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Staff Report for City Council Authorization of Community Choice Aggregation for the City of San Leandro

### SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council consider staff’s analysis of the East Bay Community Energy Authority Joint Powers Agreement. Should the City Council decide to participate in this Community Choice Aggregation Joint Powers Authority for East Bay municipalities, staff recommends that they complete the following actions:

1. Adopt the resolution approving the East Bay Community Choice Energy Authority Joint Powers Agreement in order to participate in a Community Choice Aggregation Joint Powers Authority for East Bay municipalities; and
2. Conduct a first reading of the ordinance authorizing the implementation of a Community Choice Aggregation Program

### BACKGROUND

This report and recommendation is the culmination of a process that began in 2014 with action by the Alameda County Board of Supervisors (BOS) to investigate the feasibility of establishing a Community Choice Aggregation (CCA) program in Alameda County. This initial work led to the establishment of a Steering Committee consisting of City and stakeholder representatives. Councilmember Lopez is San Leandro’s representative and Councilmember Cox is San Leandro’s alternate representative. The Steering Committee held eleven meetings. It reviewed multiple aspects of establishing a CCA program, including economic feasibility, environmental and local jobs benefits, creation of a joint powers authority agreement, and selecting the name of the authority: East Bay Community Energy (EBCE). On October 4, 2016 the Board of Supervisors became the first agency to

adopt the attached resolution. This resolution is now in the process of being presented to each city, several of which have already approved it.

To date, the San Leandro City Council was provided with four presentations related to EBCE at the following City Council meetings: June 1, 2015, May 16, 2016, June 20, 2016 and October 17, 2016. The City Attorney participated extensively in the development of the EBCE Joint Powers Agreement. To provide context and background on economic and regulatory issues, the City was assisted by a third-party consultant with relevant expertise. Throughout the Steering Committee process, San Leandro actively advocated for an EBCE governance structure fair to both large and small cities.

Community Choice Aggregation, also known as Community Choice Energy (CCE), enables local governments to pool the electricity demand within their jurisdictions in order to procure or generate electrical power supplies on behalf of the residents and businesses in their communities. These power supplies are delivered via Pacific Gas and Electric's (PG&E) electric distribution system, and replace the power supplies previously provided by PG&E. A CCA operates in partnership with the existing power utility (i.e., PG&E). The CCA procures and/or generates electricity on behalf of its customers while the existing utility continues to deliver power to homes and businesses, handles customer billing, and maintains the grid. The essential goal of a CCA is to provide more local control of the community's source of energy, which enables a greener energy supply at competitive electricity rates and creation of local jobs. In turn, this greener energy supply enables cities to be more effective in meeting sustainability and greenhouse gas reduction goals.

Since the launch in 2010 of California's first CCA program - Marin Clean Energy - urban areas throughout the state have been analyzing the potential for launching similar programs, and several additional CCA programs have since been launched.

In June 2014, the Alameda County Board of Supervisors' Transportation and Planning Committee directed the County Community Development Agency (CDA) to investigate the implementation of a CCA program for Alameda County and its cities. Phase I of the investigation included development of a Technical/Feasibility Study (summarized in Attachment A), which demonstrated that a CCA program is both feasible and cost-effective, under a range of scenarios. An Alameda County CCA program may result in cost savings for ratepayers, i.e., the City government and the residents and businesses it serves; an is expected to increase the amount of renewable energy in the power supply; and promote job creation in the clean energy sector. Phase I work is now concluded. Phases II and III will entail formation of the Joint Powers Authority (JPA) Board and CCA implementation.

A Steering Committee was formed in 2015 to bring together representatives from cities, the County, regional experts, and stakeholders from the environmental, labor, and social justice communities to assist in drafting the language of a JPA (attached) to govern the operations of the CCA and provide recommendations on program design and operation. Following considerable discussion and recommendations from the Steering Committee, the Alameda County Board of Supervisors voted on October 4, 2016, to create the CCA program under the name East Bay Community Energy Authority,

adopt a Joint Powers Agreement negotiated by the Steering Committee and attorneys for the County and proposed member cities, and establish funding for the remaining phases of program development necessary to allow the program to begin providing electricity to customers in the fall of 2017.

The purpose of this report is to recommend that the City Council approve the City of San Leandro's participation in the East Bay Community Energy JPA and to conduct the first reading of the CCA ordinance that authorizes implementation of the CCA program in San Leandro. The JPA will become effective upon approval of at least three jurisdictions, including the County. County staff has requested each of the cities that are considering joining the JPA to schedule the item for consideration by their respective City Councils by the end of November 2016.

### **Description of East Bay Community Energy Authority (EBCE)**

EBCE would serve electric customers in the unincorporated areas of Alameda County, as well as electric customers in each city (except the City of Alameda, which owns and operates its own municipal electric utility) where the governing body elects to participate. Customers in each participating city will be automatically enrolled in EBCE, unless they opt to continue to receive their energy supply from PG&E. All electric customers will receive written information about the EBCE program and be provided at least three opportunities to opt out of EBCE and continue to receive their energy supply from PG&E. The opt-out rate for recently-established CCA programs has varied from two to five percent of customers.

EBCE would be governed by a Board of Directors, comprised of one elected representative of each city and county participating in the program. Final decisions regarding the specific level of renewable energy to be procured, prioritization of local renewable energy and job development, and other governance issues will be determined by the Board of Directors, as specified in the EBCE Joint Powers Agreement.

EBCE is designed much like similar CCA programs, including Marin Clean Energy and Sonoma Clean Power. However, several provisions were added that are unique to East Bay Community Energy, including requirements to ease the transition for affected energy workers, not to interfere with unionization of employees, and to designate the head of a proposed Community Advisory Committee as a non-voting member of EBCE's Board of Directors.

The EBCE Joint Powers Agreement (Agreement) was prepared by the Office of the Alameda County Counsel and was extensively reviewed by the City Attorney's Office in each city and by the membership of the Steering Committee. As noted above, the Agreement is based on similar agreements for CCA programs in the Bay Area, and creates a legal and financial separation of the assets and liabilities of EBCE from those of its member agencies. The JPA was formally created by the Alameda County Board of Supervisors (BOS) on October 4, 2016. The BOS is expected to conduct its second reading and take final steps to formalize the JPA following consideration by the cities in either December 2016 or January 2017.

The Agreement includes rules, regulations, and principles for the formation and operation of the EBCE program, including the roles and responsibilities of each member agency. The following is a summary of the key provisions in the JPA:

- **Separate Legal Entity.** The Agreement establishes the East Bay Community Energy Authority as a separate legal entity; the member cities assume no obligations (except in narrow circumstances provided for in the Agreement) for the debts and liabilities of the Authority.
- **Board of Directors.** The EBCE Board of Directors would consist of a representative from each member agency and an alternate director from each member agency, both of whom must be members of the City Council or Board of Supervisors.
- **Community Advisory Committee (CAC).** The Agreement establishes a Community Advisory Committee consisting of nine members to advise the Authority Board of Directors on matters relating to the operation of the Authority. The chairperson of the CAC would be a non-voting member of the EBCE Board of Directors, and the vice-chairperson of the CAC would be a non-voting alternate on the EBCE Board of Directors.
- **Voting.** The EBCE Board of Directors can act by a majority of directors voting in favor of an item. Following an affirmative vote, if three directors so request, an EBCE action must also be approved by a “voting shares vote,” where each director’s vote represents that share of EBCE’s overall electrical load represented by the member entity. In two circumstances - amending the Agreement or changing the voting requirements - super majority votes are required.
- **Business Plan.** The Agreement obligates EBCE to create a Business Plan describing the Authority’s operations and strategies. The Business Plan would include a description of how the EBCE will contribute to fostering local economic benefits, such as job creation and community energy programs. Additionally, the Business Plan would identify opportunities for local power development and how EBCE can achieve its equity and local job creation goals. Finally, the Business Plan would include specific language detailing employment and labor standards
- **Withdrawal.** The Agreement provides a process for member agencies to withdraw, and provides that, in the event of a member agency’s withdrawal, that member agency will reimburse EBCE for any stranded (unavoidable) costs incurred by EBCE due to the member agency’s withdrawal.
- **Powers.** The Agreement provides for a number of powers for the Authority, including the contractual authority to purchase electricity, enter into agreements to implement EBCE programs, and to submit documentation and compliance forms to ensure regulatory compliance. In addition, EBCE has the power to issue revenue bonds and other forms of indebtedness, to acquire property by eminent domain, and to negotiate project labor agreements, community benefit agreements, and collective bargaining agreements.

### **Funding for Steering Committee, Consultant Support, Related Studies and Startup**

Funding for the Steering Committee, consultant support and related studies to date have been funded exclusively by the County of Alameda. None of this funding, nor remaining startup costs, would be assessed against cities participating in EBCE. Phase I costs were approximately \$1.33 million. The second and third phases to establish and launch EBCE are estimated to be an additional \$2.41 million, which includes the costs associated with JPA formation and program development.

The Agreement explicitly provides that the County will be reimbursed for its actual incurred expenses in creating both the Authority and the CCA program. All start-up costs associated with this project are fully reimbursable from revenue generated by ratepayers during the first three years. At the October 4, 2016, Board of Supervisors meeting, the County approved the steps necessary to secure the needed funding to complete Phase II and Phase III.

EBCE is expected to seat its Board of Directors in early 2017 and initiate early stages of operation at that time. The Board will need to secure working capital to cover its expenses leading up to the delivery of electricity, which is projected for fall of 2017. Based on the experience of other CCA entities, this capital is typically provided by a bank line of credit that requires a credit guarantee until such time that the CCA's customers have been enrolled and the program is fully resourced. The Technical Study's pro forma analysis identified up to \$51 million in working capital needs, the majority of which would cover initial power purchases and be repaid within five years of customer enrollment and ratepayer revenues. The financial model showed that this level of financing could be paid back within that timeframe, while still building a substantial reserve for the Authority in its early years. Appendix B provides further detail on required activities and consulting services needed for startup.

### **Fiscal Impacts**

In addition to San Leandro residents and businesses, the City would become a customer of EBCE. This would allow each of San Leandro's municipal electric accounts to be served by EBCE, and make the City eligible to participate in any future efficiency or incentive programs that may be developed by EBCE. Based on current renewable and nonrenewable energy supply prices, as well as the assessment in the MRW technical feasibility study, it is possible that the City could lower total energy costs for its electric accounts. Staff will conduct this financial analysis once more is known about EBCE's initial retail rates.

The City will also continue to be eligible to participate in incentive programs offered through PG&E that lower the cost of energy upgrade projects in municipal facilities as well as homes and businesses.

Some City staff time will be required to monitor and assess EBCE activities as such activities may affect San Leandro. Such cost would be reflected in future budget recommendations.

Lastly, it is common for newly formed CCAs to issue an RFP for the startup capital, and that responding banks usually ask for a loan guarantee of around 10%. According to the Technical Feasibility Study, it is expected that the proposed CCA would need \$51 million in startup capital, which would put the loan guarantee amount at approximately \$5.1 million. If the CCE Board requests that the guarantee be split up among the member agencies (as has been done with the other CCAs), it is conceivable that the City of San Leandro would have to take on a portion of that loan guarantee in the order of several hundred thousand dollars. This guarantee wouldn't require cash, but would

rather be a liability on the books for the period of the loan, likely two to three years in duration.

### **Reasons for Recommendation**

Participation in EBCE will result in more local control over San Leandro's power supply, reduced greenhouse emissions, as well as the possibility of lower costs for ratepayers, and increased jobs in the clean energy sector for the region. The anticipated greenhouse gas reductions would help San Leandro to more effectively meet its established sustainability goals.

### **Attachments to Staff Report**

- Appendix A - Alameda County Staff's Summary of MRW Technical Feasibility Study
- Appendix B - Next Steps for Formation of EBCE
- Appendix C - MRW's Technical Feasibility Study
- Appendix D - CCE Financing Requirements and Options

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