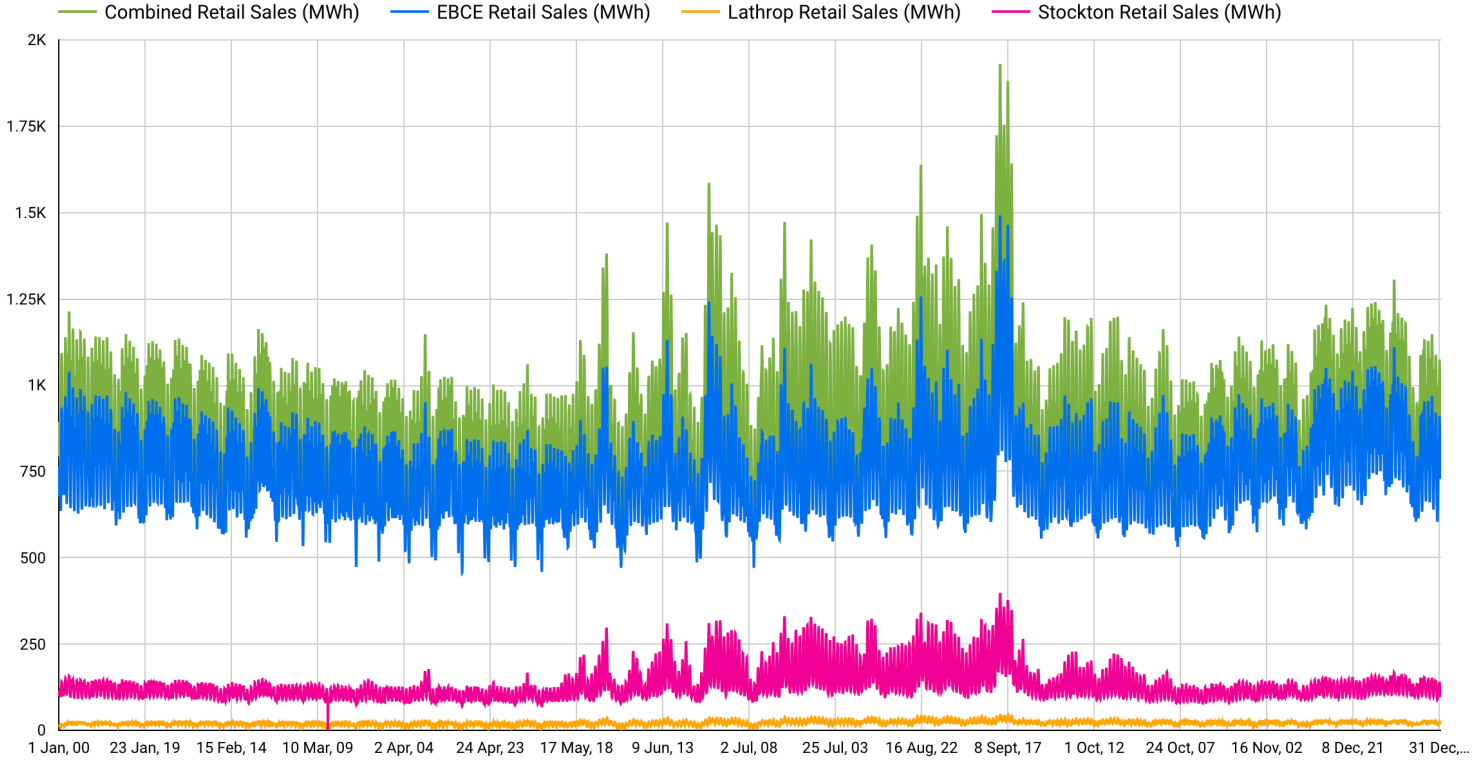
# Summary Data

Attachment Staff Report Item 111

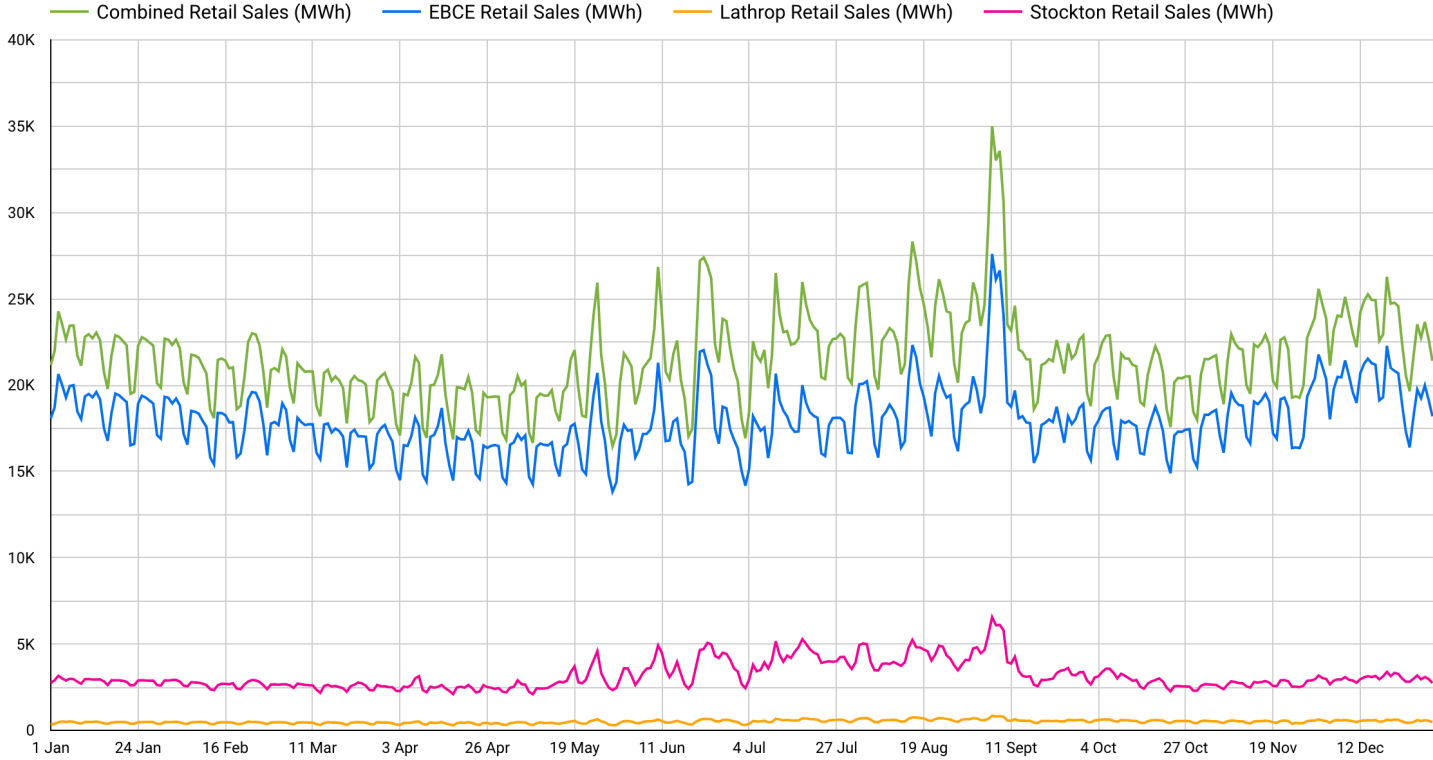
	Customer Count	Annual Load (GWh)	Peak Load (Wholesale MW)	Peak Date & Time (Hour Starting)
EBCE	641,776	6,552	1,636	2022-09-06 16:00
Stockton	111,740	1,154	438	2022-09-06 16:00
Lathrop	7,339	184	49	2022-09-06 17:00
Combined	760,855	7,890	2,120	2022-09-06 16:00

Rate Class	EBCE		Stockton		Lathrop		Combined	
	2022 MWh	%	2022 MWh	%	2022 MWh	%	2022 MWh	%
A1	945,379	14.4%	138,682	12.0%	10,212	5.5%	1,094,273	13.9%
A10	1,035,366	15.8%	159,405	13.8%	19,441	10.6%	1,214,213	15.4%
AGR	49,044	0.7%	1,462	0.1%	682	0.4%	51,189	0.6%
E19	1,316,623	20.1%	168,757	14.6%	55,779	30.3%	1,541,159	19.5%
E20	541,679	8.3%	75,230	6.5%	54,487	29.6%	671,396	8.5%
RES	2,615,021	39.9%	609,383	52.8%	42,344	23.0%	3,266,747	41.4%
LS	41,839	0.6%	97	0.0%	1,157	0.6%	43,092	0.5%
TC	7,070	0.1%	804	0.1%	134	0.1%	8,008	0.1%
<b>Total</b>	<b>6,552,021</b>	<b>100%</b>	<b>1,153,821</b>	<b>100%</b>	<b>184,237</b>	<b>100%</b>	<b>7,890,078</b>	<b>100%</b>

# 2022 Hourly Load



# 2022 Daily Load



# Qualitative Considerations

- Diversity, Equity, and Inclusion
- Environmental Justice
- Local Programs
- Legislative and Political Influence
- CCA Proliferation, Public Power, Energy Democracy

# Thank You!



Questions? Give us a call:  
**1-833-699-EBCE (3223)**



@PoweredbyEBCE



customer-support@ebce.org

Español  
[ebce.org/es](https://ebce.org/es)

中文  
[ebce.org/cn](https://ebce.org/cn)



# Additional Slides

# City of Lathrop: Key JPA Membership Milestones

Attachment Staff Report Item 11L

1. **March 13, 2023:** EBCE staff invited to present informational item to City Council
  - City authorizes EBCE to access citywide PG&E load data
2. **May 2023:** PG&E provides citywide load data to EBCE
3. **July 10, 2023:** City Council unanimously passes Resolution and ordinance to join EBCE
4. **August 14, 2023:** City Council unanimously passes second reading (required by State law) of ordinance to join EBCE

# Steps to Joining EBCE

1. Meetings with City staff/elected officials
2. 2-3 presentations to the City Council & Council considers joining JPA
3. EBCE staff conducts quantitative analysis
4. EBCE Board & Community Advisory Committee review analysis and Board considers including new community
5. If Board Approves, EBCE updates JPA and files amended Implementation Plan with the CPUC before 12/31/23

2024: Community outreach in new community

2025: EBCE enrolls customers in new community