

Board Office Use: Legislative File Info.	
File ID Number	24-1936
Introduction Date	10-09-2024
Enactment Number	24-1814
Enactment Date	10/9/2024 CJH



Memo

To	Board of Education
From	Kyla Johnson-Trammell, Superintendent; Preston Thomas, Chief Systems & Services Officer; Kenya Chatman, Executive Director, Facilities
Board Meeting Date	October 9, 2024
Subject	Amendment No. 1 -Electricity Service Agreement – AVA Community Energy – Facilities Planning and Management – Division of Facilities Planning and Management
Action Requested	Approval by the Board of Education of Amendment No. 1 to the Electricity Service Agreement by and between the District and AVA Community Energy, Oakland, CA , formerly known as East Bay Community Energy Authority for the latter to continue to provide favorable, fixed electricity rates discounted from EBCE's standard electricity rates for District's direct access-eligible electric energy services agreements, in an additional not-to-exceed amount of \$5,500,000.00 , increasing the Agreement's total not-to-exceed amount from \$2,500,000.00 to \$8,000,000.00 , and extending the term of the Agreement from May 1, 2022 to April 30, 2024, through April 30, 2026 , (an additional 729 days). All other terms and conditions of the Agreement remain in full force and effect.
Discussion	This Amendment is for ongoing electricity services and seven hundred twenty-nine (729) calendar day's extension.
LBP (Local Business Participation Percentage)	00.00%
Recommendation	Approval by the Board of Education of Amendment No. 1 to the Electricity Service Agreement by and between the District and AVA Community Energy, Oakland, CA, formerly known as East Bay Community Energy Authority for the latter to continue to provide favorable, fixed electricity rates discounted from EBCE's standard electricity rates for District's direct access-eligible electric energy services agreements, in an additional not-to-exceed amount of \$5,500,000.00, increasing the Agreement's total not-to-exceed amount from \$2,500,000.00 to \$8,000,000.00, and extending the term of the Agreement from May 1, 2022 to April 30, 2024, through April 30, 2026, (an additional 729 days). All other terms and conditions of the Agreement remain in full force and effect.
Fiscal Impact	Fund 1- General & Fund 12
Attachments	- Amendment No. 1, Including Exhibits - Routing Form - File ID: 22-0632

FIRST AMENDMENT TO ELECTRICITY SERVICE AGREEMENT

THIS FIRST AMENDMENT TO ELECTRICITY SERVICE AGREEMENT (this “**First Amendment**”) is entered into as of May 1, 2024 by and between Oakland Unified School District, a public school district (“**Customer**”), and Ava Community Energy Authority, a California joint powers authority (formerly known as East Bay Community Energy Authority, a California joint powers authority) (“**Ava**”). Customer and Ava are each referred to as a “**Party**” and together as the “**Parties**.” Capitalized terms used but not defined herein have the meanings assigned to them in the ESA (as defined below).

WHEREAS, the Parties entered into that certain Electricity Service Agreement, dated as of April 14, 2022 (the “**ESA**”); and

WHEREAS, the Parties now desire to amend certain provisions of the ESA.

NOW, THEREFORE, in consideration of the terms and provisions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. ESA Amendments. The ESA is amended as follows:

1. Generally. All references to “EBCE” in the Agreement shall hereafter be replaced with “Ava”.
2. Amendment to Section 5: Section 5 (“Electric Supply”) is amended by (i) deleting the phrase “unless generated by photovoltaic systems that are owned by Customer or located on Customer’s premises,” and (ii) adding the following proviso to the end of the first paragraph: “; provided, if any Special SA ID or Account hereunder enrolls in Ava’s Net Energy Metering Program or Solar Billing Plan, or otherwise installs solar generation facilities on the premises for purposes of reducing Customer’s electricity usage at any time during the Term (“Self-Generation Facilities”), such Account shall no longer be entitled to the favorable rate set forth under Exhibit B and shall be automatically enrolled in Ava’s Bright Choice plan or equivalent (such an Account, an “Ineligible Account”). In the event that Customer elects to consider locating Self-Generation Facilities or storage projects on its premises, Customer shall collaborate with Ava in good faith and use commercially reasonable efforts to identify partnering opportunities for such projects; provided, however, the Parties acknowledge and agree that such requirement of identifying partnering opportunities does not constitute a binding agreement between the Parties unless and until such partnership opportunities are reduced to a definitive agreement; provided, further, that such requirement of identifying partnering opportunities does not grant Ava any exclusivity to negotiate any deal with Customer, and Customer shall be free to solicit bids from any other party.”
3. Amendment to Section 7: Section 7 (“No Bypass or Substitution”) is hereby deleted in its entirety and replaced with the following:

“**7. NO BYPASS OR SUBSTITUTION.** Customer shall, with respect to all Accounts, take all electricity service from Ava. Except during emergency or outage situations, for reasonable and necessary periodic testing of emergency generating equipment, or during

the time period that Ava is in Default under this Agreement, Customer agrees not to purchase or have any portion of its electricity for its Accounts procured by any person, firm or entity other than Ava during the Term of this Agreement.

Customer shall not re-sell the electricity sold to it by Ava to any other entity, except that Customer may provide electricity to a licensee, sublessee, assignee, or occupant on its premises so long as (i) Customer sells such electricity at cost and does not mark up the price so as to earn a profit on such sale, and (ii) so long as such provision is in compliance with all applicable laws.

For the avoidance of doubt, in no event shall any Account covered by this Agreement be eligible to receive any customer revenue sharing credits that Ava issues to its other customers.”

4. Amendment to Section 8: Section 8 (“Increase, Reduction or Cessation of Operations”) is hereby deleted in its entirety and replaced with the following:

“8. INCREASE, REDUCTION OR CESSATION OF OPERATIONS. In the event that Customer, during the Term of this Agreement, causes any Account hereunder to become an Ineligible Account in accordance with Section 5, Customer understands and agrees that Ava will suffer damages resulting from reducing or terminating long-term commitments that Ava made on behalf of Customer prior to such reduction or termination. Customer agrees that the damages to be faced by Ava in the event of any Account to become an Ineligible Account shall be difficult or inconvenient to determine, and that the difference between 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) for such Account and the payment of the amount that Customer would have to pay under Standard Ava Rate Schedule for the usage under this Agreement for the remainder of this Agreement (or such equitable percentage of the amount remaining under this Agreement as the Parties hereunder so agree) for such Account becoming an Ineligible Account 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. Notwithstanding anything to the contrary, Customer’s payments on the rate of any Ineligible Account(s) under this Agreement shall be sufficient to satisfy and remedy any damage, including but not limited to any liquidated damages, Customer may cause to Ava in connection of any Account becoming an Ineligible Account, and Customer shall not be obligated to pay any other payment in addition to the payments on the rate of any Accounts and/or Ineligible Accounts.

The Parties further acknowledge and agree that the billing rate for each Account shall follow the CCA Billing Rate Code and 4013 Rate Code set forth in Exhibit C.”

5. Amendment to Section 11: The first sentence of Section 11 shall be deleted and replaced by the following:

“In addition to and consistent with the rights of access allowed to or limited to Ava pursuant

to any applicable laws, regulations, or rules and subject to Ava adhering to any such requisite limitations on Ava's rights of access, and signing a reasonable non-disclosure agreement, Customer hereby grants to Ava, and its employees, agents and authorized representatives, reasonable accompanied access to the premises of each Account, upon at least two (2) business days prior written notice (except that in the event of an emergency no such notice shall be required provided that Ava shall provide prompt written notice to Customer providing details of such emergency entry), for the purposes of performing Ava's obligations under this Agreement. Prior to Ava's entry to Customer's premises, Ava shall provide the commercial general liability insurance written on an "occurrence" policy form, covering bodily injury, property damage, and personal and advertising injury arising out of or relating (directly or indirectly) to Ava's entry to Customer's premises. Customer must be named by endorsement as additional named insured under Ava's commercial general liability coverage."

6. Amendment to Section 26: The following shall be added to Section 26 as subsection (E):

"E. Notwithstanding anything to the contrary, the Parties acknowledge that Customer, as a public school district, has an obligation to disclose the terms of this Agreement to the Oakland Union School District Board of Education ("**Board**") for review and that such disclosure, and the public posting of the Agreement as part of the Board's agenda shall not be deemed violations of this Section 26; provided, however, that prior to disclosure, Ava shall have the right to redact the terms of this Agreement as reasonably necessary to remove confidential, proprietary or commercially sensitive information."

7. Adding Section 33 to the Agreement: The following shall be added to the Agreement as Section 33:

"33. Termination.

A. *Termination for Cause.* Either Party may terminate this Agreement at any time if the other Party fails to cure any Default under this Agreement beyond applicable notice and cure period following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice and cure period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-defaulting Party, including but not limited to Section 8 hereto.

B. *Obligations Upon Termination.* If this Agreement is terminated in accordance with Section 33(A), Customer shall remain responsible for the payment of the electricity provided by Ava up to the date of the termination, and Ava shall use commercially reasonable efforts to cooperate with Customer's efforts of transferring the electricity service to another service provider. This Section 33(B) shall survive the termination of this Agreement.

8. Amendments to Exhibit A. Exhibit A ("Definitions") shall be revised as follows:

A. The following shall be added as a new defined term:

“Renewal Term” means the period beginning on May 1, 2024 and ending on April 30, 2026.

B. The definition of “Term” is hereby deleted and replaced with the following:

“Term” means the Initial Term, the Renewal Term, and, as applicable, any Subsequent Term(s).

C. The definition of “Standard EBCE Rate Schedule” is hereby deleted and replaced with the following:

“Standard Ava Rate Schedule” is the set of rates for electricity service adopted by Ava.

D. The definition of “Default” here hereby deleted and replaced with the following:

“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 if such failure is not remedied within thirty (30) days after written notice (provided, however, if the nature of such default could not be reasonably cured within such thirty (30) days and the defaulting Party commences such cure within the thirty (30) day period and continues such cure diligently to completion, then such thirty (30) day period shall be extended to sixty (60) days; (iv) the failure by Customer to provide adequate assurances in accordance with Section 12; (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 unless as otherwise expressly set forth in this Agreement.”

9. Amendment to Exhibit B. The table set forth in Exhibit B (“Addendum – Term of Contract and Rates Charged”) is hereby deleted in its entirety and replaced with the following:

Term:	MAY 1, 2022 to APRIL 30, 2026 ● Initial Term: May 1, 2022 through April 30, 2024 ● Renewal Term: May 1, 2024 through April 30, 2026
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	• Variable Term Period: not less than one (1) year or more than three (3) years (and subject to renewal). • Enrollment of Accounts to take place on meter read date.
Term Extension Option Strike Window (the period over which Ava may determine duration of Subsequent Term):	• February 1, 2025 to April 30, 2026
Price (excluding Franchise Fees and PCIA):	Initial Term: \$ [REDACTED] per kilowatt-hour, fixed. Renewal Term: \$ [REDACTED] per kilowatt-hour, fixed.
Applicable Accounts, Locations, and Delivery Points:	As set forth on <u>Appendix 1</u> or as otherwise mutually agreed upon by the Parties.
Renewal Term Total Amount Not to Exceed:	For the Renewal Term, two (2) year total amount not to exceed \$4,500,000 - \$5,500,000. 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 Renewal Term, the range would similarly increase.

9. Incorporation of Exhibit C. The Schedule A attached to this First Amendment shall be incorporated as Exhibit C.

SECTION 2. Existing Agreement. Except as expressly set forth herein, this First Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of the Parties under the ESA, the terms of which are hereby ratified and confirmed.

SECTION 3. Counterparts. This First Amendment may be executed in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. A signed copy of this First Amendment delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this First Amendment.

SECTION 4. Headings. The headings in this First Amendment are for reference only and will not affect the interpretation of this First Amendment.

SECTION 5. Severability. Whenever possible, each provision of this First Amendment will be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this First Amendment is held to be prohibited by or invalid under Applicable Law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this First Amendment. If a provision of this First Amendment is held to be invalid and the rest of this First Amendment is not invalidated, each Party will use its commercially reasonable efforts to effect as

far as practicable and valid under Applicable Law a new provision to achieve the purpose of such invalidated provision.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have signed this First Amendment as of the day and year first above written.

CUSTOMER:

Oakland Unified School District
a public school district

By: _____

Name: *Preston Thomas*

Title: *Chief Systems & Services Officer*

Ava:

Ava Community Energy Authority
a California joint powers authority

By: _____

Name: _____

Title: _____

As to form _____

319-6/6991485.3

IN WITNESS WHEREOF, the Parties hereto have signed this First Amendment as of the day and year first above written.

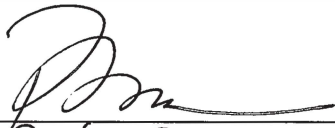
CUSTOMER:

Oakland Unified School District
a public school district

By: _____

Name: _____

Title: _____


Preston Thomas
Chief Systems & Services Officer

By: _____

As to Form

Counsel, OUSD

Date: _____

Name: Benjamin Davis

Title: President, Board of Education

Sign: 

Date: 10/10/2024

Name: Kyla Johnson-Trammell

Title: Superintendent and Secretary, Board of Education

Sign: 

Date: 10/10/2024

Ava:

Ava Community Energy Authority
a California joint powers authority

By: _____

Name: _____

Title: CEO

DocuSigned by:

5A1AEE4A3D1C415

By: _____

Name: Howard Chang

Title: CEO

As to form _____

DocuSigned by:

38687E28343646D...

SCHEDULE A



[REDACTED]

DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning and Management	Site	999/910
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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.

Attachment Checklist	☒ Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 ☒ Workers compensation insurance certification, unless vendor is a sole provider
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Contractor Information

Contractor Name	AVA Community Energy	Agency's Contact	
OUSD Vendor ID #		Title	
Street Address	1999 Harrison Street, Suite 2300	City	Oakland
Telephone		State	CA
		Zip	94612
Contractor History	Previously been an OUSD contractor? ☒ Yes ☐ No	Policy Expires	
OUSD Project #	00918	Worked as an OUSD employee? ☐ Yes ☒ No	

Term of Original/Amended Contract

Date Work Will Begin (i.e., effective date of contract)	05/01/2022	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	
		New Date of Contract End (If Any)	04/30/2026

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$5,500,000.00
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

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
0000/6105	Fund 1/ Fund 12	010-0000-0-9000-8213-5520-999-9990-9000-9999-99999 120-6105-0-8500-8213-5520-910-9100-8500-9999-99999	5520	\$5,500,000.00

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.

	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Executive Director, Facilities				
	Signature 	Date Approved	Aug 15, 2024		
	Keliya Chatman (Aug 15, 2024 10:25 PDT)				
2.	Counsel, Department of Facilities Planning and Management				
	Signature 	Date Approved	8/14/24		
	Chief Systems & Services Officer				
3.	Signature 	Date Approved	Aug 15, 2024		
	Preston Thomas (Aug 15, 2024 11:44 PDT)				
	Chief Financial Officer				
4.	Signature	Date Approved			
	President, Board of Education				

Board Office Use: Legislative File Info.	
File ID Number	22-0632
Introduction Date	4-13-2022
Enactment Number	22-0558
Enactment Date	4-13-2022 CJH

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

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

**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**

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

President, Board of Education

Attest:



Kyla Johnson-Trammell

4-14-2022

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 1st. 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

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")



Dr. Gary Yee
President, Board of Education

4-14-2022

Date



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

4-14-2022

Date

Approved as to form:



OUSD Facilities Legal Counsel



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.

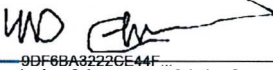
Term:	MAY 1, 2022 to APRIL 30, 2024 • Variable Term Period: Not less than one (1) year or more than three (3) years (and subject to renewal). • Enrollment of Accounts to take place on meter read date. • Price: ○ <u>Initial Term</u>: [REDACTED] per kilowatt-hour, fixed ○ <u>Subsequent Term(s)</u>: To be proposed by EBCE and agreed upon by the Parties
Term Extension Option Strike Window (the period over which EBCE may determine duration of Subsequent Term):	• February 1, 2023 to April 30, 2024
Product:	EBCE’S BRIGHT CHOICE SERVICE, OR EQUIVALENT
Price (excluding Franchise Fees and PCIA):	Initial Term: [REDACTED] per kilowatt-hour, fixed, subject to the Revised Rate provision below. Subsequent Term(s): Price to be determined upon reasonable agreement

	between the Parties, subject to the Revised Rate provision below. Revised Rate: 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.
Applicable Accounts, Locations, and Delivery Points:	████████████████████ or as otherwise mutually agreed upon by the Parties.
Initial Term Total Amount Not to Exceed:	For the Initial Term, two (2) year total amount not to exceed \$1,500,000 to \$2,500,000 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.

[Signature pages to follow]

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

DocuSigned by:



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")

85 D. Yee

Dr. Gary Yee
President, Board of Education

4-14-2022

Date

Kyla Johnson-Trammell

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

4-14-2022

Date

Approved as to form:

Wendy

OUSD Facilities Legal Counsel

3/30/22

Date



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information

Project Name	Facilities Planning and Management Project	Site	918
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.			
Attachment Checklist	☒ Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 ☒ Workers compensation insurance certification, unless vendor is a sole provider		

Contractor Information

Contractor Name	East Bay Community Energy	Agency's Contact	David Ball
OUSD Vendor ID #		Title	General Manager
Street Address	1999 Harrison St, Suite 800	City	Oakland
Telephone	510-388-0567	State	CA
Contractor History	Previously been an OUSD contractor? ☒ Yes ☐ No	Zip	94612
OUSD Project #	00918	Policy Expires	
		Worked as an OUSD employee?	☐ Yes ☒ No

Term of Original/Amended Contract

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

Compensation/Revised Compensation

If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	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.
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

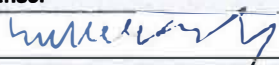
Budget Information

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