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Enactment Number	22-0558
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## Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

**Board Meeting Date** April 13, 2022

**Subject** Resolution No. 2122-0212 Declaring the Futility of Public Bidding for Electricity Service and Approving a Contract for that Purchase – Electricity Service Agreement – East Bay Community Energy Authority – Oakland Unified School District– Division of Facilities Planning and Management

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**Action Requested** Approval by the Board of Education of Resolution No. 2122-0212 of the Board of Education of the Oakland Unified School District Declaring the Futility of Public Bidding for Electricity Service and Approving a Contract for that Purchase, the Electricity Service Agreement by and between the District and East Bay Community Energy Authority, Oakland, California, for the latter to provide favorable, fixed electricity rates discounted from EBCE’s standard electricity rates for the District’s direct access-eligible electric energy services agreements as consideration for the District’s long-term commitment as an electricity customer of EBCE, with an Initial Term to begin on May 1, 2022 and end on April 30, 2024, for a two (2) year total amount not to exceed **\$1,500,000 to \$2,500,000** for the Initial Term. This range is a non-binding estimate based on the District’s historic electricity usage trends. If the District’s electricity usage increases significantly during the Initial Term, the range would similarly increase.

**Discussion** EBCE is authorized to offer nonstandard energy service rates to certain large customers currently on, or granted an allocation for, direct retail access energy service pursuant to the California Direct Access Program.

The District has certain energy service agreements (“SA IDs”) with EBCE on one or more standard business rates. The District has been granted a direct access allocation for all active SA IDs, with certain of these designated “Special SA IDs” that will be mutually agreed upon by the parties. Due to the direct access allocation granted by PG&E, the District is therefore eligible for and wishes to receive a favorable fixed rate discounted from EBCE’s standard electricity rates as consideration for the District’s long-term commitment.

Based on the District having been an existing customer of EBCE that has been offered a direct access allocation, EBCE has offered the District a preferred rate for enrolling in its Bright Choice, or equivalent, service, whereby the District would receive a greater amount of its electricity derived from renewable sources at a fixed preferred rate in

{SR705635}

exchange for entering into an agreement with EBCE for a fixed term. EBCE is the only Community Choice Aggregator that offers an electricity service available that would cover the District's entire service area.

For these reasons, a competitive public bidding process for the service would be unavailing, would not produce an advantage to the public or the District, and the goals of the competitive bid process would not be served in that it would not obtain the best economic result for the public, on each of the following sufficient and independent grounds:

- a. EBCE's quoted cost range for the service is reasonable and that a new contract with another provider would likely increase District costs.
- b. In order to keep continuity of the quality and necessary quantity of electricity service, it is necessary to use one provider, EBCE, for the service.
- c. Going out to bid for the service would cause substantial delay to the District's procurement of the service.
- d. Hiring a different provider to provide the service is impossible and will cause coordination and interference problems with the District's electricity service, which may further increase District costs.

EBCE desires to retain a stable, predictable customer base and help keep electricity rates low for all customers by entering into long-term contracts with its largest customers that have been offered a direct access allocation. EBCE is willing to provide favorable, fixed electricity rates for the District's direct access-eligible electric SA IDs in order to retain the District as an electric customer of EBCE.

The Electricity Services Agreement contains certain pricing and volume information that, in energy contracts, is referred to as "market sensitive information" and is treated as confidential by the California Public Utilities Code and the California Public Utilities Commission ("CPUC"). (*See, e.g.*, Public Utilities Code Section 454.5 and CPUC Decision D.06-06-066 (modified by D.07-05-032 and D.06-12-030)). Market sensitive information is shown as redacted in the Electricity Services Agreement included in this Board Packet.

In the energy marketplace, service providers expect that market sensitive information will be maintained confidentially and investor owned utilities ("IOUs") like PG&E have long kept this information confidential. The CPUC extended the confidential treatment for market sensitive information to community choice aggregation ("CCA") programs in CPUC Decision D. D.06-12-030, and noted in Decision D. 07.05.032 that the Legislature's directive to keep this information confidential "is an expression of the public interest in nondisclosure of confidential market sensitive information." Per EBCE, it is important that CCA programs like EBCE be able to maintain this information confidentially, in order to participate in the energy market on an equal footing with IOUs and to negotiate the most favorable prices on behalf of their customers, including the District.

If disclosed, EBCE’s competitors could leverage this information to make strategic operational and business decisions to the economic detriment of EBCE, resulting in unfair competition and harm to the competitive market and to the detriment of the consumers. (See Gov. Code § 6254(k); Civ. Code § 3426.1(d); Evid. Code § 1060). EBCE also believes that its confidential information is also subject to protection under Public Utilities Code Section 583, Commission General Order (“G.O.”) 66-D, and other provisions of the law protecting confidential information. In addition, Government Code Section 6255(a) includes a “balancing test” that is used to protect records from disclosure where, “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (*International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329). The Section 6255(a) “public interest” balancing test is appropriately employed to protect competitive information of a regulated entity from disclosure because a strong public interest exists in encouraging vigorous competition for the benefit of consumers. (Gov. Code § 6255; see also *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1520 [“Yet also fundamental to the preservation of our free market economic system is the concomitant right to have the ingenuity and industry one invests in the success of the business or occupation protected from the gratuitous use of that ‘sweat-of-the-brow’ by others.”]).

**LBP (Local Business Participation Percentage)** 100.00%

**Recommendation** Approval by the Board of Education of the Resolution of the Board of Education of the Oakland Unified School District Declaring the Futility of Public Bidding for Electricity Service and Approving a Contract for that Purchase, the Electricity Service Agreement by and between the District and East Bay Community Energy Authority, Oakland, California, for the latter to provide favorable, fixed electricity rates discounted from EBCE’s standard electricity rates for the District’s direct access-eligible electric energy services agreements as consideration for the District’s long-term commitment as an electricity customer of EBCE, with an Initial Term to begin on May 1, 2022 and end on April 30, 2024, for a two (2) year total amount not to exceed **\$1,500,000 to \$2,500,000** for the Initial Term, subject to the qualification below.

**Fiscal Impact** Two (2) year total cost not to exceed \$1,500,000 to \$2,500,000 for the Initial Term. This range is a non-binding estimate based on the District’s historic electricity usage trends and if the District’s electricity usage increases significantly during the Initial Term, the range would similarly increase.

**Attachments**

- Resolution
- Agreement

**BEFORE THE BOARD OF EDUCATION  
OF THE  
OAKLAND UNIFIED SCHOOL DISTRICT**

**RESOLUTION NO. 2122-0212**

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**RESOLUTION OF THE BOARD OF EDUCATION OF THE OAKLAND  
UNIFIED SCHOOL DISTRICT DECLARING THE FUTILITY OF PUBLIC  
BIDDING FOR ELECTRICITY SERVICE AND APPROVING A CONTRACT  
FOR THAT PURCHASE**

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**WHEREAS**, the Oakland Unified School District (“District”) is a current customer of the East Bay Community Energy Authority (“EBCE”), a Community Choice Aggregator, whereby EBCE provides the District with electricity service;

**WHEREAS**, based on the District having been an existing customer of EBCE that has been offered a direct access allocation, EBCE has offered the District a preferred rate for enrolling in its Bright Choice, or equivalent, service (“Service”), whereby the District would receive a greater amount of its electricity derived from renewable sources at a fixed preferred rate in exchange for entering into an agreement with EBCE for a fixed term (the “Contract”);

**WHEREAS**, EBCE is the only Community Choice Aggregator that offers an electricity service available that would cover the District’s entire service area;

**WHEREAS**, EBCE has provided a quote for the total cost range of the Service for two years not to exceed between One Million and Five-Hundred Thousand and NO/100 Dollars (\$1,500,000.00) and Two Million and Five-Hundred Thousand and NO/100 Dollars (\$2,500,000.00);

**WHEREAS**, the District’s Deputy Chief of Facilities Planning and Management and District staff believe that EBCE’s quoted cost range to provide the Service is reasonable;

**WHEREAS**, going out to bid for the Service would result in substantial delay to the District in obtaining the Service, potentially resulting in significantly increased costs for the District;

**WHEREAS**, hiring a provider other than EBCE to provide the Service would result in waste and delay, which would be at the expense of the District, because EBCE is already familiar with the District’s needs, is acquainted with the District’s accounts and access points, is the sole Community Choice Aggregator capable of serving the District’s entire service area, and has specialized knowledge in negotiating the rates available for the Service to meet the District’s needs;

**WHEREAS**, bringing in new service providers to provide a similar service, would not ensure the same quality of electricity service or quantity of like-kind electricity at the preferred rate, which would be at the District's expense;

**WHEREAS**, if the District were to bid the Service, the prices of those bids would likely be higher than the price of EBCE's quote for the Service, because EBCE is already uniquely and intimately familiar with the District's electricity usage, and is uniquely positioned to provide the Service to the District;

**WHEREAS**, Public Contract Code section 20111 generally requires bidding for purchases of equipment, materials, supplies or services in excess of \$99,100 for 2022;

**WHEREAS**, California law provides that, "Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply" (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694), and that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding. (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.);

**WHEREAS**, bidding the Service will not affect the final result to the District except to potentially increase the cost of the Service;

**WHEREAS**, bidding the Service will not produce an advantage to the District;

**NOW THEREFORE**, the Board of Education of the Oakland Unified School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.
2. For the reasons stated above, a competitive public bidding process for the Service would be unavailing, would not produce an advantage to the public or the District, and the goals of the competitive bid process would not be served in that it would not obtain the best economic result for the public, on each of the following sufficient and independent grounds:
  - a. The District finds that EBCE's quoted cost range for the Service is reasonable and that a new contract with another provider would likely increase District costs.
  - b. The District finds that in order to keep continuity of the quality and necessary quantity of electricity service, it is necessary to use one provider, EBCE, for the Service.
  - c. The District finds that going out to bid for the Service would cause substantial delay to the District's procurement of the Service.

d. The District finds that hiring a different provider to provide the Service is impossible and will cause coordination and interference problems with the District's electricity service, which may further increase District costs.

3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the Service.
4. Accordingly, the Board hereby awards a contract with EBCE to provide the Service, which new contract is attached hereto as Exhibit "A," without advertising for or inviting of bids.

The foregoing Resolution was adopted by the Board of Education of the Oakland Unified School District at a regularly scheduled meeting of the Board on the 13th day of April 2022, by the following vote:

AYES: VanCedric Williams, Clifford Thompson, Vice President Benjamin "Sam" Davis, President Gary Yee

NOES: None

ABSENT: Student Director Samantha Pal, Student Director Natalie Gallegos Chavez, Aimee Eng, Shanthi Gonzales

ABSTAIN: Mike Hutchinson




Gary Yee

4-14-2022

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President, Board of Education

Attest:

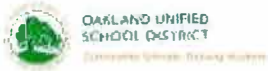


Kyla Johnson-Trammell 4-14-2022

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Secretary, Board of Education

## Exhibit “A”



**CONTRACT JUSTIFICATION FORM**  
**This Form Shall Be Submitted to the Board Office With Every**  
**Agenda Contract.**

**Legislative File ID No.** 22-0632

**Department:** Facilities Planning and Management

**Vendor Name:** East Bay Community Energy

**Project Name:** Facilities Planning and Management

**Project No.:** 00918

**Contract Term:** Intended Start: 5-1-2022

Intended End: 4-30-2024

**Total Cost Over Contract Term:** Two (2) year total cost not to exceed \$1,500,000 to \$2,500,000 for the Initial Term. This range is a non-binding estimate based on the District’s historic electricity usage trends and if the District’s electricity usage increases significantly during the Initial Term, the range would similarly increase.

**Approved by:** Tadashi Nakadegawa

**Is Vendor a local Oakland Business or has it met the requirements of the**

**Local Business Policy?**  Yes (No if Unchecked)

**How was this contractor or vendor selected?**

Vendor was hired directly based on work done on similar projects they have provided in the past for the District and because they are the only Community Choice Aggregator offering the service sought by the District in the District’s service area.

**Summarize the services or supplies this contractor or vendor will be providing.**

The vendor will provide favorable, fixed electricity rates discounted from EBCE’s standard electricity rates for the District’s direct access-eligible electric energy services agreements as consideration for the District’s long-term commitment as an electricity customer of vendor.

**Was this contract competitively bid?**  Check box for “Yes” (If “No,” leave box unchecked)

If “No,” please answer the following questions:

1) How did you determine the price is competitive?

Vendor has done similar work in the past for the District. Based on expertise with this particular type of work, the District found that the vendor has performed work quickly, accurately, and efficiently, and at a reasonable cost to the District. Further, no other Community Choice Aggregators offer the service sought by the District within the District’s service area.



2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFQ/RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: \_\_\_\_\_ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), **and** (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer *when state funds being used* – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), **and** (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$99,100 or less (as of 1/1/22)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: \_\_\_\_\_

Maintenance Contract:

- Price is at or under bid threshold of \$99,100 (as of 1/1/22)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: \_\_\_\_\_

3) Explain in detail the facts that support the applicability of the exception marked above:

- Vendor’s quoted cost range for the service is reasonable and a new contract with another provider would likely increase District costs.
- In order to keep continuity of the quality and necessary quantity of electricity service, it is necessary to use one provider, Vendor, for the service.
- This Vendor is the only vendor to offer the desired service.
- Going out to bid for the service would cause substantial delay to the District’s procurement of the service. Hiring a different Vendor to provide the service is impossible and will cause coordination and interference problems with the District’s electricity service, which may further increase District costs.

**ELECTRICITY SERVICE AGREEMENT  
BY AND BETWEEN  
EAST BAY COMMUNITY ENERGY AUTHORITY  
AND  
OAKLAND UNIFIED SCHOOL DISTRICT**

**PREAMBLE**

This Electricity Service Agreement ("Agreement") is by and between Oakland Unified School District, a public school district, with its principal office located at 1000 Broadway, Suite 300, Oakland, California ("Customer"), and East Bay Community Energy Authority, a California joint powers authority, with its primary business address at 1999 Harrison Street, Suite 800, Oakland, California 94607 ("EBCE"). EBCE and Customer may be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

- A. EBCE is authorized to offer nonstandard energy service rates to certain large customers currently on, or granted an allocation for, direct retail access energy service pursuant to the California Direct Access Program;
- B. Customer has certain energy service agreements ("SA IDs") with EBCE on one or more standard business rates;
- C. Customer has been granted a direct access allocation for all active SA IDs with EBCE, with certain of these designated "Special SA IDs," which will be mutually agreed upon by the Parties. Due to the direct access allocation granted by PG&E, the Customer is therefore eligible for and wishes to receive a favorable fixed rate discounted from EBCE's standard electricity rates as consideration for Customer's long-term commitment;
- D. EBCE desires to retain a stable, predictable customer base and help keep electricity rates low for all customers by entering into long-term contracts with its largest customers;
- E. EBCE is willing to provide favorable, fixed electricity rates for Customer's direct access-eligible electric SA IDs in order to retain Customer as an electric customer of EBCE;
- F. EBCE has asserted that certain terms contained in this Agreement should be treated as confidential and prohibited from public disclosure due to such terms being exempted from disclosure under the California Public Records Act; and
- G. Customer has agreed to permit EBCE to redact, to the extent allowed by law, such terms that EBCE has requested Customer to treat as confidential, for the purposes of making a copy of this Agreement public, but does not warrant or represent that such terms are lawfully exempt from disclosure under the California Public Records Act or any other applicable law, regulation, or rule.

## **AGREEMENT**

### **1. INCORPORATION OF PREAMBLE, RECITALS AND EXHIBITS**

The Parties to this Agreement agree and attest to the truth and accuracy of the provisions contained in the Preamble and Recitals set forth above. The provisions of the Preamble and Recitals are hereby incorporated and made a part of this Agreement by this reference. The Parties agree that this Agreement has been entered into, at least in part, in consideration of the provisions contained in the Preamble and Recitals, as well as the provisions contained in the balance of this Agreement. Unless the context otherwise expressly requires, all references in this Agreement to Exhibits are to the Exhibits of this Agreement, which are attached hereto and incorporated herein by this reference.

### **2. DEFINITIONS**

Definitions of the terms used in this Agreement and not otherwise defined in the body hereof are set forth in Exhibit A.

### **3. TERM OF AGREEMENT**

The Term of this Agreement is set forth in Exhibit B and includes any extension periods provided for in and entered into pursuant to Exhibit B. After Customer's meters are read at the first regular meter reading following the Effective Date of this Agreement, on a going-forward basis all terms and provisions of this Agreement shall govern and supersede any and all electricity rates, terms, provisions or contracts, if any, previously governing electric service of Customer.

### **4. SCOPE OF AGREEMENT**

This Agreement governs the deviations, at one or more Delivery Points, all as set forth in Exhibit B, to the electricity rate otherwise applicable to all Accounts. Except as otherwise expressly provided in this Agreement and its Exhibits and Appendices, EBCE shall continue to provide electricity service to all Accounts in accordance with EBCE's Standard EBCE Rate Schedule incorporated by this reference herein as though set forth in full, and the Parties agree that in no event shall any SA ID that is not a Special SA ID fall under the scope of this Agreement and any such SA ID shall be governed under the terms and conditions set forth under any separate agreement executed between Customer and EBCE.

### **5. ELECTRIC SUPPLY**

Upon the start of the Term, which is set forth in Exhibit B, EBCE shall sell and deliver and Customer shall purchase and receive one hundred percent (100%) of Customer's electricity serving Customer's Special SA IDs from EBCE, unless generated by photovoltaic systems that are owned by Customer or located on Customer's premises.

Customer shall timely provide EBCE with all information (including account information) and documentation required to appoint EBCE as Customer's electricity service provider and to perform its obligations hereunder. EBCE shall enroll Customer's Accounts upon

receipt of an executed Addendum - Term of Contract and Rates Charged (attached hereto as Exhibit B).

**6. SPECIAL RATE STRUCTURE**

The special rate is set forth in Exhibit B.

**7. NO BYPASS OR SUBSTITUTION**

Customer shall, with respect to all Accounts, take all electricity service requirements from EBCE. Except during emergency or outage situations, or for reasonable and necessary periodic testing of emergency generating equipment, Customer agrees not to purchase or have any portion of its electricity requirement for its Accounts procured by any person, firm or entity other than EBCE during the Term of this Agreement, with an exception for one (1) power purchase agreement for photovoltaic generation located on Customer's premises. Upon EBCE's request, Customer shall provide the load-shape modeling from such power purchase agreement to EBCE in order to facilitate EBCE's fair and equitable determination of a Revised Rate pursuant to Section 8.

In the event that Customer elects to consider locating self-generation or storage projects on its premises, Customer agrees to work with EBCE to identify partnering opportunities for such projects. Customer shall not re-sell the electricity sold to it by EBCE to any other entity, except that Customer may provide electricity to a sublessee so long as Customer does not markup such electricity so as to charge a profit and so long as such provision is in compliance with all applicable laws.

**8. INCREASE, REDUCTION OR CESSATION OF OPERATIONS**

In the event that Customer, during the Term of this Agreement, (a) elects to increase load at any or all Accounts covered by this Agreement (provided, however, in no event shall the number of Accounts governed by the terms of this Agreement exceed such number mutually agreed upon by the Parties), (b) reduces the Accounts covered by this Agreement, (c) reduces its electricity usage due to the employment of self-generation or storage as permitted under this Agreement, subject to the terms of Section 7, below the Minimum Electricity Volume Threshold, or (d) elects to terminate the Agreement altogether, Customer understands and agrees that EBCE will suffer damages resulting from reducing or terminating long-term commitments that EBCE made on behalf of Customer prior to such reduction or termination. If Customer's usage changes as a result of the installation of on-site generation or battery storage, the addition of which does not result in the achievement of the On-Site Threshold (the provisions related to which are provided below), EBCE immediately may propose an updated rate going forward based on the new usage patterns. If the Parties are unable to mutually agree on the proposed updated rate, Customer may elect to terminate this Agreement in its reasonable discretion. Customer agrees that the damages to be faced by EBCE in the event of such reduction in Customer's usage will be difficult or inconvenient to determine, and that the payment of the amount remaining under this Agreement (or such equitable percentage of the amount remaining under this Agreement as the Parties hereunder so agree) is a fair and reasonable approximation of such damages and is in the nature of liquidated damages and not in the nature of a penalty.

Customer shall provide written notice to EBCE at least ninety (90) days prior to the completion of the installation of at least one (1) GW of on-site potential photovoltaic generation or battery storage capacity on Customer's premises (the "On-Site Threshold"). At any time after receiving such notice, EBCE may under the terms of a written notice (i) propose to adjust the pricing terms set forth under Exhibit B, relying on similar methodology to that which EBCE used to calculate the Price for the Initial Term and taking into consideration the power purchase agreement load-shape modeling provided to EBCE pursuant to Section 7 (such adjusted pricing terms, the "Revised Rate"), and (ii) upon Customer's reasonable approval of the Revised Rate, cause Customer to execute with EBCE a new addendum, substantially in the form of Exhibit B, reflecting such Revised Rate, *provided*, that EBCE shall provide Customer with written notice of the Revised Rate at least fifteen (15) days before the Revised Rate becomes effective. For the avoidance of doubt, the Revised Rate shall be effective upon: (i) Customer's reasonable approval of the Revised Rate, and (ii) the achievement of the On-Site Threshold or at any time after the achievement of the On-Site Threshold, as determined by EBCE in its sole discretion, regardless of whether the On-Site Threshold is achieved during the Initial Term or a Subsequent Term.

## **9. RIGHT TO RECEIVE REQUEST FOR PROPOSAL**

For the Term of this Agreement, Customer shall send to EBCE and allow EBCE to participate in any request for proposal, request for offer, or similar solicitation ("RFP") issued by Customer's facilities within Alameda County relating to the purchase of electricity or electricity services that EBCE is not already providing to Customer. Customer shall, to the extent allowed by law, provide EBCE an equal amount of time to respond to any such RFP issued by Customer, as any other entity responding to the RFP.

## **10. LOAD SHAPE DEVIATIONS**

The favorable pricing offered in this Agreement is based upon Customer's 24-hour load shape generally conforming (within a tolerance band set forth below) to Customer's Minimum Electricity Volume Threshold. Each year during the Term, EBCE shall determine and provide sixty (60) business days' prior written notice to Customer of deviations in the Minimum Electricity Volume Threshold as determined during the applicable calendar year no later than December 1<sup>st</sup>. In the event that Customer's 24-hour load shape, as specific to the Accounts, deviates by fifty percent (50%) or more from Customer's Minimum Electricity Volume Threshold during the applicable calendar year, Customer agrees (i) that EBCE may proportionally and equitably adjust the pricing terms set forth under Exhibit B as applicable to the following calendar year of Customer's Term and (ii) to execute with EBCE a new addendum, substantially in the form of Exhibit B, reflecting such adjusted price. Customer hereby reserves the right to request and access relevant documentation supporting EBCE's calculation of deviations in the Minimum Electricity Volume Threshold, and Customer further hereby reserves the right to provide such documentation to and have such documentation reviewed by SPURR, a joint powers authority ("JPA") focused on utility services, of which Customer is a member, subject to the provisions set forth in Section 26 below.

## **11. RIGHT OF ACCESS**

In addition to and consistent with the rights of access allowed to or limited to EBCE pursuant to any applicable laws, regulations, or rules and subject to EBCE adhering to any such requisite limitations on EBCE's rights of access, and signing a reasonable non-disclosure agreement, Customer hereby grants to EBCE, and its employees, agents and authorized representatives, reasonable accompanied access to the premises of each Account, upon reasonable advance notice, for the purposes of partnering with Customer on self-generation, energy storage, EV infrastructure, or other energy projects, and determining compliance with the terms of this Agreement. Except to the extent caused by the gross negligence or willful misconduct of Customer or any person or entity under its explicit direction or control, EBCE shall reimburse, indemnify, defend, and hold Customer, its officers, agents, employees, Board of Education and members thereof, and the premises of Customer, free and harmless from any and all liability, claims, loss, damages, or expenses (including attorneys' fees and fees of any required experts or consultants) resulting from EBCE's access to the premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the death, illness, or injury of any person or property from any cause whatsoever as a direct or indirect result of EBCE's access of the premises, and EBCE's failure to perform any provision of this Agreement or to comply with any requirement of applicable law or any requirement imposed on EBCE.

## **12. CREDIT**

Upon any request from time to time by EBCE, Customer shall promptly provide to EBCE such financial statements and other information as EBCE may reasonably require to assess adequately Customer's creditworthiness. If EBCE has reasonable grounds for insecurity regarding the performance, whether or not then due, of any obligation of Customer under this Agreement (including, without limitation, on account of the occurrence of a material change in Customer's creditworthiness or any Default), EBCE may demand adequate assurances in an amount determined by EBCE in a commercially reasonable manner, which adequate assurances shall be provided by Customer within two (2) business days of such demand. In the event that adequate assurances are provided in the form of cash collateral, Customer shall be deemed to have granted EBCE a continuing first priority security interest in, lien on, and right of set-off against such collateral.

## **13. UNCONTROLLABLE FORCE**

Neither Party shall be considered to be in Default in performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force. Uncontrollable Force may include, to the extent consistent with the foregoing, Act of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic (including, without limitation, novel coronavirus and/or COVID-19), public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident. Notwithstanding anything to the contrary herein, Uncontrollable Force relief related to COVID-19 and its effects shall be

permitted solely to the extent of a material worsening of such effects after the Effective Date. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Uncontrollable Force shall not relieve Customer from any payment obligations associated with the Minimum Electricity Volume Threshold provided in Exhibit B, or from EBCE's remedies in connection therewith, except to the extent expressly provided in Exhibit B. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

#### **14. LIMITATION OF LIABILITY**

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### **15. REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Party as follows:

(a) Such Party is duly organized, validly existing, and in good standing under the laws of the state of its formation and is qualified to conduct business in California and in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of such Party.



(b) Such Party has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on such Party's performance under this Agreement. The execution, delivery, and performance of this Agreement by such Party has been duly authorized by all necessary corporate action on the part of such Party and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of such Party or any other party to any other agreement with such Party.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by such Party with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any law presently in effect having applicability to such Party, the documents of formation of such Party or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which such Party is a party or by which any of its property is bound.

(d) NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. EBCE DISCLAIMS ANY AND ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

**16. THIS AGREEMENT HAS BEEN DULY EXECUTED AND DELIVERED BY SUCH PARTY. THIS AGREEMENT IS A LEGAL, VALID, AND BINDING OBLIGATION OF SUCH PARTY ENFORCEABLE IN ACCORDANCE WITH ITS TERMS, EXCEPT AS LIMITED BY LAWS OF GENERAL APPLICABILITY LIMITING THE ENFORCEMENT OF CREDITORS' RIGHTS OR BY THE EXERCISE OF JUDICIAL DISCRETION IN ACCORDANCE WITH GENERAL PRINCIPLES OF EQUITY, ASSIGNMENTS, AND SUCCESSORS IN INTEREST.**

EBCE and Customer bind themselves, their partners, successors, assigns, executors, and administrators to all covenants and conditions of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of the other Party, except that Customer may assign this Agreement to an Affiliate (as defined in Exhibit A) to take over one or more Accounts with the prior written consent of EBCE; provided, however, said Affiliate will be bound by all obligations hereunder and Customer shall notify EBCE of the assignment (and of any change required with regard to the Notice provisions of this Agreement set forth in Section 20) prior to the end of the first Billing Cycle after the Affiliate has received the assignment.

**17. AMENDMENTS**

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto and incorporated into this Agreement.

**18. INTEGRATED DOCUMENT/TOTALITY OF AGREEMENT**

This Agreement and its Exhibits embody the entire agreement between EBCE and Customer and its terms and conditions. No other understanding, agreements, conversations, or otherwise, with any officer, agent or employee of EBCE prior to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any document comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding.

**19. NO THIRD-PARTY BENEFICIARY**

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

**20. NOTICES**

All notices to the Parties hereto shall, unless otherwise requested in writing, be sent to EBCE addressed as follows:

East Bay Community Energy  
Attn: Legal  
1999 Harrison St, Suite 800  
Oakland, CA 94612

And to Customer addressed as follows:

Oakland Unified School District  
Attn: Tadashi Nakadegawa  
955 High Street  
Oakland, CA 94601  
[tadashi.nakadegawa@ousd.org](mailto:tadashi.nakadegawa@ousd.org)

**21. CAPTIONS**

The captions of the various sections, paragraphs, and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

**22. STATUTES AND LAW GOVERNING AGREEMENT; VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the state of California without regard to principles of conflicts of law. Any judicial proceedings arising under or in relation to this Agreement shall be brought in the Superior

Court for the County of Alameda. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. This Section 22 shall survive the expiration or termination of this Agreement for any reason.

**23. NON-WAIVER**

No waiver by a Party of all or any of its rights with respect to a condition, Default or other matter arising in connection with this Agreement shall constitute or be deemed a waiver by such Party as to any subsequent condition, Default or other matter.

**24. RIGHTS AND REMEDIES**

Duties and obligations imposed by the Agreement and rights and remedies available thereunder shall be in addition to and not in limitation of duties, obligations, rights and remedies imposed by or available at law.

**25. ALTERNATIVE DISPUTE RESOLUTION**

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally, and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement. However, prior to commencing any litigation against the other Party, Customer and EBCE shall engage in Alternative Dispute Resolution as follows:

- A. Any controversies between Customer and EBCE regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of Alameda County appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation, which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

## 26. CONFIDENTIALITY

- A. The Parties to this Agreement agree to maintain as confidential, to the extent permitted by law, Confidential Information.
- B. **Confidential Information and California Public Records Act.** Customer acknowledges that EBCE is a joint powers authority subject to the requirements of the California Public Records Act, Cal. Gov. Code section 6250 et seq. EBCE acknowledges that Customer is a public school district subject to the requirements of the California Public Records Act, Cal. Gov. Code section 6250 et seq.
- i. EBCE acknowledges that Customer may submit information to EBCE that Customer considers Confidential Information, proprietary or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civil Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). Customer acknowledges that EBCE may submit to Customer information that EBCE considers Confidential Information or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.).
  - ii. Customer acknowledges that EBCE may submit information to Customer that EBCE considers Confidential Information, including but not limited to market sensitive information as defined by Public Utilities Code Section 454.5 and California Public Utilities Commission Decision 06-06-066, proprietary or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civil Code section 3426 et seq.), or otherwise not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.). EBCE acknowledges that Customer may submit to EBCE information that Customer considers Confidential Information or proprietary or not subject to disclosure pursuant to an exemption to the California Public Records Act (Government Code section 6254 et seq.).
  - iii. Each Party shall clearly identify any information believed to be Confidential Information as confidential in its transmittals to the other Party. Identification of Confidential Information may be achieved by clearly marking a transmittal as “Confidential” or by redacting Confidential Information in a transmittal.
  - iv. Upon request or demand of any third person or entity not a Party to this Agreement (“Requestor”) to a Party for production, inspection and/or copying of Confidential Information, the Receiving Party to the extent permissible and as soon as practical shall notify the Disclosing Party that such request has been made. The Receiving and Disclosing Party shall cooperate to identify any applicable redactions or exemptions from the California Public Records Act. If the Parties cannot agree on appropriate redactions, the Disclosing Party shall be solely responsible for taking

whatever legal steps are necessary to protect information deemed by it to be “Confidential Information” and to prevent release of information to the Requestor by the Receiving Party; provided, however, that Disclosing Party shall defend (with such counsel chosen by Receiving Party), indemnify, and hold Receiving Party, its officers, agents, employees, Board of Education and members thereof, harmless for any and all liability, claims, loss, damages, or expenses resulting from challenges to the assertion that such information should be held as confidential or exempt from disclosure under the California Public Records Act, or any other law, regulation or rule. Without limiting the Receiving Party’s right to disclose Confidential Information as may be required by law, if the Disclosing Party takes no such action, within 10 days of receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

- C. The Receiving Party may disclose the Disclosing Party’s Confidential Information to an Affiliate with the prior written consent of the Disclosing Party. The Disclosing Party may make its prior written consent contingent on obtaining a nondisclosure agreement with such Affiliate at the option of the Disclosing Party.
- D. Notwithstanding the foregoing, either Party may, without the consent of the other Party, disclose Confidential Information to such Party’s lenders, potential lenders, rating agencies, accountants, employees, consultants and attorneys, and EBCE may, without the consent of Customer, disclose Confidential Information to EBCE’s electricity suppliers or potential electricity suppliers; provided that in each case such entity has agreed to treat the Confidential Information as confidential under terms no less strict than as those set forth in this Agreement. For customer energy usage data only, EBCE may disclose such data to a third party, without the consent of Customer, for a “primary purpose,” as that term is defined in California Public Utilities Commission Decision 18-06-027, consistent with the requirements of that Decision.

## **27. OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into agreements with others that do not conflict with the terms hereof.

## **28. CONSTRUCTION OF THIS AGREEMENT**

This Agreement, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the Parties. Each Party has been represented by counsel. Accordingly, each of the Parties expressly acknowledges and agrees that this Agreement shall not be deemed to have been authored by, prepared by, or drafted by, any particular Party, and that the rule of construction to the effect ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or in the resolution of disputes. This Agreement is to be construed to effectuate the normal and reasonable expectations of a sophisticated buyer of electricity services and a sophisticated provider of such services and shall not be construed either for or against either Party.

**29. NO PARTNERSHIP**

Neither EBCE nor Customer is a partner or joint venturer with the other and nothing in this Agreement may be construed to make them partners or joint venturers or impose any liability as such on either of them.

**30. ENFORCEABILITY**

If any provision of this Agreement is determined to be illegal or unenforceable, such determination will not affect any other provisions of this Agreement and all other provisions will remain in full force and effect.

**31. BANKRUPTCY CODE ACKNOWLEDGEMENTS**

The Parties acknowledge and agree that all transactions contemplated under the terms of this Agreement constitute “forward contracts” within the meaning of the United States Bankruptcy Code. Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor. The Parties further agree that all electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the U.S. Bankruptcy Code.

**32. MOBILE SIERRA.**

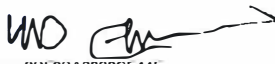
Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including electronic signatures, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**[Signature pages to follow]**

**EAST BAY COMMUNITY ENERGY  
AUTHORITY (“EBCE”)**

DocuSigned by:  
  
9DF6BA3222CE44F...

\_\_\_\_\_  
Nick Chaset, Chief Executive Officer

3/30/2022

\_\_\_\_\_  
Date

**Approved as to form:**

  
\_\_\_\_\_  
Inder Khalsa, General Counsel

March 30, 2022

\_\_\_\_\_  
Date

**OAKLAND UNIFIED SCHOOL DISTRICT (“CUSTOMER”)**

*G. D. Yee*

4-14-2022

\_\_\_\_\_  
Dr. Gary Yee  
President, Board of Education

\_\_\_\_\_  
Date

*K. Johnson-Trammell*

4-14-2022

\_\_\_\_\_  
Dr. Kyla Johnson-Trammell, Superintendent  
Secretary, Board of Education

\_\_\_\_\_  
Date

**Approved as to form:**

*[Signature]*

\_\_\_\_\_  
OUSD Facilities Legal Counsel

*3/30/22*

\_\_\_\_\_  
Date



**APPENDIX 1**



**[REDACTED]**

**ELECTRIC SERVICE AGREEMENT  
BY AND BETWEEN  
EAST BAY COMMUNITY ENERGY AUTHORITY  
AND  
OAKLAND UNIFIED SCHOOL DISTRICT**

**EXHIBIT A**

**DEFINITIONS**

Accounts means all currently existing Special SA IDs that shall be mutually agreed upon by the Parties, which, for the avoidance of doubt, shall require that any subsequently established Special SA ID only be included to the extent that such subsequently established SA ID replaces an existing Special SA ID provided under the terms of this Agreement. Accounts that are terminated by Customer for non-use with the prior written consent of EBCE are excluded from this definition.

Affiliate means any public agency, joint powers authority or similar entity.

Alternative Dispute Resolution shall mean the dispute resolution procedures set forth in Section 25.

Billing Cycle means one of twelve (12) monthly scheduled intervals per calendar year, in which electric meters for all Accounts are read, and for which electricity bills are subsequently rendered to Customer.

Confidential Information means any information so identified and marked as confidential in Exhibit B hereto, as well as any information which is of a non-public, proprietary or confidential nature belonging to the Disclosing Party, including without limitation, all reports and analyses, meter data, technical and economic data, studies, forecasts, trade secrets, research or business strategies, financial or contractual information, gas reserve information, customer identity, customer credit history, customer energy usage data, customer contacts, address or telephone numbers, negotiated electricity rates, loads, energy requirements, certain sales market information or other written or oral information. Confidential Information may be in any form whatsoever, including without limitation writings, computer programs, logic diagrams, component specifications, drawings or other media.

Only that information disclosed by a Party and clearly designated in writing as “confidential” shall be deemed to be Confidential Information, provided that the following are considered Confidential Information independent of whether they have been designated in writing as such: meter data, consumption patterns, load forecasts, or any item developed based upon Customer’s meter data, Customer bills and billing information. However, aggregate energy statistics that are developed based upon Customer’s meter data as well as other EBCE customer’s meter data are not Confidential Information. Examples of such aggregate energy statistics are summaries of overall sales, energy program results, or overall energy load forecasts that do not identify an individual Customer. Verbal information and other information in an intangible form that is intended to be treated as Confidential Information shall be described in writing and identified as “Confidential Information.”

Notwithstanding the foregoing, the term “Confidential Information” shall not include (and neither Party shall be under any obligation to maintain in confidence or not use) any information (or any portion thereof) disclosed to it by the other Party to the extent that such information:

- A. is in the public domain at the time of disclosure; or
- B. at the time of or following disclosure, becomes generally known or available through no act or omission on the part of the Receiving Party; or
- C. is known, or becomes known, to the Receiving Party from a source other than the Disclosing Party or its authorized representatives, provided that disclosure by such source is not in breach of a confidentiality agreement with the Disclosing Party; or
- D. is independently developed by the Receiving Party without violating any of its obligations under this Agreement; or
- E. is legally required to be disclosed by judicial or other governmental action; provided, however, that prompt notice of such judicial or other governmental action shall have been given to the Disclosing Party and that the Disclosing Party shall be afforded the opportunity (consistent with the terms of this Agreement) to exhaust all reasonable legal remedies to maintain the Confidential Information in confidence, in accordance with this Agreement.

Default means, with respect to the defaulting Party the occurrence of any of the following: (i) the failure to make, when due, any payment required pursuant to this Agreement or otherwise, if such failure is not remedied within five (5) business days after receipt of written notice; (ii) any representation or warranty is false or misleading when made or repeated; (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Default) if such failure is not remedied within five (5) business days after written notice; (iv) the failure by Customer to provide adequate assurances in accordance with Section 11; (v) such Party (or such Party’s credit support provider) files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar laws for the protection of creditors; (vi) notwithstanding the provisions of Section 15 hereof, such Party makes an assignment or any general arrangement for the benefit of creditors; (vii) such Party otherwise becomes bankrupt or insolvent (however evidenced); (viii) such Party becomes unable to pay its debts as they fall due; or (ix) termination of any of the terms set forth in Exhibit B.

Delivery Points means the respective meters associated with the respective SA IDs that shall be mutually agreed upon by the Parties.

Disclosing Party means the Party to whom Confidential Information originally belongs and who (after appropriate notice) shall bear the burden of pursuing legal remedies to retain confidentiality as set forth in the Agreement.

Effective Date means the date that the final signatory executes the Agreement.

Franchise Fee (FF) is the surcharge that is levied by the California Public Utilities Commission for which PG&E acts as a collection agent on behalf of the cities and counties in PG&E's service territory for all customers.

Initial Term means the period beginning on May 1, 2022 and ending on April 30, 2024.

Minimum Electricity Volume Threshold means the average monthly electricity acquired from EBCE during the six (6) months immediately preceding the Effective Date.

On-Site Threshold shall have the meaning set forth in Section 8.

Power Charge Indifference Adjustment (PCIA) is a fee that PG&E charges to each prior electricity customer to recover its above-market costs for generation resources acquired prior to such customer's switch to a third-party electric provider.

Price shall have the meaning set forth in Exhibit B.

Receiving Party means the Party to this Agreement who receives information designated as "Confidential Information" by the Disclosing Party.

Revised Rate shall have the meaning set forth in Section 8.

Special SA ID shall have the meaning set forth in the Recitals.

Standard EBCE Rate Schedule is the set of rates for electricity service adopted by EBCE.

Subsequent Term means any term subsequent to the Initial Term, which extends the Term for the duration proposed by EBCE in its sole discretion during the Term Extension Option Strike Window and agreed to by the Parties.

Term means the Initial Term and, as applicable, Subsequent Term(s).

Term Extension Option Strike Window shall have the meaning set forth in Exhibit B.

Uncontrollable Force means any cause beyond the reasonable control of the Party affected, and which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefor.

**ELECTRIC SERVICE AGREEMENT  
BY AND BETWEEN  
EAST BAY COMMUNITY ENERGY AUTHORITY  
AND  
OAKLAND UNIFIED SCHOOL DISTRICT**

**EXHIBIT B**

**ADDENDUM - TERM OF CONTRACT AND RATES CHARGED**

**CONFIDENTIAL -- DO NOT DUPLICATE OR DISCLOSE**

This Addendum (“Addendum”) supplements the Electricity Service Agreement referred to above (the “Agreement”). Capitalized terms not otherwise defined in this Addendum shall have their meanings set forth elsewhere in the Agreement, including its Appendices.

The terms of this Addendum may be amended upon execution of a new addendum, substantially in the form of this Exhibit B, reflecting such adjusted terms.

<b>Term:</b>	<p><b>MAY 1, 2022 to APRIL 30, 2024</b></p> <ul style="list-style-type: none"> <li>• Variable Term Period: Not less than one (1) year or more than three (3) years (and subject to renewal).</li> <li>• Enrollment of Accounts to take place on meter read date.</li> <li>• Price: <ul style="list-style-type: none"> <li>○ <u>Initial Term</u>: [REDACTED] per kilowatt-hour, fixed</li> <li>○ <u>Subsequent Term(s)</u>: To be proposed by EBCE and agreed upon by the Parties</li> </ul> </li> </ul>
<b>Term Extension Option Strike Window (the period over which EBCE may determine duration of Subsequent Term):</b>	<ul style="list-style-type: none"> <li>• February 1, 2023 to April 30, 2024</li> </ul>
<b>Product:</b>	<b>EBCE’S BRIGHT CHOICE SERVICE, OR EQUIVALENT</b>
<b>Price (excluding Franchise Fees and PCIA):</b>	<p><b>Initial Term</b>: [REDACTED] per kilowatt-hour, fixed, subject to the Revised Rate provision below.</p> <p><b>Subsequent Term(s)</b>: Price to be determined upon reasonable agreement</p>

	<p>between the Parties, subject to the Revised Rate provision below.</p> <p><b>Revised Rate:</b> The Parties acknowledge that Customer intends to add photovoltaic generation located on its premises equivalent to 3.5 GWh of annual load by 2024. At any time after the achievement of the On-Site Threshold, EBCE may, upon Customer’s reasonable approval, update the rate for the remainder of the Initial Term and Subsequent Term(s), as applicable, subject to the requirements set forth in <u>Section 8</u> of the Agreement.</p>
<p><b>Applicable Accounts, Locations, and Delivery Points:</b></p>	<p>████████████████████ or as otherwise mutually agreed upon by the Parties.</p>
<p><b>Initial Term Total Amount Not to Exceed:</b></p>	<p>For the Initial Term, two (2) year total amount not to exceed \$1,500,000 to \$2,500,000</p> <p>The Parties acknowledge that this range is a non-binding estimate based on Customer’s historic electricity usage trends and that if Customer’s electricity usage increases significantly during the Initial Term, the range would similarly increase.</p>

**[Signature pages to follow]**

**EAST BAY COMMUNITY ENERGY  
AUTHORITY (“EBCE”)**

DocuSigned by:



9DF6BA3222GE44F...  
Nick Chaset, Chief Executive Officer

3/30/2022

Date

**Approved as to form:**



Inder Khalsa, General Counsel

March 30, 2022

Date

OAKLAND UNIFIED SCHOOL DISTRICT ("CUSTOMER")

*Dr. Gary Yee*

Dr. Gary Yee  
President, Board of Education

4-14-2022

Date

*Dr. Kyla Johnson-Trammell*

Dr. Kyla Johnson-Trammell, Superintendent  
Secretary, Board of Education

4-14-2022

Date

**Approved as to form:**

*W. W. W. W.*

OUSD Facilities Legal Counsel

*3/30/22*

Date





## DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

### Project Information

<b>Project Name</b>	Facilities Planning and Management Project	<b>Site</b>	918
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### Basic Directions

**Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.**

<b>Attachment Checklist</b>	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider
-----------------------------	---

### Contractor Information

<b>Contractor Name</b>	East Bay Community Energy	<b>Agency's Contact</b>	David Ball		
<b>OUSD Vendor ID #</b>		<b>Title</b>	General Manager		
<b>Street Address</b>	1999 Harrison St, Suite 800	<b>City</b>	Oakland	<b>State</b>	CA
<b>Telephone</b>	510-388-0567	<b>Policy Expires</b>			
<b>Contractor History</b>	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>OUSD Project #</b>	00918				

### Term of Original/Amended Contract

<b>Date Work Will Begin (i.e., effective date of contract)</b>	5-1-2022	<b>Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)</b>	4-30-2024
		<b>New Date of Contract End (If Any)</b>	

### Compensation/Revised Compensation

<b>If New Contract, Total Contract Price (Lump Sum)</b>		<b>If New Contract, Total Contract Price (Not To Exceed)</b>	Two (2) year total cost not to exceed \$1,500,000 to \$2,500,000 for the Initial Term. This range is a non-binding estimate based on the District's historic electricity usage trends and if the District's electricity usage increases significantly during the Initial Term, the range would similarly increase.
	\$		
<b>Pay Rate Per Hour (If Hourly)</b>	\$	<b>If Amendment, Change in Price</b>	\$
<b>Other Expenses</b>		<b>Requisition Number</b>	

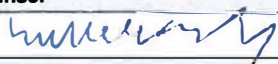

### Budget Information

*If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.*

Resource #	Funding Source	Org Key	Object Code	Amount
0000	Fund 01	010-0000-0-9000-8213-5520-999-9990-9000-0103-99999	5520	Two (2) year total cost not to exceed \$1,500,000 to \$2,500,000 for the Initial Term. This range is a non-binding estimate based on the District's historic electricity usage trends and if the District's electricity usage increases significantly during the Initial Term, the range would similarly increase.
6105	Fund 12	120-6105-0-8500-8213-5520-910-9100-8500-9999-99999	5520	

**Approval and Routing (in order of approval steps)**

Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.

1.	<b>Division Head</b>	<b>Phone</b>	510-535-7038	<b>Fax</b>	510-535-7082
	<b>Executive Director, Facilities Planning and Management</b>				
	<b>Signature</b>			<b>Date Approved</b>	
2.	<b>General Counsel</b>				
	<b>Signature</b>	 <b>Lozano Smith, as to form only</b>	<b>Date Approved</b>	3/30/22	
3.	<b>Deputy Chief, Facilities Planning and Management</b>				
	<b>Signature</b>		<b>Date Approved</b>	3/30/2022	
4.	<b>Chief Financial Officer</b>				
	<b>Signature</b>			<b>Date Approved</b>	
5.	<b>President, Board of Education</b>				
	<b>Signature</b>	 <b>Gary Yee</b>	<b>Date Approved</b>	4-14-2022	