



AGENDA

REGULAR CITY COUNCIL MEETING
Tuesday, November 18, 2014 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

7:00 p.m. CONVENE REGULAR CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – *Councilmember Lyman*

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATION

A. El Cerrito Art Association Award

Brief highlight of the El Cerrito Art Association programs and events followed by approval and presentation of a proclamation recognizing the importance of the El Cerrito Art Association in supporting and publicizing arts and artists in the East Bay, commending all artists in the community for their skill, talent and creative expression and congratulating

Catherine Woolf on her receipt of the Mayor's Award at the El Cerrito Association Annual Art Show and Sale held in October 2014.

B. El Cerrito Tree Committee Workplan – *Presentation by Cathy Bleier, Committee Vice-Chair.*

Receive a presentation regarding the Tree Committee's accomplishments, goals and workplan.

C. El Cerrito Park and Recreation Commission Workplan – *Presentation by Manish Doshi, Commission Chair.*

Receive a presentation regarding the Park and Recreation Commission's accomplishments, goals and workplan.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5H

A. Minutes for Approval

Approve the October 21, 2014 regular City Council meeting minutes.

B. I-80 Integrated Corridor Mobility Project Operations & Maintenance Cooperative Agreement No. 07W.04

Adopt a resolution authorizing the City Manager to execute Cooperative Agreement No. 07W.04 between the Contra Costa Transportation Authority (CCTA), City of El Cerrito, Contra Costa County and the Cities of Richmond, Hercules, Pinole, and the San Pablo for CCTA's funding of the operations and maintenance (O&M) of components of the I-80 Integrated Corridor Mobility (I-80 ICM) Project.

C. Cooperative Agreement No. 28W.01 between the Contra Costa Transportation Authority, the City of El Cerrito, Contra Costa County and the Cities

Adopt a resolution authorizing the City Manager to execute Cooperative Agreement No. 28W.01 between the Contra Costa Transportation Authority (CCTA), City of El Cerrito, Contra Costa County, and the Cities of Richmond, Hercules, Pinole and San Pablo to accept a one-time disbursement of \$50,000 in Measure J Subregional Transportation Needs Program (Program 28b) funds from the CCTA to the City of El Cerrito and authorizing an amendment to the Fiscal Year (FY) 2014-15 Adopted Budget to appropriate \$50,000 in the Measure J Fund for various transportation projects and programs. *Exempt from CEQA.*

D. I-80/Central Avenue Operational Improvements Project – Amendment No. 1 to Cooperative Agreement No. 07W.02

Adopt a resolution authorizing the City Manager to execute Amendment No. 1 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority (CCTA), the City of El Cerrito, and the City of Richmond to complete Plans, Specifications and Estimate (final design), perform a before and after traffic study, and perform design services during construction for the I-80/Central Avenue Operational Improvements Project (Phase 1). *Exempt from CEQA.*

E. 2014 Patch Paving and Miscellaneous Repairs Project

Adopt a resolution approving the following actions: 1) Approve plans for the 2014 Patch Paving and Miscellaneous Repairs Project; 2) Reject one submitted bid from Ransome Company as non-responsive; 3) Accept the two remaining bids; 4) Amend the Capital Improvement Program-Annual Program of Maintenance and Improvement pursuant to Measure A to add completion of the 2013-14 Street Improvement Project, C3072 and Central Avenue and Liberty Street Streetscape Improvement Project, C3063; 5) Authorize the City Manager to execute a contract in the amount of \$106,259.00 with Golden Bay Construction,

Inc. and to approve change orders in an amount not to exceed \$16,946.53 for the construction of the 2014 Patch Paving and Miscellaneous Repairs Project; and 6) Amend the Fiscal Year 2014-15 Adopted Budget to appropriate unspent project funds of \$31,224 in Measure A Street Improvement Fund (Fund 211) and \$16,520 in the Capital Improvement Fund (Fund 301).

F. Agreement with East Bay Sanitary Company, Inc. for Street Sweeping Services

Adopt a resolution authorizing the City Manager to execute an agreement with East Bay Sanitary Company, Inc. (EBS) to perform street sweeping services in the City of El Cerrito effective January 1, 2015 at an initial cost of \$7,177.73 per month and total of \$43,066.38 in Fiscal Year 2014-15, with total expenditure authorization in an amount not to exceed \$110,000 in subsequent fiscal years.

G. Park In-Lieu Fund for Park and Athletic Field Improvements

Adopt a resolution authorizing the appropriation of \$12,000 in the Park In-Lieu Fund for park and athletic field improvements as an amendment to the Fiscal Year 2014-15 budget. *Exempt from CEQA.*

H. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint George Gager to the Economic Development Committee, effective January 1, 2015.

6. PUBLIC HEARINGS

Proposed Integrated Waste Management Fees and East Bay Sanitary Garbage & Green Waste Collection and Processing Rates – Effective January 1, 2015

Staff requests the City Council to take the following actions:

- 1) Conduct a public hearing and upon conclusion adopt a resolution setting Integrated Waste Management (IWM) Fees, effective January 1, 2015; and
- 2) Conduct a public hearing and upon conclusion adopt a resolution setting maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, disposal and processing rates, effective January 1, 2015. *Both public hearings exempt from CEQA.*

7. POLICY MATTERS

Study Session to Provide Policy Direction Regarding Membership in Marin Clean Energy Community Choice Aggregation Joint Powers Agency

Receive a presentation on the results of the “Marin Clean Energy Applicant Analysis for the City of El Cerrito” and the risks and benefits associated with joining Marin Clean Energy, and provide policy direction regarding joining Marin Clean Energy’s Community Choice Aggregation Joint Powers Authority. *Exempt from CEQA.*

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

Mayoral and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regular City Council meeting is Tuesday, December 2, 2014 at 7:00 p.m. at City Hall, 10890 San Pablo Avenue, El Cerrito, California.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public

safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL PROCLAMATION

In Recognition of the El Cerrito Art Association and Commending Catherine Woolf on her Receipt of the Mayor's Award at the Annual El Cerrito Art Association Show

WHEREAS, the El Cerrito Art Association (ECAA) was founded in 1976 and supports the arts and artists in the East Bay. The Association's members live in the area surrounding El Cerrito and include artists who paint, draw, take photographs, sculpt, create mixed media and digital images; and

WHEREAS, the ECAA meets monthly at the El Cerrito Community Center from February to November. Each meeting features a mini art show of member works and a program or demonstration by an artist; and

WHEREAS, the ECAA sponsors an art show and sale each October hosting as many as 350 works by more than 100 artists from around the East Bay and also sponsors a Plein Air Painting Group and curates exhibits of member artists work at various local venues; and

WHEREAS, the October 2014 show, which kicked off with a reception attended by approximately 300 people, featured 318 registered Artworks and included 116 artist participants of which 105 were ECAA members; and

WHEREAS, approximately seventy awards, including honorable mentions, were issued in the categories of oil, acrylic, watercolor, pastel, photography, digital art, sculpture, mixed media, drawing, and printmaking; and

WHEREAS, each year the Mayor of El Cerrito makes a selection for the "Mayors Award" and this year, Mayor Abelson selected and presented the Mayor's Award to Catherine Woolf for her painting "Aaliyah & Rabbit."

NOW, THEREFORE, the City Council of the City of El Cerrito hereby recognizes the importance of the El Cerrito Art Association in supporting and publicizing arts and artists in the East Bay, commends all artists in the community for their skill, talent and creative expression and congratulates Catherine Woolf on her receipt of the Mayor's Award at the October 2014 ECAA Art Show.

Dated: November 18, 2014

Janet Abelson, Mayor

El Cerrito City Council
November 18, 2014
Tree Committee Work Plan

MISSION STATEMENT:

- The Tree Committee serves in an advisory capacity to the City Council, other commissions, and the citizens of the City with regard to the growth, maintenance, and location of trees within the City:
- To recommend programs, policies, and ordinances to implement and promote the City's Master Street Tree Plan and Urban Forest Management Plan and to coordinate with Public Works staff regarding management and maintenance efforts;

MISSION STATEMENT:

- To promote and foster public awareness, education, interest and support for urban forestry efforts, foster volunteer opportunities for tree planting and irrigation along the city's streets and in residential front yards, and educates residents regarding selecting, planting and maintaining trees; and
- To promote public awareness and education concerning potential hazards about above ground and underground utilities and provides information about appropriate tree species for avoiding such hazards.

2014 Tree Committee



Left to Right Vice Chair Cathy Bleier, Steve Price,
Mike Srago, Chair: Janet Hittle,
Ralph Boniello, Michael Charlton, Sheauchi
Cheng, Karen Christian

PRIOR YEAR ACCOMPLISHMENTS

- A. Secured support for implementing urban forestry activities
 - Invest From the Ground Up (IFGU) grant: surveyed San Pablo business community on tree care concerns; developed brochure on benefits, care and protection of City street trees –January to May 2014
 - IFGU grant: planted 24 trees on February 15, 2014

PRIOR YEAR ACCOMPLISHMENTS

B. Participated in community events

- Arbor Day tree planting with El Cerrito Garden Club and Komatsu Middle School 7th grade science students at Cerrito Vista Park - March 2013 & 2014
- IFGU tree planting - February 2014
- IFGU business brochure distribution - Earth Day 2014

PRIOR YEAR ACCOMPLISHMENTS

C. Provided Input on EC policies affecting trees

- Submitted comments on San Pablo Specific Plan

D. Educate Tree Committee on tree health:

- Participated in U.C. Berkeley's statewide Sudden Oak Death (SOD) Bioblitz survey to detect and track infestations (surveyed trees in Hillside Natural Area)
- Attended workshops: Annual California Tree Failure Report, Trees in All Policies, and Understanding Trees in our Communities

Current Work Plan Goals – High Priority

- Ensure care and survival of recent tree plantings
- Secure funding and public support for urban forestry activities
- Provide input on El Cerrito policies and plans affecting trees
- Educate EC Tree Committee on tree care needs and costs
- Recommend tree species for Approved City Tree List
- Address tree protection policy and ordinance needs

Current Work Plan Goals - Medium High Priority

- Educational workshops for the public
- Participate in annual and special community events
- Become a Tree City USA
- Develop outreach materials for public
- Enhance EC Tree Committee web presence

GOAL	FISCAL YEAR 2014-15 WORK PLAN PROPOSED ACTIVITIES	TIMELINE
Care for new plantings	- Plan and schedule watering for IFGU trees - Implement over 2 yrs or as needed	June, 2014 Fall 2016
Funding and public support	- Pursue available EEMP grants when feasible - Consider establishing volunteer corps - Follow-up on IFGU brochure effort - Pursue CALFIRE/ARB urban forestry grants	Ongoing Ongoing Nov. 2014 forward
Input on City policies, plans	- Review and comment on San Pablo Ave Specific Plan - Comment on other plans as needed, e.g. Greening Plan	June – July 2014 Ongoing
Educate ECTC	Presentations to EC Tree Committee on tree care and management	Ongoing
Approved City Tree List	- Tree selection principles, protocols and appropriate species - Public input and Council approval	Spring 2015

FISCAL YEAR 2014-15 WORK PLAN

GOAL	PROPOSED ACTIVITIES	TIMELINE
Tree Ordinance	• Tree removal policy for responding to residents • Tree care protection ordinances, as needed	November 2014- February 2015
Community events	• Information tables, educational handouts, tree plantings, etc. for annual (Arbor Day, Earth Day, July 4th) and special events	Ongoing
Tree City USA	• Fulfill prerequisites and prepare application	Ongoing
Outreach materials	• Informational brochure for EC grid pruning • Info for community events and workshops	November 2014 Ongoing
Tree Committee web presence	• Develop content and work with staff on City website • Enhance public access to and use of tree inventory	Ongoing
Educational workshops	Plan and implement workshops, such as individual pruning and tree care, urban forest management	Ongoing

Questions?

- Chair Janet Hittle
- Vice Chair Cathy Bleier
- Staff Liaison Stephen Prée – spre@ci.el-cerrito.ca.us



PARK AND RECREATION COMMISSION 2014-15 WORK PLAN

**Parks
Make
Life
Better!**SM

Park and Recreation Commission

El Cerrito Municipal Code Section 2.04.240

There shall be a park and recreation commission. It shall have the powers and duties stated below, and such others as the council may decide:

- A. To act in an advisory capacity to the council and the city manager on all matters pertaining to public recreation, including parks, playgrounds, landscaping within the boundaries of parks, playgrounds and recreational facilities, child care, educational courses, and entertainment;
- B. To make recommendations regarding the annual budget, within its scope of concern, to the city manager and the council;
- C. To make recommendations to the council, annually, concerning fees for city sponsored programs;
- D. To assist in planning recreation programs for the residents of the city, to promote public interest therein, and to solicit the cooperation of other public and private agencies;
- E. To make recommendations to the council regarding present and future needs for park and recreation

2014-15 Work Plan Goals & Areas of Interest

1. Present and Future Needs of Park Facilities and Landscaping
 - A. Commissioners visit all sites (either individually and/or) as a group during a regularly scheduled Park and Recreation Meeting, emphasizing:
 - i. Huber Park
 - ii. Motorcycle Hill/Hillside Natural Area
 - iii. Community Demonstration Garden/Fairmont Park
 - iv. Urban Greening Sites
 - v. Creeks, trails, parks, and future/potential project sites
 - B. Document park conditions and form recommendations to the City Council

2014-15 Work Plan Goals & Areas of Interest

2. More Active Involvement in Facility, Park, Creek, and Trail Planning and Maintenance
 - A. Trail development policies
 - B. Receive future presentation on status of Ohlone Greenway Master Plan and future identified and potential improvements.
 - C. Pursue comprehensive signage program throughout City for parks, trails, and fields
 - D. Help develop Hillside Natural Area Master Plan
 - E. Review Landscape Management Policy (including trees) and Integrated Pest Management Plans

2014-15 Work Plan Goals & Areas of Interest

3. Special Event Support
 - A. Ohlone Greenway Fun Day
 - B. Explore new sporting events such as a runs, walks and cycling events, etc.
 - i. Help establish volunteer group to organize events
 - C. Expand future Hillside Festival Events
 - D. Explore economic development and income building opportunities benefiting park and recreational facilities.

2014-15 Work Plan Goals & Areas of Interest

4. Recreation Department

- A. Receive Division Updates by Supervisors
- B. Review budget updates semi-annually (two to 3 times per year)

5. Increase gathering of information/communication/feedback from community

- A. Develop community survey
- B. Solicit feedback at community events
- C. Publicize Commission Meetings in e-newsletter, other venues

6. Receive Urban Greening Plan and modify work plan accordingly



Facility and Park Age





Deferred Maintenance





Accessibility



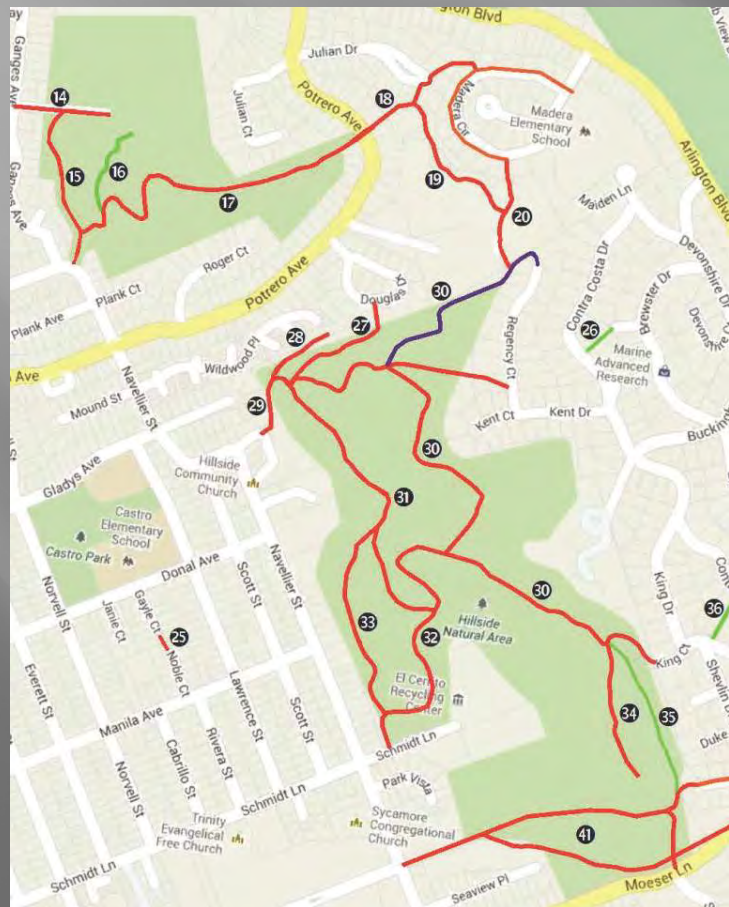


Disproportionate Amenities





Hillside Natural Area



Athletic Fields & Landscaping



EL CERRITO CITY COUNCIL

MINUTES

REGULAR CITY COUNCIL MEETING

Tuesday, October 21, 2014 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

Councilmembers Benassini, Bridges, Friedman, Lyman and Mayor Abelson.

7:00 p.m.

CONVENE REGULAR CITY COUNCIL MEETING

Mayor Abelson convened the regular City Council meeting at 7:04 p.m.

1. **PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE** was led by Mayor Pro Tem Rebecca Benassini.

2. COUNCIL / STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS

Councilmember Friedman reported on his attendance at the Rotary Club's fundraiser for a new El Cerrito Library that was held on October 19 at the Mira Vista Country Club. The event was well attended. On October 23 there will be the first meeting of a Sustainability Circle in El Cerrito. Maria Sanders, Environmental Analyst, is working with True Market Solutions. There are openings available for businesses and non-profits to join a Sustainability Circle in El Cerrito and participate and learn from each other about how to be more energy efficient and sustainable.

Councilmember Lyman reported that he attended the Del Norte BART station improvement open house on October 9. Plans for the station are both eye opening and forward thinking. BART staff informed Councilmember Lyman that city staff are very well informed and have been very helpful in making suggestions regarding circulation and changes to the station. Councilmember Lyman also reminded all about the Free Folk Festival that will occur on October 25 from noon to 10:00 p.m. at the El Cerrito High School Performing Arts Center. There will be free music and workshops. Councilmember Lyman concluded by encouraging everyone to vote on Election Day.

Mayor Pro Tem Benassini announced that there will be a Joint Environmental Quality Committee and Park and Recreation Commission meeting on October 22 to go over the Urban Greening Plan.

Councilmember Bridges announced that the El Cerrito Historical Society will offer a presentation by the East Bay Municipal Utility District (EBMUD) on October 23 regarding the history of water resources in the East Bay at the Arlington Clubhouse.

STAFF COMMUNICATIONS

Cheryl Morse, City Clerk, reminded residents that each registered voter should have received their voter information pamphlet and sample ballot in the mail by now. Anyone who has not received a pamphlet/sample ballot should call the County Elections Office at (925) 335-7800. Ms. Morse also reminded all those who vote by mail to remember to sign the back of the ballot envelope before sending it in and noted that postage is 70 cents. Alternatively, voters can drop off their ballots at any polling place in the County on Election Day.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Al Miller, El Cerrito, reminded residents that they are part of the Stege Sanitary District and noted that there is a contested election for the Stege Sanitary District Board of Directors for the first time in twenty years. There are four candidates running for three seats. Mr. Miller also reported that the Rotary Club recently co-sponsored a fundraiser at the Mira Vista Country Club that contributed funds in support of the new El Cerrito Library project. The event was well attended.

Gary Hill, Parks and Recreation Commissioner and Madera Hillside Open Space Campaign, provided an update on the campaign. The campaign recently hosted a music fundraiser and silent auction that was also a fun community event. Nearly \$4,000 was raised at the event. To date, over 214 donations totaling \$61,800 have been received. The Open Space Campaign hopes that additional people will join the citizens and businesses that have donated thus far to reach the \$100,000 goal for land acquisition. Currently, the Conner Family will match dollar for dollar every donation up to \$5,000 until November 15. More information is available on the www.el-cerrito.org and www.ectrailtrekkers.org.

Tom Panas, El Cerrito, thanked East Bay Sanitary Company for being such a terrific partner with the City and noted that it would be hard to find a more civic minded business person in town other than the Company's president, Mark Figone. Mr. Panas also thanked City staff for their attention over the weekend regarding BART's notice pertaining to herbicide application on the Ohlone Greenway. The application was delayed to allow for more study.

4. PRESENTATION

A. El Cerrito Library Strategic Plan Update – *Presentation by Liz Ruhland, Senior Community Library Manager, El Cerrito Library.*

Receive a presentation regarding the Contra Costa Library Strategic Plan and the annual service plan for the El Cerrito Library.

Action: Received presentation.

B. Clean Water Program Update – *Presentation by Stephen Préé, Environmental Programs Manager.*

Action: Received presentation.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5F

Moved, seconded (Bridges/Friedman) and carried unanimously to approve Consent Calendar Item Nos. 5A through 5F in one motion as indicated below.

A. Minutes for Approval

- 1) Approve the September 22, 2014 Special City Council meeting minutes; and
- 2) Approve the October 7, 2014 Special Joint City Council / Redevelopment Agency Successor Agency Meeting – Closed Session, Special City Council Meeting – Closed Session and the Regular City Council Meeting Minutes.

Action: Approved minutes.

B. Contra Costa County Community Awareness Emergency Response Proclamation

Approve a proclamation recognizing the importance of preparing for emergencies and encouraging participation in the Contra Costa Community Awareness Emergency Response (CAER) Group's public education efforts and proclaiming November 5, 2014, as "Shelter-in-Place Education Day" in the City of El Cerrito, in support of the parents, teachers, students and staff that will be participating with hundreds of other schools and childcare centers in the Shelter-in-Place Drill.

Action: Approved proclamation.

C. Amend Franchise Agreement with East Bay Sanitary Company

Adopt a resolution approving the proposed Seventh Amendment to the Franchise Agreement between the City of El Cerrito and East Bay Sanitary Company, Inc., eliminating provisions pertaining to fleet maintenance that were changed or added to the Franchise Agreement by the Sixth Amendment and are now unnecessary.

Action: Adopted Resolution No. 2014–62.

D. Extend the Street Sweeping Maintenance Agreement with Universal

Adopt a resolution authorizing the City Manager to extend the City's street sweeping maintenance agreement with Universal Building Services (UBS) for the period October 22, 2014 to December 31, 2014, in an additional amount not to exceed \$15,324 bringing the total contract to an amount not to exceed \$40,324 for Fiscal Year (FY) 2014-2015.

Action: Adopted Resolution No. 2014–63.

E. West Contra Costa Unified School District Memorandum of Understanding

Adopt a resolution authorizing the City Manager to execute a Memorandum of Understanding (MOU) with the West Contra Costa Unified School District (District) for the renovation of the Castro Park athletic field.

Action: Adopted Resolution No. 2014–64.

F. Metropolitan Transportation Commission's Regional Measure 2 Project Compliance for San Pablo Avenue Specific Plan and Complete Streets Plan – Additional Analysis for Implementation

Adopt a resolution verifying project compliance with the Metropolitan Transportation Commission's Regional Measure 2 requirements and authorizing the City Manager to submit an allocation request in the amount of \$100,000 for the San Pablo Avenue Specific Plan and Complete Streets Plan.

Action: Adopted Resolution No. 2014–65.

6. PUBLIC HEARINGS

Extension of San Pablo Avenue Specific Plan Development Fees on an Interim Basis as an Urgency Measure

Conduct a public hearing and upon conclusion adopt an urgency resolution extending interim San Pablo Avenue Specific Plan Planning and Development Fees for a second and final period not to exceed 30 days.

Mayor Abelson opened the public hearing. No speakers.

Moved, seconded (Lyman/Friedman) and carried unanimously to close the public hearing

Action: Moved, seconded (Friedman/Benassini) and carried unanimously to adopt Resolution No. 2014–66.

7. POLICY MATTERS – None

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

Mayoral and City Council communications regarding local and regional liaison assignments and committee reports.

Mayor Pro Tem Benassini reported that the Economic Development Committee met and is planning a mixer/idea sharing with the Chamber of Commerce in early December. The Committee also continues to determine priorities for its work plan. Some of the Committee's ideas include contacting landlords that have vacancies in the city and also scheduling speakers such as brokers, developers and commercial interests in El Cerrito to gather information, foster an open dialogue and provide a forum for sharing ideas on how to help grow business in the City. The Committee also sent out an invitation to the UC Berkeley public policy and planning schools for interns to help with research.

Councilmember Bridges reported that she attended the October 15 Tom Bates Sports Field Joint Powers Authority meeting. The City will be charged \$15,000 for the fields along with the other participating cities. There was a short discussion regarding car break-ins at the field. Signs will be posted that will advise users not to leave valuables in the car. There was also a short discussion regarding water conservation measures. The fields are conserving water very well.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 8:15 p.m.

SUPPLEMENTAL COMMUNICATIONS

1. Comments expressing concerns regarding widespread herbicide application scheduled by BART – *Submitted by Howdy Goudey, El Cerrito.*



AGENDA BILL

Agenda Item No. 5(B)

Date: November 18, 2014
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: I-80 Integrated Corridor Mobility Project Operations and Maintenance -
Cooperative Agreement No. 07W.04

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute Cooperative Agreement No. 07W.04 between the Contra Costa Transportation Authority (CCTA), City of El Cerrito, Contra Costa County and the Cities of Richmond, Hercules, Pinole, and San Pablo for CCTA's funding the operations and maintenance (O&M) of components of the I-80 Integrated Corridor Mobility (I-80 ICM) Project.

BACKGROUND

Traffic Conditions

I-80, between the Carquinez Bridge and the Bay Bridge, is one of the most congested corridors in the San Francisco Bay Area, with traffic volumes reaching 288,000 vehicles per day and an average of 7,000 hours of daily traffic delays. Traffic demands on the freeway far exceed the roadway capacity, causing severe congestion, unreliable travel times, and traffic diversion to local arterial streets. During the peak periods, the majority of the corridor operates with significant congestion and delays. The congestion on the roadway network contributes to an increase in incident rates, including rear-end collisions on both the freeway and local arterials.

With projected increase in travel demand, congestion will get worse. As congestion along the corridor increases, incident rates will increase causing additional congestion. About half of the collisions along I-80 that occur during the peak period appear to be congestion-related/end-of-queue crashes. Over a three-year period, 6,285 crashes took place along I-80. Currently, when there is an incident, such as a collision, on I-80, the amount of time the freeway is affected (referred to as "recovery time") is directly related to how quickly emergency services or roadside assistance can reach the incident and clear blocked lanes. Because emergency response is also hindered by congestion, the recovery time increases as congestion levels increase.

Project Description

The I-80 ICM Project is a \$93 million project intended to enhance the effectiveness of the existing transportation network, including the freeway, San Pablo Avenue, crossing arterials and bus transit in Alameda and Contra Costa Counties. The project has been

Agenda Item No. 5(B)

developed through a partnership among multiple jurisdictions and transportation agencies including Alameda County Transportation Commission (ACTC), Contra Costa Transportation Authority (CCTA), West Contra Costa Transportation Advisory Committee (WCCTAC), Caltrans, AC Transit, WestCat, Contra Costa County, and the Cities of El Cerrito, Hercules, Pinole, Richmond, San Pablo, Albany, Berkeley, Emeryville and Oakland. The ACTC is the lead agency for the implementation of the project.

The project is primarily funded through the 2006 California Infrastructure Bond Act (State Proposition 1B), including \$55.3 million from the Corridor Mobility Improvement Account (CMIA) and \$21.4 million from the Traffic Light Synchronization Program (TLSP). Contra Costa Measure J is also a contributing fund for project development. In order to secure the TLSP funds for arterial and transit improvements along San Pablo Avenue and crossing arterials, jurisdictions along the I-80 corridor approved resolutions of support for the project in late 2007 through early 2008. The City of El Cerrito City Council adopted Resolution No 2007-91 in November 2007 for this purpose.

The I-80 ICM Project consists of a 20-mile-long network of variable message, lane-use and advisory speed signs and other elements designed to enhance motorist safety, improve travel time reliability and reduce collisions and associated traffic congestion. By improving travel time and reducing delays along I-80, jurisdictions along the corridor will benefit by keeping regional traffic on I-80. As traffic flow improves, vehicle emissions are reduced improving overall air quality. A major part of the project is incident management. By providing warning to drivers, end-of-queue collisions can be reduced. Adaptive ramp metering will not only improve traffic flow on the mainline freeway, but will also reduce side-swipes and rear-end accidents associated with merging maneuvers. By directing traffic to clear lanes ahead of collisions, emergency vehicles can reach collision scenes quicker, allowing for faster recovery time. Lastly, by having coordinated incident response plans, Caltrans and local agencies will have ready-to-deploy tools to manage traffic during major incidents and events.

The I-80 ICM Project is well underway with anticipated completion in early 2015. Caltrans has completed the installation of wayfinding signage and transit prioritization signals along San Pablo Avenue, as well as adaptive ramp meters on 44 on-ramps along I-80. Overhead sign installation on the freeway is nearly complete, with eight of eleven sign frames (gantries) installed along westbound I-80 between Cutting Boulevard in Richmond and Powell Street in Emeryville. The sign frames support new, state-of-the-art electronic signage, which, when activated in spring 2015, will provide real-time traffic information to motorists traveling on the I-80 corridor.

Memorandum of Understanding

The City entered into a Memorandum of Understanding (MOU) with the project partner agencies as authorized by the City Council under Resolution No. 2012-17 in March 2012. The MOU states that local jurisdictions will be responsible for the operations and maintenance (O&M) of various ICM components installed on local streets, and that the CCTA will secure funding in the amount of \$2 million to fund approximately 15 years of O&M with an estimated cost of \$133,000 per year. In December 2013, the CCTA approved programming \$2 million for this purpose in the 2013 Measure J Strategic Plan. The project has also replaced much of the old equipment, such as traffic signal controllers, which will lower the existing O&M costs.

ANALYSIS

Cooperative Agreement 07W.04 defines a framework to fund the O&M of the I-80 ICM components installed on local streets and specifically provides a process for reimbursing West County jurisdictions, including El Cerrito, for O&M costs. In El Cerrito, the City will continue to be responsible for O&M costs related to existing equipment including traffic signal and transit signal priority/emergency vehicle preemptions systems. The cooperative agreement will provide funding for new equipment at specific locations including mid-block vehicle detection, emergency vehicle preemption traffic signal priority, communications equipment, and operations software. The estimated O&M cost for this new equipment is approximately \$9,000 per year. Caltrans will be responsible for O&M costs for equipment located in state right-of-way along San Pablo Avenue as well as any freeway ramps. O&M costs are not expected to be incurred until late 2015 after the project is fully operational and tested.

The O&M can be done by City crews or a third party such as a private contractor or Contra Costa County, which currently provides O&M for several jurisdictions along the corridor. The agreement allows the CCTA to disburse funding to the City with submission of a copy of the contractor invoice in advance of the City paying the contractor, which means the City will not have to use City funds upfront. The CCTA cannot pay City vendors directly because the CCTA does not have agreements with them.

STRATEGIC PLAN AND ENVIRONMENTAL CONSIDERATIONS

Approval of the proposed agreement is consistent with El Cerrito Strategic Plan Goal A – *Deliver exemplary government services*, and Goal F – *Foster environmental sustainability citywide*. Specifically, approval of the proposed agreement will support the “develop and strengthen relationships with public partners” strategy listed in Goal A, and the “be a leader in setting policies and providing innovative programs that promote environmental sustainability” in Goal F. The multi-agency, multi-year effort to develop and implement the I-80 ICM Project demonstrates the City’s aim to work collaboratively with neighboring and regional agencies. In addition, the I-80 ICM Project is one of the most comprehensive high-tech transportation projects of its kind in the State of California and its benefits include improving air quality by reducing congestion.

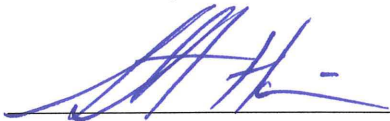
FINANCIAL CONSIDERATIONS

Execution of the proposed agreement will not burden the City with additional O&M costs because it commits the CCTA to provide the necessary funding for any new I-80 ICM equipment installed on local streets.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and agreement, and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution
2. Cooperative Agreement No. 07W.04

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE COOPERATIVE AGREEMENT NO. 07W.04 BETWEEN THE CONTRA COSTA TRANSPORTATION AUTHORITY (CCTA), CITY OF EL CERRITO, CONTRA COSTA COUNTY AND THE CITIES OF RICHMOND, HERCULES, PINOLE, AND SAN PABLO FOR CCTA'S FUNDING THE OPERATIONS AND MAINTENANCE (O&M) OF COMPONENTS OF THE I-80 INTEGRATED CORRIDOR MOBILITY (I-80 ICM) PROJECT

WHEREAS, I-80 is one of the most congested corridors in the San Francisco Bay Area; and

WHEREAS, with projected increase in travel demand, congestion will get worse and incident rates will increase causing additional congestion; and

WHEREAS, I-80 Integrated Corridor Mobility (ICM) is a \$93 million project along I-80, San Pablo Avenue and connecting arterials aimed to optimize the use of existing infrastructure by implementing state-of-the-art technologies to improve safety, reduce congestion, shorten travel times, provide real time information to motorists and improve air quality; and

WHEREAS, the I-80 ICM Project is primarily funded through the 2006 California Infrastructure Bond Act (State Proposition 1B), including \$55.3 million from the Corridor Mobility Improvement Account (CMIA) and \$21.4 million from the Traffic Light Synchronization Program (TLSP); and

WHEREAS, the City of El Cerrito City Council approved Resolution No. 2012-17 authorizing the execution of a Memorandum of Understanding (MOU) with the project partner agencies and the MOU indicated that the CCTA would seek funding for approximately 15 years of O&M of I-80 ICM components installed on local streets; and

WHEREAS, on December 2013, the CCTA approved programming \$2 million for this purpose in the 2013 Measure J Strategic Plan; and

WHEREAS, Cooperative Agreement No. 07W.04 defines a framework to fund O&M of the I-80 ICM components installed on local streets and specifically provides a process for reimbursing West Contra Costa County jurisdictions, including El Cerrito, for the O&M costs.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute Cooperative Agreement No. 07W.04 between the Contra Costa Transportation Authority (CCTA), City of El Cerrito, Contra Costa County and the Cities of Richmond, Hercules, Pinole, and San Pablo for CCTA's funding the O&M of components of the I-80 Integrated Corridor Mobility (I-80 ICM) Project.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 18, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

COOPERATIVE AGREEMENT NO. 07W.04

This COOPERATIVE AGREEMENT (this “AGREEMENT”) is effective this ____ day of _____, 2014 among CONTRA COSTA TRANSPORTATION AUTHORITY, a local transportation authority (“AUTHORITY” or “CCTA”), CONTRA COSTA COUNTY, a political subdivision of the State of California (“CONTRA COSTA”), CITY OF RICHMOND, a municipal corporation of the State of California (“RICHMOND”), the CITY OF SAN PABLO, a municipal corporation of the State of California (“SAN PABLO”), the CITY OF PINOLE, a municipal corporation of the State of California (“PINOLE”), the CITY OF HERCULES, a municipal corporation of the State of California (“HERCULES”), and the CITY OF EL CERRITO, a municipal corporation of the State of California (“EL CERRITO”), and together with AUTHORITY, CONTRA COSTA, RICHMOND, SAN PABLO, PINOLE, EL CERRITO and HERCULES, are collectively referred to as the “PARTIES” and each separately, a “PARTY”.

RECITALS

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

- A. Pursuant to the Memorandum of Understanding (“MOU”) signed in May 2012 for the I-80 Integrated Corridor Mobility (“I-80 ICM”) project , CONTRA COSTA, RICHMOND, SAN PABLO, PINOLE, HERCULES, AND EL CERRITO (each, a “PARTNER AGENCY” and collectively, the “PARTNER AGENCIES”), and AUTHORITY desire to enter into this AGREEMENT to define a framework to fund the operations and maintenance of I-80 ICM components, as outlined in Exhibit A attached hereto and incorporated herein by reference.

- B. The MOU states that:

Within Contra Costa County outside of State right-of-way, local jurisdictions will be responsible for operations and maintenance of ICM equipment, and may choose to contract with Contra Costa County for

maintenance. Local jurisdictions will not be responsible for funding the operations and maintenance of ICM equipment in perpetuity. CCTA will secure \$2,000,000 in funding for operating and maintaining ICM equipment. This amount is estimated to fund about 15 years of operations and maintenance. CCTA will seek additional funding beyond the \$2 million from regional and other sources.

C. The PARTNER AGENCIES will operate and maintain I-80 ICM equipment within their jurisdiction outside of the State of California's right of way, and submit invoices to the AUTHORITY for such cost, which shall be reimbursed as provided in this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual agreements set forth above and the rights and obligations set forth in this AGREEMENT and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, AUTHORITY and each PARTNER AGENCY hereby agree to the following:

SECTION 1

EACH PARTNER AGENCY AGREES TO:

A. Operate and maintain I-80 ICM equipment within its jurisdiction, outside of the State of California's right of way as outlined in the MOU, through its personnel or by contracting with a third party.

B. Submit invoices to AUTHORITY delineating maintenance and operation cost for each I-80 ICM component, and certification that costs incurred have not been reimbursed.

C. Maintain true and complete records in connection with the PROJECT, for at least thirty-six (36) months after the delivery of the invoices to the AUTHORITY.

D. Allow the AUTHORITY upon its request to audit all expenditures for I-80 ICM Operations and Maintenance funded through this AGREEMENT. For the duration of each fiscal year of the I-80 ICM project, and for four (4) years following the end of each fiscal year of the I-80 ICM project, or four years following the earlier termination of the AGREEMENT, each PARTNER AGENCY will make available to the AUTHORITY all records relating to expenses incurred in performance of this AGREEMENT.

SECTION 2

AUTHORITY AGREES TO:

- A. Program \$2,000,000 in Measure J funds for operating and maintaining I-80 ICM equipment within PARTNER AGENCIES' jurisdictions outside of the State of California's right of way, as outlined in the MOU.
- B. Reimburse each PARTNER AGENCY after receipt of each invoice for operation and maintenance costs associated with the I-80 ICM project within the PARTNER AGENCY'S jurisdiction, as outlined in the MOU.
- C. Notify each PARTNER AGENCY one year prior to the anticipated depletion of the \$2 million in Measure J funds programmed for I-80 ICM operations and maintenance.
- D. Seek additional funds for operations and maintenance from regional, state and other sources, in accordance with the MOU.

SECTION 3

IT IS MUTUALLY AGREED AMONG AUTHORITY AND PARTNER AGENCIES:

- A. Term. The term of this AGREEMENT shall commence on December 1, 2014 and shall remain in effect until terminated as provided in Subsection I of this Section 3.
- B. Additional Acts and Documents. Each PARTY agrees to do all such things and take all such actions, and to make, execute, and deliver such other documents and instruments, as shall be reasonably requested by each other party to carry out the provisions, intent, and purpose of the AGREEMENT.
- C. Amendment. This AGREEMENT may not be changed, modified, or rescinded except in writing, signed by all PARTIES hereto, and any attempt at oral modification of this AGREEMENT shall be void and of no effect.

D. Assignment. This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any PARTY without the express written consent of the other PARTIES.

E. Binding on Successors. This AGREEMENT shall be binding upon the successors, assignees and transferees of the PARTIES. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided in Subsection D of this SECTION 3, above.

F. Indemnification.

i. AUTHORITY hereby agrees to indemnify, defend, assume all liability for, and hold harmless each PARTNER AGENCY, its officers, employees, agents, and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs, and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and attorneys' fees), environmental claims, and bodily or personal injuries or death to any persons (collectively, "CLAIMS") arising out of or in any way connected to AUTHORITY, its officers, agents, or employees in connection with or arising from any of its obligations under this AGREEMENT. However, the AUTHORITY shall not be required to indemnify any PARTNER AGENCY for any CLAIMS that arise from the sole negligence or willful misconduct of the PARTNER AGENCY. This indemnification shall survive the termination of the AGREEMENT.

ii. Each PARTNER AGENCY hereby agrees to indemnify, defend, assume all liability for and hold harmless AUTHORITY and its member agencies, officers, employees, agents and representatives, to the maximum extent allowed by law, from all CLAIMS arising out of or in any way connected to the PARTNER AGENCY, its officers, agents, or employees in connection with or arising from any of its obligations under this AGREEMENT. However, the PARTNER AGENCY shall not be required to indemnify AUTHORITY for any CLAIMS that arise from the sole negligence or willful misconduct of the AUTHORITY. This indemnification shall survive the termination of the AGREEMENT.

iii. Each PARTNER AGENCY hereby agrees to indemnify, defend, assume all liability for, and hold harmless each other PARTNER AGENCY, its officers, employees, agents, and representatives, to the maximum extent allowed by law, from all CLAIMS arising from the

indemnifying PARTNER AGENCY's operation and maintenance of I-80 ICM equipment within the PARTNERS AGENCY's jurisdiction pursuant to this AGREEMENT. However, no PARTNER AGENCY shall be required to indemnify any other PARTNER AGENCY for any CLAIMS that arise from the sole negligence or willful misconduct of that other PARTNER AGENCY. This indemnification shall survive the termination of this AGREEMENT.

G. Compliance with Laws. AUTHORITY and each of the PARTNER JURISDICTIONS shall comply with all applicable federal and state laws and regulations regarding the work performed and the reimbursements requested under this agreement.

H. Notices. All required or permitted payments, reports, demands, and notices may be sent by regular mail or electronic mail or personally delivered. Notices that are mailed by regular mail shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a PARTY shall send or deliver all such communications relating to this AGREEMENT to the following address:

Hisham Noeimi
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597
hnoeimi@ccta.net

Julie Bueren
Public Works Director
Contra Costa County
255 Glacier Drive
Martinez, CA 94553
jbuer@pw.cccounty.us

Steven Tam
City of Richmond
450 Civic Center Plaza
Richmond, CA 94804
Steven_tam@ci.richmond.ca.us

Yvette Ortiz
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
yortiz@ci.el-cerrito.ca.us

Dean Allison
City of Pinole
2131 Pear Street
Pinole, CA 94564
DAllison@ci.pinole.ca.us

Jeff Brown
City of Hercules
111 Civic Drive
Hercules, CA 94547
jbrown@ci.hercules.ca.us

Matt Rodriguez
City of San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806
MattR@sanpabloca.gov

I. Termination of Agreement. A PARTY may terminate this AGREEMENT at any time by giving written notice of termination to each of the other PARTIES specifying the effective date thereof; provided that any notice of termination shall be given at least thirty (30) days before its effective date.

J. Entire Agreement. This AGREEMENT is the entire agreement among AUTHORITY and the PARTNER AGENCIES relating to the subject matter of this AGREEMENT. All PARTIES acknowledge they have not relied upon any promise, representation, or warranty not expressly set forth in this AGREEMENT in executing this AGREEMENT. If any provision of this AGREEMENT is void or otherwise unenforceable, the remainder of the AGREEMENT shall

continue in full force and effect. Any changes to the terms and provisions of this AGREEMENT or affecting the obligations of the PARTIES set forth in this AGREEMENT shall be by written amendment signed by all PARTIES.

K. Severability. Should any part of this AGREEMENT be declared unconstitutional, invalid, or beyond the authority of a PARTY to enter into or carry out, such decision shall not affect the validity of the remainder of this AGREEMENT which shall continue in full force and effect; provided that the remainder of this AGREEMENT can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.

L. Waiver. No waiver by a PARTY of any default or breach of any covenant, term, or conditions in this AGREEMENT by the other PARTIES shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this AGREEMENT shall be effective unless in writing and signed by the waiving PARTY.

M. Controlling Law and Venue. This AGREEMENT and all matters relating to it shall be governed by the laws of the State of California.

N. Authority. All PARTIES executing this AGREEMENT represent and warrant that they are authorized to do so.

O. Counterparts. This AGREEMENT may be executed in counterparts.

P. Limitations. All obligations of AUTHORITY under the terms of this AGREEMENT are expressly subject to the AUTHORITY'S continued authorization to collect and expend the sales tax proceeds provided by MEASURE C and MEASURE J. If for any reason the AUTHORITY'S right to collect or expend such sales tax proceeds is terminated or suspended in whole or part, the AUTHORITY shall promptly notify PARTNER JURISDICTIONS, and the PARTIES shall consult on a course of action. If, after twenty five (25) working days, a course of action is not agreed upon by the parties, this AGREEMENT shall be deemed terminated by mutual or joint consent; provided, that any obligation to fund from the date of the notice shall be expressly limited by

and subject to (i) the lawful ability of the AUTHORITY to expend sales tax proceeds for the purposes of this AGREEMENT; and (ii) the availability, taking into consideration all the obligations of the AUTHORITY under all outstanding contracts, agreement to other obligations of the AUTHORITY, of funds for such purposes.

[Signatures on the following pages]

CONTRA COSTA TRANSPORTATION AUTHORITY

By: Kevin Romick, Chair

Date _____, 2014

APPROVED AS TO FORM:

By: Malathy Subramanian, General Counsel

Date _____, 2014

CONTRA COSTA COUNTY

By: Julie Bueren, Public Works Director

Date _____, 2014

APPROVED AS TO FORM:
Sharon Anderson, County Counsel

By: Deputy County Counsel

Date _____, 2014

CITY OF RICHMOND

By:

Date _____, 2014

APPROVED AS TO FORM:

By

Date _____, 2014

CITY OF EL CERRITO

By: Scott Hanin, City Manager

Date _____, 2014

APPROVED AS TO FORM:

By: Sky Woodruff, City Attorney

Date _____, 2014

CITY OF PINOLE

By:

Date _____, 2014

APPROVED AS TO FORM:

By:

Date _____, 2014

CITY OF HERCULES

By:

Date _____, 2014

APPROVED AS TO FORM:

By:

Date _____, 2014

CITY OF SAN PABLO

By:

Date _____, 2014

APPROVED AS TO FORM:

By:

Date _____, 2014

Exhibit A



Maintenance Costs -- CONTRA COSTA COUNTY (LOCAL ROW)

Device	Locations	Number of Devices	Unit Capital Cost	Unit Maintenance Cost/Year	Total Cost/Year	Life (Years)	Maintenance Cost Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by County
Existing SMART Corridor cameras (used by project)	N/A	0	\$0.00	\$0.00	\$0.00	10	Same as new CCTV camera	\$0	\$0	\$0	\$0
New closed-circuit television (CCTV) cameras	San Pablo Ave at Willow Ave and at Cummings	2	\$2,000	\$336	\$672	10	Alameda CTC Cost Data	\$672	\$0	\$0	\$0
New video recorders	N/A	0	\$3,550	\$359	\$0	10	10% of Capital cost	\$0	\$0	\$0	\$0
New video recorders (used by project)	John Muir Pkwy east of San Pablo Avenue	1	\$3,550	\$359	\$359	10	Same as new CCTV camera	\$359	\$0	\$0	\$0
New video recorders (used by project)	San Pablo Ave east of Cummings Street	1	\$3,550	\$359	\$359	10	Same as new CCTV camera	\$359	\$0	\$0	\$0
Existing SMART Corridor TSP intersections	San Pablo Ave at Cummings Street and west of Cummings Street	2	\$1,000	\$403	\$806	10	Alameda CTC Cost Data	\$806	\$0	\$0	\$0
New TSP intersections	San Pablo Avenue at (1) Willow Rd, (2) Victoria Crescent East, (3) John Muir Pkwy (SSA), (4) Crestwood Dr, (5) New Rd	5	\$5,000	\$403	\$2,013	10	Alameda CTC Cost Data	\$2,013	\$0	\$0	\$0
New EVI-only intersections	N/A	0	\$5,000	\$403	\$0	10	Same as EVI/TSP intersection	\$0	\$0	\$0	\$0
New Traffic Signal	Parker Ave (SB) north of San Pablo Ave, San Pablo Avenue (NB) west of Cummings Street, San Pablo Ave (SB) east of Cummings Street	3	\$1,000	\$1,000	\$3,000	10	Per Skyline, includes GPRS cost	\$3,000	\$0	\$0	\$0
Wireless GPRS modem (traffic signal controllers)	N/A	0	\$2,800	\$250	\$1,410	3	Based on City of Concord	No increase in maint cost	\$0	\$1,410	\$0
Controller communications: Ethernet switch	San Pablo Ave/Cummings, San Pablo Ave/Refinery, Parker/2nd, Parker/4th, San Pablo Ave/Parker/Willow	5	\$4,000	\$406	\$2,030	10	10% of Capital cost	\$2,030	\$0	\$0	\$0
Controller communications: Ethernet module	San Pablo Ave/Cummings, San Pablo Ave/Refinery, Parker/2nd, Parker/4th, San Pablo Ave/Parker/Willow	5	\$1,475	\$146	\$738	10	10% of Capital cost	\$738	\$0	\$0	\$0
New Intersection Vehicle Detection: Video Image Detection camera	N/A	0	\$11,785	\$336	\$0	10	Estimated same as CCTV camera	\$0	\$0	\$0	\$0
New Intersection Vehicle Detection: Magnetometer	N/A	0	\$8,438	\$844	\$0	10	10% of Capital cost	\$0	\$0	\$0	\$0
Speed Feedback Signs	N/A	0	\$12,875	\$500	\$0	15	Compared to trailerizer	\$0	\$0	\$0	\$0
New Annual Characteristic Message Sign (CMS), single-sided	N/A	0	\$160,333	\$1,500	\$0	10	Compared to trailerizer	\$0	\$0	\$0	\$0
New Annual Characteristic Message Sign (CMS), double-sided	N/A	0	\$248,752	\$2,000	\$0	10	Compared to trailerizer	\$0	\$0	\$0	\$0
New Variable Message Sign (VMS), single-sided	N/A	0	\$100,000	\$1,000	\$0	10	Compared to trailerizer	\$0	\$0	\$0	\$0
New Variable Message Sign (VMS), double-sided	N/A	0	\$170,000	\$1,700	\$0	10	Compared to trailerizer	\$0	\$0	\$0	\$0
Traffic Signal Software Maintenance/Upgrades *	N/A	10.00%	\$500,000	\$27,500	\$2,750	5	Actual bids	\$2,750	\$0	\$0	\$0
Estimated Annual Maintenance Cost (Subtotal)					\$11,856	Total increase due to ICM Devices					
TOTAL ESTIMATED CONSTRUCTION COST					\$	194,980.00					\$0

* Local ROW cost only; no increase in maintenance cost if traffic signal system is existing
Contra Costa County has existing signal system.

Operating Costs

Device		Quantity	Capital Cost	Unit Operation Cost	Total Cost/Year	Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by County
San Pablo Corridor Collaboration		3.99%		\$122,512	\$4,883	Estimated Cost	\$4,883	\$0	\$4,883	\$0
Wireless GPRS modem		5		\$198	\$3,140	\$64 per month	\$3,140	\$0	\$3,140	\$0
Point Point 11 line for each camera		2		\$2,100	\$4,200	\$174 per month	\$4,200	\$0	\$4,200	\$0
Fixed Devices Electrically (new traffic signal, new CCTV cameras)		2		3000	\$1,300	Alameda CTC Cost Data	\$1,300	\$0	\$1,300	\$0
IT/Staffing Assistance - Maintenance Staff		3.99%			\$0	Internal based on each Agency's OAM policy	\$0	\$0	\$0	\$0
IT/Staffing Assistance - Operations Staff		3.99%			\$0	Internal based on each Agency's OAM policy	\$0	\$0	\$0	\$0
Estimated Annual Operating Cost (Subtotal)					\$14,243	Total increase due to ICM Devices	\$14,243	\$0	\$14,243	\$0

* Provided by Alameda CTC or City Traffic Signal Coordinator for all agencies

Total Estimated Annual Operation and Maintenance Cost					\$25,896	Total increase due to ICM Devices					\$0
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Local ROW cost only- no increase in maintenance cost if traffic signal system is existing
New signal system for El Cerrito being provided by project

Operating Costs

*Provided by Alameda CTC or City Traffic Signal Coordinator for all agencies

Prepared and Maintained by: Randy Durnberger
LAST UPDATED: 3/1/12



Maintenance Costs -- SAN PABLO (LOCAL ROW)

Device	Locations	Number of Devices	Unit Capital Cost	Unit Maintenance Cost/Year	Total Cost/Year	Life (Years)	Maintenance Cost Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
Existing SMART Corridor cameras (used by project)	San Pablo Dam Rd at San Pablo Ave	1	\$0,300	\$336	\$336	10	Same as new CCTV camera	\$336		\$336	\$0
New speed-camera reduction (CCTV cameras)	San Pablo Ave at El Portal Drive	1	\$2,000	\$336	\$336	10	Alameda CTC Cost Data	\$336		\$336	\$0
New video encoders	n/a	0	\$3,560	\$358	\$358	10	10% of Capital cost	\$358		\$358	\$0
Existing SMART Corridor Vehicle Detection Stations (used by project)	San Pablo Ave south of El Portal Dr	1	\$14,080	\$358	\$358	10	same as New MVDOS	\$358		\$358	\$0
New Vehicle Detection Stations	San Pablo Dam Rd east of San Pablo Ave, El Portal Dr, east of Mission Bell Dr	2	\$14,080	\$358	\$716	10	Alameda CTC Cost Data	\$716		\$716	\$0
Existing SMART Corridor TSP intersections	San Pablo Ave at (1) Rummel Rd (2) El Portal Dr, (3) International Market Pl (4) 23rd St (5) Van Ness St (6) Church Ln (7) Vale Rd (8) San Pablo Dam Rd (9) Ford Motor Entrance (10) El Portal Blvd	10	\$5,060	\$403	\$4,025	10	Alameda CTC Cost Data	\$4,025		\$4,025	\$0
New TSP intersections	San Pablo Ave at (1) Rummel Rd (2) El Portal Dr, (3) International Market Pl (4) 23rd St (5) Van Ness St (6) Church Ln (7) Vale Rd (8) San Pablo Dam Rd (9) Ford Motor Entrance (10) El Portal Blvd	1	\$5,060	\$403	\$403	10	Alameda CTC Cost Data	\$403		\$403	\$0
New EVF-only intersections	San Pablo Ave at (1) Rollingwood Dr (2) Road 20, SPOR at (1) Ventura Ave (2) Contra Costa Ave	4	\$5,060	\$403	\$1,610	10	Same as EVPTSP intersection	\$1,610		\$1,610	\$0
New Trailblazer Signs	San Pablo Ave (NB) at (1) south of San Pablo Dam Rd (2) south of El Portal Dr, San Pablo Ave (SB) at (1) north of SPDR (2) north of El Portal Dr	4	\$24,675	\$1,000	\$4,000	10	Per Skyline, includes GPRS cost	\$4,000		\$4,000	\$0
New Traffic Signal	n/a	0	\$300,000	\$3,000	\$3,000	10	Based on City of Concord	\$3,000		\$3,000	\$0
Traffic Signal Controller (located in signal cabinet)	n/a	2	\$250	\$350	\$700	10	10% of Capital cost	\$700	No increase in traffic cost		\$0
Wireless GPRS module (located in signal cabinet)	n/a	2	\$250	\$350	\$700	10	10% of Capital cost	\$700		\$564	\$0
Controller communications, Ethernet switch	El Portal Dr/Church Ln/Rollingwood Dr, San Pablo Dam Rd/Ventura Ave	0	\$4,000	\$400	\$400	10	10% of Capital cost	\$400		\$0	\$0
Controller communications, Ethernet switch	n/a	0	\$1,475	\$148	\$295	10	10% of Capital cost	\$295		\$295	\$0
New Intersection Vehicle Detection, Video Image Detection camera	El Portal Dr/Church Ln/Rollingwood Dr, San Pablo Dam Rd/Ventura Ave	2	\$11,785	\$336	\$336	10	Estimated same as CCTV camera	\$336		\$336	\$0
Speed Feedback Signs	n/a	0	\$9,438	\$844	\$844	10	10% of Capital cost	\$844		\$0	\$0
New Intersection Vehicle Detection, Video Image Detection camera	n/a	0	\$12,873	\$500	\$500	10	Compared to Trailblazer	\$0		\$0	\$0
Speed Feedback Signs	n/a	0	\$240,782	\$2,000	\$2,000	10	Compared to Trailblazer	\$0		\$0	\$0
New multi-mode (GPRS-Infrared) TSP Emitters	n/a	0	\$1,000	\$500	\$500	10	Assumed to be same as existing	\$500		\$500	\$0
Traffic Signal Software Maintenance/licenses *	n/a	0	\$4,750	\$27,500	\$27,500	10	Assumed to be same as existing	\$27,500		\$27,500	\$0
Estimated Annual Maintenance Cost (Subtotal)					\$15,557		Total increase due to ICM Devices	\$12,843	\$0	\$12,843	\$0
TOTAL ESTIMATED CONSTRUCTION COST					\$	239,350.00					
TOTAL ESTIMATED CONSTRUCTION COST					* Local ROW cost only; no increase in maintenance cost if traffic signal system is existing. San Pablo has existing signal system.						



Maintenance Costs -- RICHMOND (LOCAL ROW)

Device	Location(s)	Number of Device	Unit Capital Cost	Unit Maintenance Cost/Year	Total Cost/Year	Life (Years)	Maintenance Cost Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
Existing SMART Corridor cameras (used by project)	San Pablo Avenue/Richmond Parkway	1	\$0,300	\$336	\$336	10	Same as new CCTV camera	\$336		\$336	\$0
New closed-circuit television (CCTV) cameras	San Pablo Avenue/Hillside	1	\$23,000	\$336	\$336	10	Alameda CTC Cost Data	\$336		\$336	\$0
New video stoplamps	n/a	0	\$3,500	\$359	\$359	10	10% of Capital cost	\$0		\$0	\$0
Existing SMART Corridor Vehicle Detection Stations (used by project)	San Pablo Ave (south of Richmond Pkwy), Richmond Pkwy west of I-80, San Pablo Ave (south of Robert H Miller), San Pablo Ave (south of Barron)	4	\$14,000	\$358	\$1,432	10	same as New MVDS	\$1,432		\$1,432	\$0
New Vehicle Detection Stations	Hilltop Dr. (South of Hillview Dr.), Richmond Pkwy (east of Hillside Dr.)	2	\$14,000	\$358	\$716	10	Alameda CTC Cost Data	\$716		\$716	\$0
Existing SMART Corridor TSP intersections	San Pablo Ave at (1) McBryde Av (2) Elgin Av (3) Garvin Av (4) Solano Av (5) Contra Costa (6) Santa Av (7) Benet Av (8) Elgin Av (9) Hillside Dr. (10) Hillside Dr.	9	\$5,000	\$403	\$3,623	10	Alameda CTC Cost Data	\$3,623		\$3,623	\$0
New TSP intersections	San Pablo Ave at (1) Richmond Pkwy (2) Hilltop Dr. (3) Robert Miller Dr., Richmond Pkwy at (1) Lakeside Dr. (2) Bella Vista Entrance	5	\$5,000	\$403	\$2,013	10	Alameda CTC Cost Data	\$2,013		\$2,013	\$0
New EVPT-only intersections	Hilltop Dr at (1) Blume Dr (2) Shane Dr (3) Robert Miller Dr (4) Hillview Dr (5) Research Dr., Central Ave at San Luis Ave/Pierce, McBryde Ave at (1) Anador St (2) I-80 WB off.	8	\$5,000	\$403	\$3,220	10	Same as EVPTSP intersection	\$3,220		\$3,220	\$0
New Trailblazer Signs	San Pablo Ave (NB) (1) north of Barrett Ave. (2) south of Hilltop Dr. (3) south of Richmond Pkwy. San Pablo Ave (SB) (1) south of Clinton Ave. (2) north of Hilltop Dr. (3) south of K&N St.	6	\$24,675	\$1,000	\$6,000	10	Per Skyline, includes GPRS cost	\$6,000		\$6,000	\$0
New Traffic Signal	n/a - city responsibility	2	\$200,000	\$3,000	\$6,000	10	Based on City of Concord	\$6,000			\$6,000
Traffic Signal Controller Upgrades (existing signal)	n/a - city responsibility	23	\$2,500	\$250	\$5,750	10	10% of Capital cost	No increase in maint cost			
Wireless GPRS modem (traffic signal controllers)	McBryde-40 WB off-ramp, McBryde/Anador, Richmond	4	\$2,820	\$282	\$1,128	3	10% of Capital cost	\$1,128		\$1,128	\$0
Controller communications. Ethernet module	Provid. Alameda Dr. Hillside/Robert Miller	0	\$4,000	\$408	\$0	10	10% of Capital cost	\$0		\$0	\$0
Controller communications. Ethernet module	McBryde-40 WB off-ramp, McBryde/Anador, Richmond	4	\$1,475	\$148	\$580	10	10% of Capital cost	\$580		\$580	\$0
New Intersection Vehicle Detection. Video Image Detection camera	Provid. Alameda Dr. Hillside/Robert Miller	7	\$11,785	\$336	\$2,352	10	Estimated same as CCTV camera	\$2,352		\$2,352	\$0
Speed Feedback Signs	n/a - city responsibility	0	\$8,438	\$844	\$0	10	10% of Capital cost	\$0		\$0	\$0
New Annual Changeable Message Sign (CMS) single sided	n/a	0	\$12,875	\$500	\$0	15	Compared to trailblazer	\$0		\$0	\$0
New Annual Changeable Message Sign (CMS) double-sided	n/a	0	\$160,333	\$1,500	\$0	10	Compared to trailblazer	\$0		\$0	\$0
Existing TSP cameras	n/a	0	\$985,282	\$2,000	\$0	10	Compared to trailblazer	\$0		\$0	\$0
Existing TSP cameras	n/a	0	\$2,500	\$250	\$0	10	10% of Capital cost	\$0		\$0	\$0
Traffic Signal Software Maintenance/Upgrades *	n/a	0	\$500,000	\$27,500	\$2,750	5	Actual bid. No to-be same as existing	\$2,750		\$2,750	\$0
TOTAL ESTIMATED CONSTRUCTION COST			Estimated Annual Maintenance Cost (Subtotal)		\$35,909	Total Increase due to ICM Devices		\$27,745	\$0	\$19,393	\$8,352

* Local ROW cost only - no increase in maintenance cost if traffic signal system is existing
Richmond has existing signal system.

Operating Costs

Device	Quantity	Capital Cost	Unit Operation Cost	Total Cost/Year	Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
San Pablo Corridor Collaboration	8,70%		\$122,512	\$10,653	Estimated Cost	\$10,653		\$10,653	\$0
Wireless GPRS modem	4	\$768	\$3,072	\$4,840	\$44 per month	\$3,072		\$3,072	\$0
Point-Point T1 line for each camera	1	\$2,100	\$2,100	\$2,100	\$175 per month	\$2,100		\$2,100	\$0
Field Devices Electricity (new traffic signal, new CCTV cameras)	3	\$660	\$1,980	\$1,980	Alameda CTC Cost Data	\$1,980		\$660	\$1,320
IT Staffing Assistance - Maintenance Staff	8,70%		\$0	\$0	Internal based on each Agency's O&M policy	\$0		\$0	\$0
IT Staffing Assistance - Operation Staff	8,70%		\$0	\$0	Internal based on each Agency's O&M policy	\$0		\$0	\$0
Estimated Annual Operating Cost (Subtotal)			\$17,805		Total Increase due to ICM Devices	\$17,805	\$0	\$16,485	\$1,320

*Provided by Alameda CTC or City Traffic Signal Coordinator for all agencies

Total Estimated Annual Operation and Maintenance Cost	\$63,714	Total Increase due to ICM Devices	\$45,550	\$0	\$35,878	\$9,672
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Maintenance Costs -- PINOLE (LOCAL ROW)

Device	Location(s)	Number of Devices	Unit Capital Cost	Unit Maintenance Cost/Year	Total Cost/Year	Life (Years)	Maintenance Cost Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
Existing SMART Corridor cameras (used by project)		0	\$0	\$336	\$0	10	Same as New CCTV Camera	\$0	\$0	\$0	\$0
New Concealed Intersection CCTV cameras	San Pablo Ave at (1) Argonaut (2) Pinole Valley Rd	2	\$1,000	\$336	\$672	10	Alameda CTC Cost Data	\$672	\$672	\$0	\$0
New Concealed Intersection CCTV cameras	San Pablo Ave south of Del Monte	1	\$1,000	\$336	\$336	10	Alameda CTC Cost Data	\$336	\$336	\$0	\$0
Existing SMART Concealed Vehicle Detection Stations (used by project)	San Pablo Ave south of Del Monte	1	\$14,080	\$358	\$14,438	10	Same as New MVDIS	\$358	\$358	\$0	\$0
New Vehicle Detection Stations	Applan Way north of Mann Dr, San Pablo Ave west of Oakridge Dr, Pinole Valley Rd south of Henry Avenue	3	\$14,080	\$358	\$14,438	10	Alameda CTC Cost Data	\$1,074	\$1,074	\$0	\$0
Existing SMART Concealed TSP Intersections		0	\$5,060	\$403	\$0	10	Alameda CTC Cost Data	\$0	\$0	\$0	\$0
New TSP Intersections	San Pablo Ave at (1) John St, (2) Pinole Valley Rd (3) Fernandez Av (4) Tennyson Av (5) Oak Ridge Ln (6) Applan Way (7) Sunnyview Dr (8) Pinole Shores (9) Del Monte Dr (10) Tara Hills Dr (11) Shamrock Dr, Pinole Valley Rd at (1) Tennyson Dr	14	\$5,060	\$403	\$5,635	10	Alameda CTC Cost Data	\$5,635	\$5,635	\$0	\$0
New EVIP-only intersections	Pinole Valley Rd at San Pablo Ave and Applan Way at Canyon Dr	2	\$5,060	\$403	\$805	10	Same as EVIP/TSP Intersection	\$805	\$805	\$0	\$0
New Trailblazer Signs	San Pablo Ave (NB) (1) west of Applan Way (2) south of Tennyson Dr, San Pablo Ave (SB) (1) east of Laurel Ave (2) north of Tennyson Dr	4	\$24,675	\$1,000	\$4,000	10	Per Skyline, includes GPRS cost	\$4,000	\$4,000	\$0	\$0
New Traffic Signal		0	\$2,000,000	\$3,000	\$0	10	Based on City of Concord	\$0	\$0	\$0	\$0
Traffic Signal Controller Upgrades (existing signal)	Applan Way/Tara Hills, Pinole Valley/Henry, Fitzgerald/Best	3	\$2,000	\$250	\$750	10	10% of Capital cost	\$750	\$750	\$0	\$0
Wireless GPRS modem (traffic signal controllers)		0	\$2,000	\$250	\$0	10	10% of Capital cost	\$0	\$0	\$0	\$0
Controller communications, Ethernet switch		0	\$4,000	\$400	\$0	10	10% of Capital cost	\$0	\$0	\$0	\$0
Controller communications, Ethernet module		0	\$1,475	\$148	\$0	10	10% of Capital cost	\$0	\$0	\$0	\$0
New Intersection Vehicle Detection, Video Image Detection camera		0	\$11,785	\$336	\$0	10	Estimated same as CCTV camera	\$0	\$0	\$0	\$0
New Intersection Vehicle Detection, Magnetometer		0	\$8,438	\$844	\$0	10	10% of Capital cost	\$0	\$0	\$0	\$0
Speed Feedback Signs		2	\$12,875	\$500	\$1,000	15	Compared to trailblazer	\$1,000	\$1,000	\$0	\$0
New Annual Characteristic Message Sign (CMS), single sided		0	\$100,353	\$1,500	\$0	10	Compared to trailblazer	\$0	\$0	\$0	\$0
New Annual Characteristic Message Sign (CMS), double sided		0	\$200,706	\$3,000	\$0	10	Compared to trailblazer	\$0	\$0	\$0	\$0
Existing TSP Intersections		0	\$1,000	\$500	\$0	10	Assumed to be same as existing	\$0	\$0	\$0	\$0
New multi-modal (GPRS-enabled) TSP Emitters		0	\$4,750	\$0	\$0	10	Assumed to be same as existing	\$0	\$0	\$0	\$0
Traffic Signal Software Maintenance/Upgrades *		10.00%	\$500,000	\$27,500	\$27,500	5	Actual bids	\$27,500	\$27,500	\$0	\$0
Estimated Annual Maintenance Cost (Subtotal)					\$19,833		Total Increase due to ICM Devices	\$17,583	\$0	\$16,583	\$1,000
TOTAL ESTIMATED CONSTRUCTION COST			\$	329,035.00			* Local ROW cost only, no increase in maintenance cost if traffic signal system is existing. New signal system work for Pinole (connected to County signal system) being provided by project.				

Operating Costs

Device	Quantity	Capital Cost	Unit Operation Cost	Total Cost/Year	Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
San Pablo Corridor Collocation	5.98%		\$122,512	\$7,324	Estimated Cost	\$7,324	\$7,324	\$0	\$0
Wireless GPRS modem	3	\$8,438	\$768	\$2,304	\$84 per month	\$2,304	\$2,304	\$0	\$0
Point-Point T1 line for each camera	2	\$2,100	\$2,100	\$4,200	\$175 per month	\$4,200	\$4,200	\$0	\$0
Field Devices Electronics (new traffic signal, new CCTV cameras)	2	\$660	\$660	\$1,320	Alameda CTC Cost Data	\$1,320	\$1,320	\$0	\$0
IT/Staffing Assistance - Maintenance Staff	5.98%			\$0	Internal based on each Agency's O&M policy	\$0	\$0	\$0	\$0
IT/Staffing Assistance - Operation Staff	5.98%			\$0	Internal based on each Agency's O&M policy	\$0	\$0	\$0	\$0
Estimated Annual Operating Cost (Subtotal)				\$15,148	Total Increase due to ICM Devices	\$15,148	\$0	\$15,148	\$0

*Provided by Alameda CTC or City Traffic Signal Coordinator for all agencies

Total Estimated Annual Operation and Maintenance Cost	\$34,981	\$32,731	\$0	\$1,731	\$1,000
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Maintenance Costs -- HERCULES (LOCAL ROW)

Device	Locations	Number of Devices	Unit Capital Cost	Unit Maintenance Cost/Year	Total Cost/Year	Life (Years)	Maintenance Cost Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
Existing SMART Corridor cameras (used by project)	San Pablo Ave at John Muir Pkwy	1	\$0.00	\$336	\$336	10	Same as new CCTV camera	\$336		\$336	\$0
New closed-circuit television (CCTV) cameras	n/a	0	\$0.00	\$336	\$0	10	Alameda CTC Cost Data	\$0		\$0	\$0
New video encoders	San Pablo Ave south of Sycamore	0	\$3,558	\$358	\$0	10	10% of Capital cost	\$0		\$0	\$0
Existing SMART Corridor Vehicle Detection Stations (used by project)	San Pablo Ave south of Sycamore	1	\$14,080	\$358	\$358	10	Same as New MVDs	\$358		\$358	\$0
New Vehicle Detection Stations	San Pablo Ave south of Victoria Crescent	1	\$14,080	\$358	\$358	10	Alameda CTC Cost Data	\$358		\$358	\$0
Existing SMART Corridor TSP Intersections	n/a	0	\$5,060	\$403	\$0	10	Alameda CTC Cost Data	\$0		\$0	\$0
New TSP Intersections	Willow Rd at Hawthorne Dr, San Pablo Ave at (1) Transit Center (2) Sycamore Ave (3) Willow Rd (4) Hercules Ave	5	\$5,060	\$403	\$2,013	10	Alameda CTC Cost Data	\$2,013		\$2,013	\$0
New EIP-only intersections	n/a	0	\$5,060	\$403	\$0	10	Same as EIP/TSP intersection	\$0		\$0	\$0
New Trailblazer Signs	San Pablo Ave NB (1) south of John Muir Pkwy (2) south of Willow Ave, and San Pablo Ave SB north of John Muir Pkwy	3	\$24,875	\$1,000	\$3,000	10	Per Skyline, includes GPRS cost	\$3,000		\$3,000	\$0
New Traffic Signal	n/a	0	\$200,000	\$3,000	\$0	10	Based on City of Concord	\$0		\$0	\$0
New traffic signal Upgrades (existing signal)	n/a	0	\$200,000	\$3,000	\$0	10	Based on City of Concord	\$0		\$0	\$0
Wireless GPRS modem (traffic signal controllers)	n/a	0	\$2,820	\$282	\$0	3	10% of Capital cost	\$0		\$0	\$0
Controller communications. Ethernet switch	n/a	0	\$4,060	\$406	\$0	10	10% of Capital cost	\$0		\$0	\$0
Controller communications. Ethernet module	n/a	0	\$1,475	\$148	\$0	10	10% of Capital cost	\$0		\$0	\$0
New Intersection Vehicle Detection. Video Image Detection camera	n/a	0	\$11,785	\$336	\$0	10	Estimated same as CCTV camera	\$0		\$0	\$0
New Intersection Vehicle Detection. Magnetometer	n/a	0	\$8,438	\$844	\$0	10	10% of Capital cost	\$0		\$0	\$0
Speed Feedback Signs	n/a	0	\$12,875	\$500	\$0	15	Compared to trailblazer	\$0		\$0	\$0
New Alameda Changeable Message Sign (CMS), single sided	n/a	0	\$160,333	\$1,500	\$0	10	Compared to trailblazer	\$0		\$0	\$0
New Alameda Changeable Message Sign (CMS), double sided	n/a	0	\$249,782	\$2,000	\$0	10	Compared to trailblazer	\$0		\$0	\$0
New multi-modal (GPS-enabled) TSP Emitters	n/a	0	\$4,750	\$0	\$0	10	Assumed to be same as existing	\$0		\$0	\$0
Traffic Signal Software Maintenance/Upgrades *	n/a	0	\$4,750	\$0	\$0	10	Assumed to be same as existing	\$0		\$0	\$0
TOTAL ESTIMATED CONSTRUCTION COST		10.00%	\$500,000	\$27,500	\$2,750	5	Actual bids	\$2,750		\$2,750	\$0
Estimated Annual Maintenance Cost (Subtotal)				\$0.229	\$0.229		Total increase due to ICM Devices	\$0.815	\$0	\$0.815	\$0
TOTAL ESTIMATED CONSTRUCTION COST			\$	120,905.00							

* Local ROW cost only, no increase in maintenance cost if traffic signal system is existing.
New signal system work for Hercules (connected to County signal system) being provided by project.

Operating Costs

Device	Quantity	Capital Cost	Unit Operation Cost	Total Cost/Year	Notes	Devices that Increase Inventory	Paid by Caltrans	Paid by CCTA	Net Contribution by City
San Pablo Corridor Collocation	1.63%	\$122,512	\$122,512	\$1,987	Estimated Cost	\$1,987		\$1,987	\$0
Wireless GPRS modem	0	\$768	\$768	\$0	\$84 per month	\$0		\$0	\$0
Point-Point T1 line for each camera	0	\$2,100	\$2,100	\$0	\$175 per month	\$0		\$0	\$0
Field Devices Electricity (new traffic signal, new CCTV cameras)	0	\$660	\$660	\$0	Alameda CTC Cost Data	\$0		\$0	\$0
IT/Staffing Assistance* - Maintenance Staff	1.63%			\$0	\$0 Internal based on each Agency's OAM policy	\$0		\$0	\$0
IT/Staffing Assistance* - Operation Staff	1.63%			\$0	\$0 Internal based on each Agency's OAM policy	\$0		\$0	\$0
Estimated Annual Operating Cost (Subtotal)				\$1,987	Total increase due to ICM Devices	\$1,987	\$0	\$1,987	\$0

*Provided by Alameda CTC or City Traffic Signal Coordinator for all agencies

Total Estimated Annual Operation and Maintenance Cost	\$11,228	\$10,812	\$0	\$10,812	\$0
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AGENDA BILL

Agenda Item No. 5(C)

Date: November 18, 2014

To: El Cerrito City Council

From: Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Cooperative Agreement No. 28W.01 between the Contra Costa Transportation Authority, the City of El Cerrito, Contra Costa County and the Cities of Richmond, Hercules, Pinole, and San Pablo

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute Cooperative Agreement No. 28W.01 between the Contra Costa Transportation Authority (CCTA), City of El Cerrito, Contra Costa County, and the Cities of Richmond, Hercules, Pinole, and San Pablo to accept a one-time disbursement of \$50,000 in Measure J Subregional Transportation Needs Program (Program 28b) funds from the CCTA to the City of El Cerrito and authorizing an amendment to the Fiscal Year (FY) 2014-15 Adopted Budget to appropriate \$50,000 in the Measure J Fund for various transportation projects and programs.

DISCUSSION

In 2004, Contra Costa County voters approved Measure J to continue a half-cent sales tax to fund transportation projects and programs throughout the County. One component of Measure J is Program 28b, which is a funding source for subregional needs and is typically distributed by the CCTA to the Regional Transportation Planning Committees (RTPCs) including the West Contra Costa Transportation Advisory Committee (WCCTAC). Program 28b is a flexible source of funding that is programmed by the RTPCs, and in our case, the WCCTAC Board. RTPCs have generally used these funds for common subregional priorities and matching funds to leverage other grants and keep projects on track. In some cases, RTPCs have distributed these funds to local jurisdictions, allowing them to function as flexible return-to-source funds. At its July 25, 2014 meeting, the WCCTAC Board approved appropriation of \$400,000 as one-time, return-to-source funds to the member jurisdictions of WCCTAC. The funding amount allocated to each jurisdiction was based on the jurisdiction's share of WCCTAC dues.

To streamline the disbursement of the Program 28b funds by the CCTA, a single, multi-party cooperative agreement between CCTA and all six WCCTAC member jurisdictions, including the City of El Cerrito, was proposed. A disbursement of \$50,000 will be provided to the City of El Cerrito once all parties have executed the agreement. The City must expend all funds no later than July 1, 2016, and submit a form indicating how Program 28b funds were expended no later than September 1, 2016. Program 28b

funds cannot be used for staff time unless it is directly related to a project funded by Program 28b.

The Public Works Department has identified various pedestrian facilities that require attention to fully restore them to safe and accessible conditions, as well as, the need for professional services to support the timely delivery of several transportation planning and capital projects. Although the value of all potential maintenance and repair needs throughout the City far exceeds available funding, top priority facilities identified by the Department, based on currently unsafe or inaccessible conditions and critical pedestrian connections, include the pathway and stairway connecting Arlington Boulevard just south of Arlington Park and Brewster Drive to Contra Costa Drive and various sidewalk repairs throughout the City. The funding requested for repair of these pedestrian facilities is \$40,000. The remaining funding of \$10,000 will be used for miscellaneous professional services as described above.

STRATEGIC PLAN CONSIDERATIONS

Authorizing the execution of the cooperative agreement and the proposed appropriation is consistent with El Cerrito Strategic Plan Goal D – *Develop and rehabilitate public facilities as community focal points*. Specifically, appropriating funds to repair pedestrian facilities fulfills a portion of the “Develop a plan to address ongoing and deferred maintenance of facilities and infrastructure.”

ENVIRONMENTAL CONSIDERATIONS

The pedestrian facility repair work is categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) because the project is a repair to an existing facility involving negligible or no expansion of use beyond that presently existing. More specifically, restoration or rehabilitation of deteriorated or damaged facilities to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as an earthquake, landslide, or flood, is exempt from CEQA.

FINANCIAL CONSIDERATIONS

An amendment to the FY 2014-15 Adopted Budget is required to appropriate \$50,000 in one-time funds from the Measure J Fund (204).

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and agreement, and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Accompanying Resolution
2. Cooperative Agreement No. 28.W01

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE COOPERATIVE AGREEMENT NO. 28W.01 BETWEEN THE CONTRA COSTA TRANSPORTATION AUTHORITY (CCTA), CITY OF EL CERRITO, CONTRA COSTA COUNTY AND THE CITIES OF RICHMOND, HERCULES, PINOLE, AND SAN PABLO TO ACCEPT A ONE-TIME DISBURSEMENT OF \$50,000 IN MEASURE J SUBREGIONAL TRANSPORTATION NEEDS (PROGRAM 28B) FUNDS FROM THE CCTA TO THE CITY OF EL CERRITO AND AUTHORIZING AN AMENDMENT TO THE FISCAL YEAR 2014-15 ADOPTED BUDGET TO APPROPRIATE \$50,000 IN MEASURE J FUNDS

WHEREAS, in 2004, Contra Costa County voters approved Measure J to continue a half-cent sales tax to fund transportation projects and programs throughout the County and one component of Measure J is the Subregional Transportation Needs Program (Program 28b); and

WHEREAS, Program 28b is a flexible source of funding for transportation projects and programs and the funding is distributed by the CCTA to Regional Transportation Planning Committees (RTPCs), including the West Contra Costa Transportation Advisory Committee (WCCTAC); and

WHEREAS, at its July 25, 2014 meeting, the WCCTAC Board approved appropriation of \$400,000 as one-time, return-to-source funds to the member jurisdictions of WCCTAC and the funding amount allocated to each jurisdiction was based on the jurisdiction's share of WCCTAC dues; and

WHEREAS, the Public Works Department has identified Measure J eligible transportation projects and programs, including repair of pedestrian facilities to fully restore them to safe and accessible conditions, as well as, the need for professional services to support the timely delivery of several transportation planning and capital projects; and

WHEREAS, the pedestrian facility repair work is categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) because the project is a repair to an existing facility involving negligible or no expansion of use beyond that presently existing and more specifically, restoration or rehabilitation of deteriorated or damaged facilities to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as an earthquake, landslide, or flood, is exempt from CEQA; and

WHEREAS, funding is not currently available in the Fiscal Year (FY) 2014-15 Budget for this work.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute Cooperative Agreement No. 28W.01 between the Contra Costa Transportation Authority (CCTA), City of El

Cerrito, Contra Costa County and the Cities of Richmond, Hercules, Pinole, and San Pablo to accept a one-time disbursement of \$50,000 in Measure J Subregional Transportation Needs Program (Program 28b) funds from the CCTA to the City of El Cerrito and authorizing an amendment to the FY 2014-15 Adopted Budget to appropriate \$50,000 in the Measure J Fund for various transportation projects and programs.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 18, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

COOPERATIVE AGREEMENT NO. 28W.01

This COOPERATIVE AGREEMENT (this “AGREEMENT”) is effective this ____ day of _____, 2014 among CONTRA COSTA TRANSPORTATION AUTHORITY, a local transportation authority (“AUTHORITY”), CONTRA COSTA COUNTY, a political subdivision of the State of California (“CONTRA COSTA”), CITY OF RICHMOND, a municipal corporation of the State of California (“RICHMOND”), the CITY OF EL CERRITO, a municipal corporation of the State of California (“EL CERRITO”), the CITY OF HERCULES, a municipal corporation of the State of California (“HERCULES”), the CITY OF PINOLE, a municipal corporation of the State of California (“PINOLE”), and the CITY OF SAN PABLO, a municipal corporation of the State of California (“SAN PABLO”) and together with AUTHORITY, CONTRA COSTA, RICHMOND, EL CERRITO, HERCULES, PINOLE and SAN PABLO, the “PARTIES” and each separately, a “PARTY”).

RECITALS

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

A. Pursuant to the Measure C Sales Tax Renewal Ordinance (#88-01) “hereinafter MEASURE C”) as amended by (#04-02), hereinafter referred to as “MEASURE J” approved by the voters of the Contra Costa County on November 2, 2004, CONTRA COSTA, RICHMOND, EL CERRITO, HERCULES, PINOLE, AND SAN PABLO (each, a “PARTNER JURISDICTION” and collectively, the “PARTNER JURISDICTIONS”), and AUTHORITY desire to enter into this AGREEMENT to define a framework to enable the parties to utilize Program 28b funds in MEASURE J.

B. PARTNER JURISDICTIONS shall propose programming Program 28b funds to any project or program identified in the Measure J Expenditure Plan or eligible under the provisions of the Local Transportation Authority and Improvement Act (“PROJECT”) and AUTHORITY shall disburse collected funds under Program 28b as provided herein.

NOW, THEREFORE, in consideration of the mutual agreements set forth above and the rights and obligations set forth in this AGREEMENT and other good and valuable consideration,

the receipt and sufficiency of which is acknowledged, AUTHORITY and each PARTNER JURISDICTION hereby agree to the following:

SECTION 1

PARTNER JURISDICTIONS AGREE:

1. To expend allocated funds no later than July 1, 2016, and submit a form indicating how Program 28b funds were expended no later September 1, 2016.
2. Commit to not use Program 28b funds for staff time, unless it is directly related to a project funded by Program 28b.
3. Each PARTNER JURISDICTION shall maintain true and complete records in connection with the PROJECT, and shall retain all such records for at least thirty-six (36) months after the delivery of the form to the AUTHORITY as provided in Section 1.
4. To allow the AUTHORITY to audit all expenditures relating to the PROJECT funded through this AGREEMENT. For the duration of each fiscal year of the PROJECT, and for four (4) years following each fiscal year of the PROJECT, or earlier discharge of the AGREEMENT, PARTNER JURISDICTION will make available to the AUTHORITY all records relating to expenses incurred in performance of this AGREEMENT.

SECTION 2

AUTHORITY AGREES:

1. To disburse \$400,000 from Program 28b funds to PARTNER JURISDICTIONS following the execution of the agreement out of revenues collected for Fiscal Year 2013-14 and prior fiscal years using the split formula provided in Exhibit A attached hereto and incorporated herein by reference.

SECTION 3

IT IS MUTUALLY AGREED:

1. Term. The term of this AGREEMENT shall commence on _____, 2014 and shall remain in effect until terminated as provided in Section 9.
2. Additional Acts and Documents. Each PARTY agrees to do all such things and

take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the AGREEMENT.

3. Amendment. This AGREEMENT may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this AGREEMENT shall be void and of no effect.

4. Assignment. This AGREEMENT may not be assigned, transferred, hypothecated, or pledged by any PARTY without the express written consent of the other PARTIES.

5. Binding on Successors. This AGREEMENT shall be binding upon the successor(s), assignee(s) or transferee(s) of the PARTIES. This provision shall not be construed as an authorization to assign, transfer, hypothecate or pledge this AGREEMENT other than as provided above.

6. Indemnification.

a. AUTHORITY hereby agrees to indemnify, defend, assume all liability for and hold harmless each PARTNER JURISDICTION, its officers, employees, agents, and representatives, to the maximum extent allowed by law, from all actions, claims, suits, penalties, obligations, liabilities, damages to property, costs and expenses (including, without limitation, any fines, penalties, judgments, actual litigation expenses and experts' and actual attorneys' fees), environmental claims or bodily and/or personal injuries or death to any persons (collectively, "CLAIMS") arising out of or in any way connected to AUTHORITY its officers, agents, or employees in connection with or arising from any of its activities pursuant to this AGREEMENT. This indemnification shall survive the termination of the AGREEMENT and shall apply except as to the sole negligence or willful misconduct of a PARTNER JURISDICTION.

b. Each PARTNER JURISDICTION hereby agrees to indemnify, defend, assume all liability for and hold harmless AUTHORITY and its member agencies, officers, employees, agents and representatives, to the maximum extent allowed by law, from all CLAIMS arising out of or in any way connected to the PARTNER JURISDICTION, its officers, agents or employees in connection with or arising from any of its activities pursuant to this AGREEMENT. This indemnification shall survive the termination of the AGREEMENT and shall

apply, except as to the sole negligence or willful misconduct of AUTHORITY.

7. Compliance with Laws. AUTHORITY and each of the PARTNER JURISDICTIONS shall comply with all applicable federal and state laws and regulations regarding the work performed and the reimbursements requested.

8. Notices. All required or permitted payments, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a PARTY shall send or deliver all such communications relating to this Agreement to the following address:

Hisham Noeimi
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597
hnoeimi@ccta.net

City of Richmond
Steven Tam - Engineering
440 Civic Center Plaza
Richmond, CA 94804
Steven.Tam@ci.richmond.ca.us

City of El Cerrito
Yvetteh Ortiz
10890 San Pablo Avenue
El Cerrito, CA 94530
Yortiz@ci.el-cerrito.ca.us

City of San Pablo
Michele Rodriguez
13831 San Pablo Avenue

San Pablo, CA 94806
MicheleR@sanpabloca.gov

City of Hercules
Holly Smyth - Planning
111 Civic Drive,
Hercules, CA 94547
HSmyth@ci.hercules.ca.us

City of Pinole
Winston Rhodes
2131 Pear Street,
Pinole, CA 94564
WRhodes@ci.pinole.ca.us

Contra Costa County
Robert Sarmiento
Conservation and Development
30 Muir Road
Martinez, CA 94553
Robert.Sarmiento@dcd.cccounty.us

9. Termination of Agreement. A PARTY may terminate this Agreement at any time by giving written notice of termination to each of the other PARTIES which shall specify the effective date thereof; provided that any notice of termination shall be given at least thirty (30) days before its effective date.

10. Entire Agreement. This Agreement is the entire agreement among AUTHORITY and the PARTNER JURISDICTIONS relating to the subject matter of this Agreement. All PARTIES acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement. If any provision of this Agreement is void or otherwise unenforceable, the remainder of the Agreement shall continue in full force and effect. Any changes to the terms and provisions of this Agreement or affecting the obligations of the PARTIES set forth in this Agreement shall be by written amendment signed by all PARTIES.

11. Severability. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of a PARTY to enter into or carry out, such decision shall not

affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the PARTIES.

12. Waiver. No waiver by a PARTY of any default or breach of any covenant by the other PARTIES shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving PARTY.

13. Controlling Law and Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and venue shall be in Contra Costa County.

14. Authority. All PARTIES executing this Agreement represent and warrant that they are authorized to do so.

15. Counterparts. This AGREEMENT may be executed in counterparts.

16. Limitations. All obligations of AUTHORITY under the terms of this AGREEMENT are expressly subject to the AUTHORITY'S continued authorization to collect and expend the sales tax proceeds provided by MEASURE C and MEASURE J. If for any reason the AUTHORITY'S right to collect or expend such sales tax proceeds is terminated or suspended in whole or part, the AUTHORITY shall promptly notify PARTNER JURISDICTIONS, and the PARTIES shall consult on a course of action. If, after twenty five (25) working days, a course of action is not agreed upon by the parties, this AGREEMENT shall be deemed terminated by mutual or joint consent; provided, that any obligation to fund from the date of the notice shall be expressly limited by and subject to (i) the lawful ability of the AUTHORITY to expend sales tax proceeds for the purposes of this AGREEMENT; and (ii) the availability, taking into consideration all the obligations of the AUTHORITY under all outstanding contracts, agreement to other obligations of the AUTHORITY, of funds for such purposes.

[Signatures on the following pages]

CONTRA COSTA TRANSPORTATION AUTHORITY

By: Kevin Romick, Chair

Date _____, 2014

APPROVED AS TO FORM:

By: Chris Diaz, General Counsel

Date _____, 2014

CONTRA COSTA COUNTY

By:

Date _____, 2014

APPROVED AS TO FORM:
Sharon Anderson, County Counsel

By: Deputy County Counsel

Date _____, 2014

CITY OF RICHMOND

[Redacted Signature Line]

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

[Redacted Signature Line]

By: _____, City Attorney

Date _____, 2014

CITY OF EL CERRITO

By: Scott Hanin, City Manager

Date _____, 2014

APPROVED AS TO FORM:

By: Sky Woodruff, City Attorney

Date _____, 2014

CITY OF HERCULES

[Redacted Signature Line]

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

[Redacted Signature Line]

By: _____, City Attorney

Date _____, 2014

CITY OF PINOLE

[Redacted Signature Line]

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

[Redacted Signature Line]

By: _____, City Attorney

Date _____, 2014

CITY OF SAN PABLO

By: (Name, Title)

Date _____, 2014

APPROVED AS TO FORM:

By: _____, City Attorney

Date _____, 2014

Exhibit A

Jurisdiction	Split Formula (%)	Program 28b Allocations through June 30, 2014
County	12.5	\$ 50,000
Richmond	37.5	\$ 150,000
El Cerrito	12.5	\$ 50,000
Hercules	12.5	\$ 50,000
Pinole	12.5	\$ 50,000
San Pablo	12.5	\$ 50,000
SUM	100%	\$ 400,000



AGENDA BILL

Agenda Item No. 5(D)

Date: November 18, 2014

To: El Cerrito City Council

From: Yvetteh Ortiz, Public Works Director/City Engineer

Subject: I-80/Central Avenue Operational Improvements Project – Amendment No. 1 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority, the City of El Cerrito, and the City of Richmond

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute Amendment No. 1 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority (CCTA), the City of El Cerrito, and the City of Richmond to complete Plans, Specifications and Estimate (final design), perform a before and after traffic study, and perform design services during construction for the I-80/Central Avenue Operational Improvements Project (Phase 1).

BACKGROUND

The City of El Cerrito has continually supported the evaluation and implementation of transportation improvements that would reduce congestion along Central Avenue – a major route of access from I-80 and I-580 to key commercial areas and residential neighborhoods in both the cities of El Cerrito and Richmond. Central Avenue also serves as a primary commuter connection between these freeways and the El Cerrito Plaza BART Station and is therefore an important regional route. Central Avenue, between San Pablo Avenue and Rydin Road, experiences heavy congestion and poor traffic operations, especially during weekend peak hours. Closely spaced signalized intersections in the vicinity of the I-80/Central Avenue interchange, as well as, heavy left-turn volumes and insufficient turn lanes are key contributors to the problem.

The I-80/Central Avenue Interchange Improvements Project is meant to address these problems and is eligible to receive significant funding from a federal earmark, Measure J – County sales tax, and the West County Subregional Transportation Mitigation Program (STMP). El Cerrito and Richmond staff have been jointly developing this project since the first of these funds. The federal earmark, was awarded in 2003. The availability of funding for this project and inclusion of the project in the WCCTAC West County Action Plan, illustrate the regional support that exists for this project.

As authorized by the City of El Cerrito City Council under Resolution No. 2006-48 in June 2006, the City of El Cerrito entered into Cooperative Agreement 07W.02 with the Contra Costa Transportation Authority (CCTA) and the City of Richmond to identify improvements that could be implemented at the I-80/Central Avenue interchange. The

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agreement identified the CCTA as the agency responsible for developing the Project Study Report (PSR) and the Environmental Document (ED). At that time, the CCTA initiated work to analyze improvements. Sixteen alternatives were examined as part of the PSR effort; however, these were removed from consideration due to public input, limited benefits, significant community impacts, and high cost. As such, it became apparent that developing a Feasibility Study was more appropriate than a PSR, which is a Caltrans-required document for larger projects. The Feasibility Study found that less capital demanding alternatives would provide adequate near-term congestion relief. Based on the recommendations in the Feasibility Report, the interchange improvements will be attained in two different phases: Phase 1 will provide operational improvements by using multiple electronic message signs while Phase 2 will improve signalized intersection spacing on Central Avenue as indicated below.

Phase 1: Operational Improvements – aimed at reducing congestion along Central Avenue by prohibiting left turns onto the I-80 westbound on-ramp (toward San Francisco) during the weekend peak period (11 AM to 3 PM), which was found to be the most congested period throughout the week. Using mostly electronic signs, the project will redirect westbound Central Avenue traffic bound for I-80 westbound to use the I-580 eastbound on-ramp at Rydin Road. The project will also replace the all-way STOP signs at the I-580 ramps with coordinated traffic signals. Funding for Phase 1 includes \$2.7 million in a federal earmark, and \$1.6 million in Measure J funds. Project benefits include:

- Reduces westbound travel time on Central Avenue from San Pablo Avenue to Rydin Rd. by 28% (approximately 2 minutes)
- Reduces eastbound travel time on Central Avenue from Rydin Road to San Pablo Avenue by 13% (approximately 30 seconds)
- Reduces vehicle hours of delay during weekend peak hours by 34%
- Improved operations will lessen vehicle idling resulting in improved air quality
- Low cost improvement that can be completed in a relatively short timeframe
- Improves safety and speed along westbound I-80 by reducing back up of traffic exiting at Central Avenue
- Improves traffic operations at westbound I-80 ramps/Central Avenue/Jacuzzi Street intersection from Level of Service (LOS) F to acceptable LOS D

Phase 2: Local Roadway Realignment – aimed at improving traffic flow along Central Avenue by increasing the spacing between the signalized intersections and eliminating the blockage of through traffic along Central Avenue by left-turning traffic onto Pierce Street. The traffic signal at Central Avenue/Pierce Street will be removed and access at this intersection will be restricted to “right-in/right-out” where no left turns will be allowed. Left turns into Pierce Street will be accommodated at the intersection of Central Avenue and San Mateo Street, which will be signalized and widened to provide storage for left turns. San Mateo Street will also be realigned to connect with Pierce Street. Funding for Phase 2 includes \$9.9 million in Measure J funds and \$7.1 million in future STMP funds. Some of the initial project benefits that have been identified include:

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- Increases traffic signal spacing between eastbound I-80 ramps and Pierce Street from approximately 100 feet to 450 feet between eastbound I-80 ramps and San Mateo Street
- Increases vehicle queuing capacity on Central Avenue at San Mateo Street by providing additional turn lanes including a westbound left-turn lane
- Improved operations will lessen vehicle idling resulting in improved air quality

The Phase 1 improvements are located within the City of Richmond. As such, in March 2014, the City of Richmond City Council approved a resolution in support of the Phase 1 concept plan and directed Richmond staff to proceed with project implementation in coordination with the CCTA. El Cerrito staff will continue to work with CCTA, Caltrans, and Richmond staff to seek timely implementation of Phase 1 improvements as well as initiate the environmental document for Phase 2 improvements.

ANALYSIS

CCTA has completed the Feasibility Study and the Environmental Document for the Phase 1 Project and is requesting to amend Cooperative Agreement No. 07W.02 assigning the CCTA the responsibility of delivering the Plans, Specifications and Estimate (final design), before and after study to measure project effectiveness, and provide design services during construction for the Phase 1 Project. CCTA is estimating a cost of \$700,000 for these services and has secured the needed funds through an eligible Measure J Program in the 2013 Measure J Strategic Plan. The CCTA is not requesting the Cities provide additional funding at this time. If additional funding is required, the CCTA will notify and seek approval of the Cities to expend additional funds.

STRATEGIC PLAN CONSIDERATIONS

Approval of the proposed agreement is consistent with El Cerrito Strategic Plan Goal A – *Deliver exemplary government services*, and Goal F – *Foster environmental sustainability citywide*. Specifically, approval of the proposed amendment will support the “develop and strengthen relationships with public partners” strategy listed in Goal A, and the “be a leader in setting policies and providing innovative programs that promote environmental sustainability” in Goal F. The multi-agency project to develop and implement the I-80/Central Avenue Interchange Improvements, Phase 1 Project demonstrates the City’s aim to work collaboratively with neighboring and regional agencies to reduce congestion along a key transportation route. In addition, the I-80/Central Avenue Interchange Improvements Phase 1 Project is an important regional transportation project that will improve air quality by reducing congestion.

ENVIRONMENTAL CONSIDERATIONS

After comprehensive environmental studies, Caltrans has determined that the Phase 1 Operational Improvements Project is Categorically Exempt (Class I) as outlined in the California Environmental Quality Act (CEQA) and Categorically Excluded in the National Environmental Protection Act (NEPA), and has filed a Categorical Exemption/Categorical Exclusion Environmental Clearance (CE/CE) for the project.

FINANCIAL CONSIDERATIONS

Execution of the proposed amendment will result in no fiscal impact to the City.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and agreement amendment, and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Amendment No. 1 to Cooperative Agreement No. 07W.02

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT NO. 07W.02 BETWEEN THE CONTRA COSTA TRANSPORTATION AUTHORITY (CCTA), THE CITY OF EL CERRITO, AND THE CITY OF RICHMOND TO COMPLETE PLANS, SPECIFICATIONS AND ESTIMATE (FINAL DESIGN), PERFORM A BEFORE AND AFTER TRAFFIC STUDY, AND PERFORM DESIGN SERVICES DURING CONSTRUCTION FOR THE I-80/CENTRAL AVENUE OPERATIONAL IMPROVEMENTS PROJECT (PHASE 1)

WHEREAS, the City of El Cerrito has continually supported the evaluation and implementation of transportation improvements that would reduce congestion along Central Avenue – a major route of access from I-80 and I-580 to key commercial areas and residential neighborhoods in both the cities of El Cerrito and Richmond; and

WHEREAS, Central Avenue also serves as a primary commuter connection between these freeways and the El Cerrito Plaza BART Station and is therefore an important regional route; and

WHEREAS, Central Avenue between San Pablo Avenue and Rydin Road experiences heavy congestion and poor traffic operations, especially during weekend peak hours and closely spaced signalized intersections in the vicinity of the I-80/Central Avenue interchange, as well as, heavy left-turn volumes and insufficient turn lanes are key contributors to the problem; and

WHEREAS, the I-80/Central Avenue Interchange Improvements Project is meant to address these problems and is eligible to receive significant funding from a federal earmark, Measure J – County sales tax, and the West County Subregional Transportation Mitigation Program (STMP); and

WHEREAS, as authorized by the City of El Cerrito City Council under Resolution No. 2006-48 in June 2006, the City of El Cerrito entered into Cooperative Agreement 07W.02 with the Contra Costa Transportation Authority (CCTA) and the City of Richmond that identified the CCTA as the lead agency responsible for developing the Project Study Report (PSR) and the Environmental Document (ED) to evaluate what could be implemented at the I-80/Central Avenue interchange; and

WHEREAS, sixteen alternatives were examined as part of the PSR effort; however, these were removed from consideration due to public input, limited benefits, significant community impacts and high cost and instead a Feasibility Study was prepared that found less capital demanding alternatives that would provide adequate near-term congestion relief; and

WHEREAS, based on the recommendations in the Feasibility Report, the interchange improvements will be attained in two different phases: Phase 1 will provide operational improvements through the use of multiple electronic message signs while

Phase 2 will improve signalized intersection spacing on Central Avenue as indicated below; and

WHEREAS, the Phase 1 Operational Improvements Project would prohibit left turns from westbound Central Avenue onto the I-80 westbound on-ramp on the weekend during the peak traffic hours 11 AM to 3 PM only, redirect I-80 westbound traffic to the nearby I-580 eastbound on-ramp at Rydin Road, and add two new interconnected traffic signals at the Central Avenue and I-580 on/off ramps; and

WHEREAS, funding for Phase 1 includes \$2.7 million in a federal earmark, and \$1.6 million in Measure J funds; and

WHEREAS, after comprehensive environmental studies, Caltrans has determined that the Phase 1 Operational Improvements Project is Categorically Exempt (Class I) as outlined in the California Environmental Quality Act (CEQA) and Categorically Excluded in the National Environmental Protection Act (NEPA), and has filed a Categorical Exemption/Categorical Exclusion Environmental Clearance (CE/CE) for the project.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute Amendment No. 1 to Cooperative Agreement No. 07W.02 between the Contra Costa Transportation Authority (CCTA), the City of El Cerrito, and the City of Richmond to complete Plans, Specifications and Estimate (final design), perform a before and after traffic study, and perform design services during construction for the I-80/Central Avenue Operational Improvements Project (Phase 1).

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 18, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



COOPERATIVE AGREEMENT No. 07W.02
with the CITY OF RICHMOND AND the CITY OF EL CERRITO
for I-80/Central Avenue Interchange Improvements Project

Amendment No. 1

This Amendment No. 1 to Cooperative Agreement No. 07W.02 is entered into this ____ day of _____, 2014, by and among the Contra Costa Transportation Authority ("AUTHORITY") and the City of Richmond and the City of El Cerrito (collectively the "CITIES"). AUTHORITY and CITIES may be collectively referred to as the "Parties."

WHEREAS, the AUTHORITY and CITIES entered into Cooperative Agreement No. 07W.02 on July 25, 2006 ("Agreement"); and

WHEREAS, the Project Study Report found that major modifications to the I-80 Central Avenue are cost-prohibitive and geometrically unattainable without significant impacts to the residences and businesses in the area; and

WHEREAS, the Project Study Report found that better traffic flow can be achieved by making operational improvements and local street realignments; and

WHEREAS, operational improvements will be made through the use of electronic variable message signs directing I-80 westbound on-ramp traffic during peak hours to I-580 ("Phase 1"), and by connecting Pierce Street and San Mateo Street, converting Pierce Street access at Central Avenue to "right-in, right-out" and relocating the traffic signal at Pierce Street/Central Avenue to the San Mateo/Central Avenue intersection ("Phase 2"); and

WHEREAS, the Parties wish to amend the scope of services to include Final Plans, Estimate and Specifications ("Final Design Services") for Phase 1, a Before and After Traffic Study to determine Phase 1 effectiveness ("Traffic Study") and provide Phase 1 Design Services During Construction ("DSDC");

WHEREAS, the Phase 1 Budget is detailed and Funding Sources are identified in Exhibit B;

WHEREAS, the City of Richmond will seek **MEASURE J** appropriation from Authority for Construction and Construction Management Services;

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

(1) **Article 1 of Section II** of the Agreement is amended to read in full as follows:

To retain a consultant to develop/perform the Project Study Report, Environmental Document for the **PROJECT**, and to develop/perform Final Design Services, Traffic Study and DSDC for Phase 1.

Funding for Final Design Services, Traffic Study and DSDC shall be from Measure J funds available to the project.

(2) **Article 5 of Section II** of the Agreement is amended to read in full as follows:

To notify the **CITIES** of final costs incurred to complete the Project Study Report, the Environmental Document for the **PROJECT**, and the Final Design Services, Traffic Study and DSDC for Phase 1.

(3) **Article 1(b) of Section III** of the Agreement is amended to read in full as follows:

That the cost to complete the Environmental Documentation for the **PROJECT** shall not exceed \$1,500,000 and that the cost to complete Final Design Services, Traffic Study and DSDC for Phase 1 shall not exceed \$700,000. If **AUTHORITY** determines that these amounts will be exceeded, it will notify and seek approval of the **CITIES** to expend additional funds.

(4) **Paragraph 3 of Exhibit A** of the Agreement is amended to read in full as follows:

This Agreement covers the preparation of the PSR and the Environmental Documentation for the **PROJECT** and performance of the Final Design Services for Phase 1 consistent with Caltrans guidelines.

(5) Except as amended by this Amendment No. 1, all provisions of the Agreement shall remain in full force and effect and shall govern the actions of the Parties as if fully set forth herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to Cooperative Agreement No. 07W.02 effective as of the 15th day of October, 2014.

CITY OF RICHMOND

**CONTRA COSTA TRANSPORTATION
AUTHORITY**

William Lindsay
City Manager

Kevin Romick, Chair

Randell H. Iwasaki
Executive Director

CITY OF EL CERRITO

Malathy Subramanian
Authority Council

Scott Hanin
City Manager

COOPERATIVE AGREEMENT NO. 07W.02

between

the Contra Costa Transportation Authority

and

Cities of Richmond and El Cerrito

EXHIBIT B

I-80 Central Avenue Budget (Phase 1)

Description	Baseline Estimate	Source of Funds	
		Measure J	DEMO
Project Management	\$230,235	\$230,235	-
Studies Prior to Environmental	\$0	-	-
Environmental Clearance	\$1,224,250	\$282,285	\$941,965
Design and DSDC	\$653,845	\$653,845	-
Right of Way (Capital)	\$0	-	-
Right of Way (Services)	\$0	-	-
Utilities	\$0	-	-
Construction (advertise - CCA)	\$1,860,709	\$372,142	\$1,488,567
Construction Services	\$324,100	\$64,820	\$259,280
Total - All Phases	\$4,293,139	\$1,603,327	\$2,689,812



AGENDA BILL

Agenda Item No. 5(E)

Date: November 18, 2014
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: 2014 Patch Paving and Miscellaneous Repairs Project, City Project Nos. C3027, C3063 and C3072

ACTION REQUESTED

Adopt a resolution approving the following actions:

- 1) Approve plans for the 2014 Patch Paving and Miscellaneous Repairs Project;
- 2) Reject one submitted bid from Ransome Company as non-responsive;
- 3) Accept the two remaining submitted bids;
- 4) Amend the Capital Improvement Program-Annual Program of Maintenance and Improvement pursuant to Measure A to add completion of the 2013-14 Street Improvement Project, C3072 and Central Avenue and Liberty Street Streetscape Improvement Project, C3063;
- 5) Authorize the City Manager to execute a contract in the amount of \$106,259.00 with Golden Bay Construction, Inc. and to approve change orders in an amount not to exceed \$16,946.53 for the construction of the 2014 Patch Paving and Miscellaneous Repairs Project; and
- 6) Amend the FY 2014-15 Adopted Budget to appropriate unspent project funds of \$31,224 in the Measure A Street Improvement Fund (Fund 211) and \$16,520 in the Capital Improvement Fund (Fund 301).

BACKGROUND

The 2014 Patch Paving and Miscellaneous Repairs Project consists of minor patch paving and minor sidewalk, driveway, drainage, curb and gutter repair at twelve (12) locations throughout the City. The following list is of the 12 locations, brief work description, and funding source:

No.	Location	Description of Work	Funding Source
1	Arlington Blvd. near Roberta Dr.	Minor asphalt concrete pavement and concrete driveway repair as part of the 2013-14 Street Improvement Project	C3072, Measure A - Street Improvement Fund (211)
2	Central Ave. and Kearney St.	Sidewalk Drain, Curb and Gutter as part of the Central Avenue and	C3063, Capital Improvement Fund (301)

Agenda Item No. 5(E)

No.	Location	Description of Work	Funding Source
		Liberty Street Streetscape Improvement Project	
3	428 Everett St.	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
4	704 Hancock Way	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
5	Hill St near San Pablo Ave.	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
6	1316 Lawrence St.	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
7	Moeser Ln and Seaview Dr.	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
8	7905 Potrero Ave.	Reconstruct Sidewalk as part of the 2013-14 Street Improvement Project	C3072, Measure A - Street Improvement Fund (211)
9	Seaview Dr. and Errol Dr.	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
10	Ashbury Ave. and Eureka Ave.	Patch Paving	C3027, Measure A - Street Improvement Fund (211)
11	714 and 708 Pomona Ave.	Reconstruct Sidewalk due to Street Tree Damage	Public Works Operating, Gas Tax Fund (201)
12	2621 Tuller Ave.	Reconstruct Sidewalk due to Street Tree Damage	Public Works Operating, Gas Tax Fund (201)

The largest portion of the work involves the repair of potholes with nine (9) inches of asphalt concrete pavement (patch paving) and is part of the City's Annual Street Improvement Program, C3027. The work at Arlington Boulevard and Roberta Drive (Location 1) and 7905 Potrero Avenue (Location 8) is remaining work associated with the 2013-14 Street Improvement Project, C3072, while the work at Central Avenue and Kearney Avenue (Location 2) is remaining work as part of the Central Avenue and Liberty Street Streetscape Improvements Project, C3063. Finally, sidewalk and driveway aprons that have been damaged by City trees are being repaired by removing and replacing the existing sidewalk and driveway apron.

The project was informally bid in accordance with the Uniform Public Construction Cost Accounting Act (UCCAP) of the California Public Contract Code, as provided in Chapter 16.35 of the El Cerrito Municipal Code. Public projects of \$175,000 or less may be bid by informal procedures set by the UCCAP. On September 29, 2014, the Notice Inviting Informal Bids was sent to fifteen (15) contractors from the City's current list of contractors who have the required licensing for the work involved in this project. The project was also posted on the City's website. Subsequently, one (1) addendum was issued and all fifteen bidders were notified.

ANALYSIS

Three bids were received on October 13, 2014. One bid received from Ransome Company did not acknowledge receipt of Addendum 1 and did not include the required

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revised bid proposal form. Staff is requesting Council to consider this bid non-responsive. The following are the results for the other two bids:

Name	Location	Bid
Golden Bay Construction, Inc.	Hayward	\$ 106,259.00
W.R. Forde, Inc.	Richmond	\$ 136,535.00
Engineer's Estimate		\$ 90,000.00

The low bid of \$106,259.00 is approximately 18% above the Engineer's Estimate of \$90,000. Staff believes this is a reasonable bid for the type and size of the work involved in this project.

Staff recommends that the City Council award a construction contract in the amount of \$106,259.00 to Golden Bay Construction, Inc. as the lowest responsive, responsible bidder.

FINANCIAL CONSIDERATIONS

The total project budget is as summarized below and includes a contingency of 15% for change orders for all work except 25% for the sidewalk repair work and 15% for construction inspection, testing and administration.

	C3027	C3072	C3063	PW-Ops	All
Construction Contract	\$59,456.64	\$24,018.20	\$12,707.36	\$10,076.80	\$106,259.00
Contingency (15%)	\$8,918.50	\$3,602.73	\$1,906.10	\$2,519.20	\$16,946.53
Inspect, Test & Admin (15%)	\$8,918.50	\$3,602.73	\$1,906.10	In-House	\$14,427.33
Total	\$77,293.64	\$31,223.66	\$16,519.56	\$12,596.00	\$137,632.86

Funding of \$77,294 for the Annual Street Improvement Program, C3027, work is included in the City's Adopted Fiscal Year (FY) 2014-15 Budget in an allocation from the Measure A Street Improvement Fund within the Capital Improvement Program/Annual Program of Maintenance and Improvement pursuant to Measure A Street Improvement Program.

Funding of \$31,224 for the 2013-14 Street Improvement Project, C3072, was not expended in last year's (FY 2013-14) budget and an amendment to the FY 2014-15 Adopted Budget is required to appropriate the unspent funds in this year's Measure A Street Improvement Fund (211) within the Capital Improvement Program-Annual Program of Maintenance and Improvement pursuant to Measure A Street Improvement Program.

Funding of \$16,520 for the Central Avenue and Liberty Street Streetscape Improvement Project, C3063, was not expended in last year's budget and an amendment to the FY 2014-15 Adopted Budget is required to appropriate the unspent funds to the Capital Improvement Fund (301).

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Funding of \$12,596 for the sidewalk repair work due to street tree damage is included in the City's Adopted FY 2014-15 Budget in an allocation from the Gas Tax Fund for Infrastructure Maintenance Services.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution

RESOLUTION 2014 - XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING PLANS FOR THE 2014 PATCH PAVING AND MISCELLANEOUS REPAIRS PROJECT, CITY PROJECT NOS. C3027, C3063 AND C3072; REJECTING ONE SUBMITTED BID FROM RANSOME COMPANY AS NON-RESPONSIVE; ACCEPTING THE TWO REMAINING SUBMITTED BIDS; AMENDING THE CAPITAL IMPROVEMENT PROGRAM-ANNUAL PROGRAM OF MAINTENANCE AND IMPROVEMENT PURSUANT TO MEASURE A TO ADD COMPLETION OF THE 2013-14 STREET IMPROVEMENT PROJECT, C3072 AND CENTRAL AVENUE AND LIBERTY STREET STREETScape IMPROVEMENT PROJECT, C3063; AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH GOLDEN BAY CONSTRUCTION, INC. IN AN AMOUNT NOT TO EXCEED \$106,259.00 AND TO APPROVE CHANGE ORDERS IN AN ADDITIONAL AMOUNT NOT TO EXCEED \$16,946.53 TO CONSTRUCT THE 2014 PATCH PAVING AND MISCELLANEOUS REPAIRS PROJECT; AND AMENDING THE FY 2014-15 ADOPTED BUDGET TO APPROPRIATE UNSPENT PROJECT FUNDS OF \$31,224 IN THE MEASURE A STREET IMPROVEMENT FUND (FUND 211) AND \$16,520 IN THE CAPITAL IMPROVEMENT FUND (FUND 301)

WHEREAS, the 2014 Patch Paving and Miscellaneous Repairs Project consists of minor patch paving and minor sidewalk, driveway, drainage, curb and gutter repair at twelve (12) locations throughout the City; and

WHEREAS, the project was informally bid in accordance with the Uniform Public Construction Cost Accounting Act (UCCAP) of the California Public Contract Code, as provided in Chapter 16.35 of the El Cerrito Municipal Code; and

WHEREAS, on September 29, 2014, the Notice Inviting Informal Bids was sent to fifteen (15) contractors from the City's current list of contractors who have the required licensing for the work involved in this project and the project was posted on the City's website; and

WHEREAS, three (3) bids were received on October 13, 2014 and one (1) bid received from Ransome Company did not acknowledge receipt of Addendum 1 and did not include the required revised bid proposal form; and

WHEREAS, funding of \$77,294 for the Annual Street Improvement Program, C3027, work is included in the City's Adopted Fiscal Year (FY) 2014-15 Budget in an allocation from the Measure A Street Improvement Fund and the expenditures are an appropriate use of the Pothole Repair and Local Street Improvement and Maintenance Transactions and Use Tax pursuant to Section 4.60.150 of the El Cerrito Municipal Code; and

WHEREAS, funding of \$31,224 in the Measure A Street Improvement Fund (211) for the 2013-14 Street Improvement Project, C3072 and \$16,520 in the Capital Improvement Fund (301) for the Central Avenue and Liberty Street Streetscape

Improvement Project, C3063, was unspent in Fiscal Year 2013-14 Budget and is needed to complete the work; and

WHEREAS, funding of \$12,596 for the sidewalk repair work due to street tree damage is included in the City's Adopted FY 2014-15 Budget in an allocation from the Gas Tax Fund for Infrastructure Maintenance Services; and

WHEREAS, the lowest responsive, responsible bidder was Golden Bay Construction, Inc. whose bid was in the amount of \$106,259.00;

WHEREAS, Golden Bay Construction, was deemed the lowest responsive, responsible bidder;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito:

- 1) Approves plans for the 2014 Patch Paving and Miscellaneous Repairs Project;
- 2) Rejects one submitted bid from Ransome Company as non-responsive;
- 3) Accepts the two remaining submitted bids;
- 4) Amends the Capital Improvement Program-Annual Program of Maintenance and Improvement pursuant to Measure A to add completion of the 2013-14 Street Improvement Project, C3072 and Central Avenue and Liberty Street Streetscape Improvement Project, C3063;
- 5) Authorizes the City Manager to execute a contract in the amount of \$106,259.00 with Golden Bay Construction, Inc. and to approve change orders in an amount not to exceed \$16,946.53 to construct the 2014 Patch Paving and Miscellaneous Repairs Project; and
- 6) Amends the FY 2014-15 Adopted Budget to appropriate unspent project funds of \$31,224 in the Measure A Street Improvement Fund (Fund 211) and \$16,520 in the Capital Improvement Fund (Fund 301).

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

* * * * *

I CERTIFY that at a regular meeting on November 18, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

Agenda Item No. 5(E)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(F)

Date: November 18, 2014

To: El Cerrito City Council

From: Garth Schultz, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Agreement with East Bay Sanitary Company, Inc. for Street Sweeping Maintenance Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an agreement with East Bay Sanitary Company, Inc. (EBS) to perform street sweeping services in the City of El Cerrito effective January 1, 2015 at an initial cost of \$7,177.73 per month and total of \$43,066.38 in FY 2014-15, with total expenditure authorization not to exceed \$110,000 in subsequent fiscal years.

BACKGROUND

Per the terms of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP), the City of El Cerrito (City) is responsible for keeping its streets, gutters, storm drains, creeks and waterways free of trash, debris and other pollutants. Trash, debris and other pollutants on City streets can easily be mobilized by rain and wind to gutters and storm drain inlets, ending up in storm drains flowing to creeks and the San Francisco Bay. Regular street sweeping of residential and commercial streets is an effective method of removing trash, debris, and other pollutants from City streets before they can enter the storm drain system.

Following a 2009 public bidding process the City Council approved an agreement (Resolution No. 2009-21) with Universal Building Services (UBS) to provide street sweeping effective June 17, 2009 through June 30, 2014. On October 21, 2014, City Council extended the agreement through December 31, 2014 (Resolution No. 2014-63) so that City staff could complete a Request for Proposals (RFP) begun in August 2014 as further discussed below.

The Public Works Department issued an RFP for street sweeping services identical to those currently received by the City on August 29, 2014. The RFP was posted to the City's website and directly provided to seven potential street sweeping companies, including UBS. The RFP requested proposals for services for an initial agreement term through June 30, 2020, with possible annual extensions through June 30, 2025.

ANALYSIS

The City received three proposals from qualified companies by the September 30, 2014 due date. The proposers included Clean Streets out of Gardena, CA, Contract Sweeping Services out of San Jose, CA, and EBS out of El Cerrito, CA. EBS proposes subcontracting with the City's current service provider, UBS. The proposals are summarized in the table below.

Summary of 2014 Street Sweeping Proposals (compared to current costs)

<i>Contractor</i>	<i>Monthly Cost of Service</i>	<i>Annual Cost of Service</i>
Current Cost of Service (UBS)	\$6,720.51	\$80,658.12
Clean Streets Garden, CA	\$7,092.00	\$85,104.00
East Bay Sanitary Company El Cerrito, CA	\$7,177.73	\$86,132.76
Contract Sweeping Services San Jose, CA	\$8,799.00	\$105,588.00

Following receipt of proposals, a selection committee comprised of the Public Works Director, Operations + Environmental Services Manager, and Maintenance Superintendent met to evaluate the proposals and interview Clean Streets and EBS as the two top-ranked proposers. On October 6, 2014, upon consideration of its competitive pricing, response time, resources allocated to the City, familiarity with municipal maintenance work, customer service approach, and performance of similar work in other communities, the selection committee determined that the proposal received from EBS best fits the needs of the City.

Though Clean Streets' cost proposal is marginally lower than EBS's (\$85.73 per month / \$1,028.76 per year), EBS has a stronger customer service approach, including local offices and an in-depth knowledge of El Cerrito that Clean Streets could not match. Additionally, because EBS and UBS are both locally situated companies (UBS is based on Pierce Street in Richmond), staff has a greater level of confidence in their ability to respond to emergencies requiring street sweeping services; in such a situation, Clean Streets would have to dispatch a sweeper out of San Jose, which would likely result in longer response times.

EBS's proposal to subcontract street sweeping services to UBS will provide a seamless transition, requiring little to no observable changes to the street sweeping program in El

Agenda Item No. 5(F)

Cerrito (though some service days will likely be shifted, and the community will be notified before such changes get implemented). Additionally, during agreement negotiations, EBS agreed to provide additional services to the City including:

- Providing all customer service related to street sweeping services, including soliciting, responding to, and resolving all customer requests, complaints and inquiries via phone, email, and in-person (all of which are currently provided by the City).
- Providing complete hand sweeping and removal of all debris along Fairmount Avenue between San Pablo Avenue and Richmond Street a minimum of two times between January 1, 2015 and March 31, 2015 and provide photos and a report of the amount of labor time used to provide the service, all at no additional cost to the City. This information will inform future decision-making about how to address and fund cleaning of hard to reach areas.
- Providing proposals detailing options to conduct opposite-side street sweeping services, wherein certain City streets would receive street sweeping services on one side of the street at a time, and assuming that there are posted no parking restrictions and enforcement in place for those street sections. These proposals likewise will inform future decision-making about how to enhance street sweeping effectiveness in key areas of the City.

It is worth noting that, compared to the amounts paid to UBS in Fiscal Year 2013-14, the \$5,474.64 increase in annual expenses that would be paid to EBS respectively, is due primarily to the fact that UBS's costs have not been adjusted for cost-of-living increases in several years. The annual costs proposed by EBS are within the range that staff anticipated for these services.

STRATEGIC PLAN AND ENVIRONMENTAL CONSIDERATIONS

Approval of the proposed agreement is consistent with El Cerrito Strategic Plan Goal A – *Deliver exemplary government services*, and Goal F – *Foster environmental sustainability citywide*. Specifically, approval of the proposed agreement with EBS will support the “maintain emphasis on providing excellent customer service” strategy listed in Goal A, and the “be a leader in setting policies and providing innovative programs that promote environmental sustainability” in Goal F. EBS's customer service approach, in which EBS will serve as the primary point of contact for community questions and complaints about street sweeping, will provide increased levels of customer service for El Cerrito. Additionally, EBS's commitment to explore and document hand-sweeping of hard to reach locations and propose options for opposite-side street sweeping will help inform and guide the City's efforts to remove trash, debris, and other pollutants from City streets before they can enter the storm drain system. Enhancing these efforts in the future will help meet trash load reduction requirements in the MRP.

FINANCIAL CONSIDERATIONS

The cost of street sweeping services provided by EBS from January 1 through June 30, 2015 will be \$43,066.38. As of January 1, 2015, funding of \$47,176 will be available in the City's Adopted FY 2014-2015 Budget in an allocation from the General Fund for Infrastructure Maintenance Services. The monthly cost of street sweeping services provided under the proposed agreement with EBS will be adjusted consistent with the Consumer Price Index (or another similar but lesser index, if available) a maximum of one time annually, effective January 1 of each year starting in 2016.

As future budgets allow, the City and EBS may agree to change the scope of street sweeping services provided in order to more effectively remove trash, debris, and other pollutants from City streets, which could increase the annual cost of street sweeping services provided by the Company; for this reason, staff is recommending that total expenditures in future fiscal years not exceed \$110,000. Any changes to the annual cost and scope of service would require amending the proposed agreement, and would be subject to that fiscal year's budget appropriations.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Proposed Street Sweeping Maintenance Agreement

RESOLUTION 2014-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH EAST BAY SANITARY COMPANY, INC. FOR STREET SWEEPING MAINTENANCE SERVICES EFFECTIVE JANUARY 1, 2015

WHEREAS, per the terms of the City's National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP), the City of El Cerrito (City) is responsible for keeping its streets, gutters, storm drains, creeks, and waterways free of trash, debris, and other pollutants; and

WHEREAS, trash, debris, and other pollutants on City streets can easily be mobilized by rain and wind to gutters and storm drain inlets, and end up in storm drains flowing to creeks and the San Francisco Bay; and

WHEREAS, regular sweeping of residential and commercial streets is an effective method of removing trash, debris, and other pollutants before they can enter the storm drain system; and

WHEREAS, following a 2009 public bidding process the City Council approved an agreement (Resolution No. 2009-21) with Universal Building Services (UBS) to provide street sweeping effective June 17, 2009 through June 30, 2014, and which was recently extended through December 31, 2014 (Resolution No. 2014-63); and

WHEREAS, on August 29, 2014 the City issued an RFP for street sweeping services identical to those currently provided, which was posted to the City's website and directly provided to seven potential street sweeping companies including UBS; and

WHEREAS, the City received three proposals from qualified companies by the September 30, 2014 due date; and

WHEREAS, on October 6, 2014 upon consideration of its competitive pricing, response time, resources allocated to the City, familiarity with municipal maintenance work, customer services approach, and performance of similar work in other communities, the selection committee determined that the proposal received from East Bay Sanitary Company, Inc. (EBS) best fits the needs of the City; and

WHEREAS, the initial cost of street sweeping services proposed by EBS is \$86,132.76 per year (\$7,177.73 per month); and

WHEREAS, the cost of street sweeping services provided by EBS from January 1, 2015 through June 30, 2015 will be \$43,066.38; and

WHEREAS, as of January 1, 2015, funding of \$47,176 will be available in the City's Adopted FY 2014-2015 Budget in an allocation from the General Fund for Infrastructure Maintenance Services; and

WHEREAS, the cost of street sweeping services provided under the proposed agreement with EBS will be adjusted consistent with the Consumer Price Index (or another similar but lesser index) a maximum of one time annually, effective January 1 of each year; and

WHEREAS, as future budgets allow, the City and EBS may agree to change the scope of street sweeping services provided in order to more effectively remove trash, debris, and other pollutants from City streets, which could increase the annual cost of street sweeping services provided by the Company.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes the City Manager to execute an agreement with East Bay Sanitary Company, Inc. to perform street sweeping services in the City of El Cerrito effective January 1, 2015 at an initial cost of \$7,177.73 per month and \$43,066.38 in FY 2014-15, with total expenditure authorization not to exceed \$110,000 in subsequent fiscal years.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 18, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



STREET SWEEPING AGREEMENT

This Agreement ("Agreement") for street sweeping services is made on November __, 2014 between, the City of El Cerrito, a California municipality ("City"), and East Bay Sanitary Company, Inc. ("Contractor").

1. Scope of Services. Contractor shall provide to City the street sweeping services described in the Scope of Services, attached hereto as **Attachment 1** and **Attachment 2** incorporated herein (the "Services"). Only the City's governing body or the City Manager may authorize any change or addition to the Scope of Services specified in this Agreement. Contractor also agrees to provide the following services:

1.1 Customer Service

- 1.1.1 Provide for all customer services related to the street sweeping services provided by this Agreement.
- 1.1.2 Solicit, respond to, and resolve all customer requests, complaints, and other inquiries whether received via phone, email, or in person.
- 1.1.3 Provide tri-annual outreach in the form of printed materials to all residents and businesses detailing how to contact the Contractor via phone and email for requests, complaints and other inquiries; seek City approval of printed materials prior to production.

1.2 Hand Sweeping of Hard to Reach Locations

- 1.2.1 Provide complete hand sweeping and removal of all debris along Fairmount Avenue between San Pablo Avenue and Richmond Street a minimum of two (2) times between January 1, 2015 and March 31, 2015 included in annual the compensation listed in Section 3, below.
- 1.2.2 Hand sweeping and removal of all debris along Fairmount Avenue as described above includes all curb lines, parking spaces, bulb-outs, and medians in the street sections noted above.
- 1.2.3 Provide photo documentation of the areas noted immediately before and after hand sweeping is performed, and provide such photo documentation to the City, at a minimum of ten (10) before and ten (10) after photographs.
- 1.2.4 Provide the City with a report of the amount of labor time utilized to perform the hand sweeping services described in this Section 1.2, and an estimate of the amount of additional debris removed as a result of the hand sweeping.

1.3 Opposite-side Street Sweeping Schedule Proposal

- 1.3.1 By March 31, 2015, provide the City with a proposal detailing options to conduct opposite-side street sweeping, wherein certain City streets receive street sweeping services on one side of the street at a time, and assuming that there are posted no parking restrictions and enforcement in place for those street sections.
- 1.3.2 This proposal should include, at a minimum:

- 1.3.2.1 A low cost option, wherein the cost of implementing opposite-side street sweeping on a increased number of key streets would increase the costs of operations provide for under this Agreement by no more than 5%.
 - 1.3.2.2 A medium cost option, wherein the cost of implementing opposite-side street sweeping on a greater number of key streets would increase the costs of operations provide for under this Agreement by no more than 10%.
 - 1.3.2.3 A maximum cost option, wherein the cost of implementing opposite-side street sweeping on the greatest number of key streets would increase the costs of operations provide for under this Agreement by no more than 15%.
- 1.3.3 The proposal should assume that the costs of signage and enforcement would not be borne by the Contractor, but should assume that the Contractor would implement public outreach regarding any resultant schedule changes via outreach avenues described in Section 1.1
- 1.3.4 Upon remitting the proposal to the City, the City is under no obligation to take action on any service or cost changes detailed in the proposal. The information detailed in the proposal shall be for the City's benefit in making any future determinations regarding changes to the street sweeping program.

1.4 El Cerrito Recycling + Environmental Resource Center Tipping Wall

- 1.4.1 The Contractor has proposed disposal of street sweeping spoils at the El Cerrito Recycling + Environmental Resource Center Tipping Wall Transfer Station as described in **Attachment 1**. Contractor understands and agrees to the posted terms of use for that facility and also agrees that street sweeping operators will provide all hand sweeping and labor services necessary for all street sweeping spoils to be placed directly into designated containers. At no time may a street sweeping operator leave street sweeping spoils on any surface or structure at the Tipping Wall Transfer Station, with the exception of the containers designated for street sweeping spoils. Contractor further agrees that only street sweeping spoils generated within the City of El Cerrito may be disposed of at the Transfer Station.

1.5 Missed Service Days and/or Street Sections

- 1.5.1 Contractor understands that the City intends for all street sweeping service days, including all scheduled streets and sections of streets, to be swept as scheduled. Contract agrees that will make every effort to schedule and perform all Services in this Agreement as scheduled. In the event that any street sweeping services days, streets or sections of streets are missed in the course of regular sweeping, Contractor shall arrange for make-up sweeping missed street sections within 72 hours of the original sweeping schedule for those streets. If Contractor does not complete make-up sweeping of missed street section within 72 hours, Contractor will credit the City at the rate of \$.01 per curb foot of street section that was missed. Such credit will be applied to the invoice immediately following the date of missed street sweeping, and will detail the street sections missed, the date they were missed, and the length in linear feet of street sections missed.

2. Term. This Agreement shall become effective on January 1, 2015, and shall terminate on June 30, 2020 unless terminated sooner in accordance with Section 12 of this Agreement. The term of this Agreement shall automatically be extended for up to five (5) additional one (1) year terms with the extensions to commence upon the expiration of the initial term or any extended term, unless the City notifies Contractor in writing at least thirty (30) days before the end of the initial term or any extended term, of its intent to terminate the Agreement at the conclusion of the initial term or any extension. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance.

3. Compensation. For the full and satisfactory completion of the Services, City shall compensate Contractor in an amount not to exceed \$86,132.76 between January 1, 2015 and December 31, 2015, without prior written authorization by City. Contractor's compensation shall be increased annually starting January 1, 2016 by the prior twelve month average (October to October) for the San Francisco-Oakland-San Jose All Items Consumer Price Index (Series ID CUURA422SA0 or equivalent) or the Contractor's separate annually calculated Refuse Rate Index (RRI), whichever is lower. Contractor shall notify City by November 30 of each year of the proposed adjustment for the following calendar year. Contractor's Cost Proposal is attached hereto as **Attachment 3** and incorporated herein.

4. Payment. City shall pay Contractor for services satisfactorily provided during each calendar month following within thirty (30) days following City receipt and approval of a detailed invoice. The invoice must include, at a minimum:

- 4.1 A description of the specific Services provided,
- 4.2 the Contractor's name and the name of any subcontractors providing the Services,
- 4.3 the date(s) upon which the Services were provided,
- 4.4 the amount due for the Services and the basis for calculating the amount due, and

5. Independent Contractor. The Parties agree that Contractor shall perform the Services required by this Agreement as an independent Contractor engaged by the City and not as an officer or employee of the City, nor as a partner of or joint venture with the City. No employee or agent of Contractor or its subcontractors shall be or shall be deemed to be an employee or agent of the City. Contractor is solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor, nor its officers, employees, subcontractors, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to the City employees.

6. Subcontractors. Contractor may utilize professional street sweeping subcontractors, subject to the City's approval. Contractor has proposed and the City has approved Universal Building Services (UBS) as the initial subcontractor performing Services under this Agreement. If the Contractor wishes to utilize a different professional street sweeping subcontractor, or any different subcontractor at any point in the future, the Contractor shall provide the City with written notice ninety (90) days in advance of the date that Contractor intends to contract with said subcontractor. The City shall respond in writing within thirty (30) days if it does not approve of the proposed subcontractor, or requires additional information prior to making a determination approving the subcontractor. The City's failure to respond within thirty (30) days shall be deemed an approval of the subcontractor.

7. Contractor's Warranties.

7.1 Contractor warrants that all Services provided under this Agreement shall be performed in accordance with generally accepted professional practices and standards for Contractor's profession in the state.

7.2 Contractor warrants that all Services provided under this Agreement shall be performed in accordance with applicable federal, state, and local laws and regulations, including, but not limited to, conflict of interest laws.

7.3 Contractor warrants that Contractor has no present interest which would conflict in any manner with the performance of Services on the City's behalf.

8. Notice. Any notice, billing, or payment required by this Agreement must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by e-mail as a .pdf (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party shall be given as follows:

<u>City:</u>	<u>Contractor:</u>
City of El Cerrito	East Bay Sanitary Company, Inc.
10890 San Pablo Ave.	PO Box 1316
El Cerrito, CA 94530	El Cerrito, CA 94530
Ph: 510.215.4369	Ph: 510-237-4321
Fax: 510.559.7682	Fax: 510-237-1340
Attention: Garth Schultz	Attention: Mark Figone
Title: Operations Manager	Title: President

9. Indemnity. The terms and conditions set forth in this section are applicable to this Agreement. To the full extent permitted by law, Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless to the full extent permitted by law, City, its governing body, officers, agents, employees, and volunteers from and against any and all liability, demands, loss, damage, claims, settlements, expenses, and costs (including, without limitation, attorney fees, expert witness fees, and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's acts or omissions with respect to this Agreement, except such Liability caused by the active negligence, sole negligence, or willful misconduct of the City. This indemnification obligation is not limited by any limitation on the amount or type of damages or compensation payable under Workers' Compensation or other employee benefit acts, or by insurance coverage limits, and shall survive the expiration or early termination of this Agreement.

10. Insurance. Before providing any services under this Agreement, Contractor shall be required to procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of Contractor and its employees or subcontractors relating to or arising from the performance of services under this Agreement, and must remain in full force and effect at all times during the term of the Agreement. All required insurance must be issued by an insurer licensed to do business in the State of California, and each such insurer must have an A.M. Best financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor.

10.1 The following insurance policies and limits are required for this Agreement:

10.1.1 **Commercial General Liability Insurance ("CGL").** The CGL policy shall be issued on an occurrence basis, written on a comprehensive general liability form, and shall include coverage for liability arising from Contractor's acts or omissions in the performance of services under this Agreement with limits of at least one million dollars (\$1,000,000.00) per occurrence. The CGL policy must name City as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and must protect City, its officers, employees, and agents against any and all liability for personal injury, death, or property damage or destruction arising directly or indirectly in the performance of the Agreement. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.

10.1.2 **Automobile Insurance.** The automobile liability insurance shall cover bodily injury and property damage in an amount no less than one million dollars (\$1,000,000.00) combined single limit for each occurrence, including owned, hired, and non-owned vehicles.

10.1.3 **Workers' Compensation Insurance and Employer's Liability.** The policy must comply with the requirements of the California Workers' Compensation Insurance and Safety Act, with limits of at least one million dollars (\$1,000,000.00). If Contractor is self-insured, Contractor shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

10.2 Each certificate of insurance must state that the coverage afforded by the policy or policies shall not be reduced, cancelled or allowed to expire without at least thirty (30) days written notice to City, unless due to non-payment of premiums, in which case at least ten (10) days written notice shall be made to City.

10.3 Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against City.

10.4 The CGL policy must include the following endorsements:

10.4.1 The inclusion of more than one insured shall not operate to impair the rights of one insured against another, and the coverages afforded shall apply as though separate policies have been issued to each insured.

10.4.2 The insurance provided is primary and no insurance held or owned by City shall be called upon to contribute to a loss.

11. Dispute Resolution. In the event that any dispute arises between the parties in relation to this Agreement, the parties agree to meet face to face as soon as possible to engage in a good faith effort to resolve the matter informally. In the event that any dispute arises between the parties in relation to this Agreement, and the dispute is not resolved by informal discussions, the parties agree to submit the dispute to mediation.

11.1 Either party may give written notice to the other party of a request to submit a dispute to mediation, and a mediation session must take place within sixty (60) days after the date that such notice is given, or sooner if reasonably practicable. The parties shall jointly appoint a mutually acceptable mediator. The parties further agree to share equally the costs of the mediation, except costs incurred by each party for representation by legal counsel.

11.2 Good faith participation in mediation pursuant to this Section is a condition precedent to either party commencing litigation in relation to the dispute.

12. Termination for Cause. If either party breaches this Agreement by failing to timely or satisfactorily perform any of its obligations or otherwise violates the terms of this Agreement, the other party may terminate this Agreement by giving written notice thirty (30) calendar days prior to the effective date of termination, specifying the reason and the effective date of the termination. Contractor shall be entitled to payment for all services satisfactorily provided up to the effective date of termination, except that the City may deduct from that payment the amount of costs the City incurred, if any, because of Contractor's breach of the Agreement.

13. General Provisions.

13.1 **Assignment and Successors.** Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto.

13.2 **Third Party Beneficiaries.** There are no intended third party beneficiaries to this Agreement.

13.3 **Nondiscrimination.** Contractor shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, disability, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

13.4 **Choice of Law and Venue.** This Agreement shall be governed by California law, and venue shall be in the Superior Court for the county in which City is located, and no other place.

13.5 **Severability.** If any provision of this Agreement is determined to be illegal, invalid, or unenforceable, in part or in whole, the remaining provisions, or portions of the Agreement shall remain in full force and effect.

13.6 **Amendment.** No amendment or modification of this Agreement shall be binding unless it is in a writing duly authorized and signed by the parties to this Agreement.

13.7 **Provisions Deemed Inserted.** Every provision of law required to be inserted in this Agreement shall be deemed to be inserted, and this Agreement shall be construed and enforced as though included. If it is discovered that through mistake or otherwise that any required provision is not inserted, or not correctly inserted, this Agreement shall be amended to make the insertion or correction.

13.8 **Entire Agreement.** This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties regarding the subject matter of this Agreement and supersedes all prior written or oral understandings or agreements of the parties.

13.9 **Attachments.** If any provision in any attachment to this Agreement conflicts with or is inconsistent with the provisions set forth in the body of this Agreement, the provisions set forth in the body of this Agreement shall control over the conflicting or inconsistent provisions in the attachment.

13.10 **Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

13.11 **Force Majeure.** If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, riots, insurrection, war, fire or other casualty, or other reason beyond the reasonable control of the party delayed, excluding financial inability ("Force Majeure Event"), performance of that act shall be excused for the period during which the Force Majeure Event prevents such performance, and the period for that performance shall be extended for an equivalent period. Delays or failures to perform resulting from lack of funds shall not be Force Majeure Events.

13.12 **Headings.** The headings in this Agreement are included for convenience only and shall neither affect the construction or interpretation of any provision in this Agreement nor affect any of the rights or obligations of the parties to this Agreement.

13.13 **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

13.14 **Authorization.** Each individual executing this Agreement, or its counterpart, on behalf of the respective party, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents. As to those Parties that are corporations, signatures from two officers of the corporation are required pursuant to California Corporation Code section 313.

The parties agree to this Agreement as witnessed by the signatures below:

City of El Cerrito

By: _____

Scott Hanin, City Manager

Date: _____, 2014

APPROVED AS TO FORM:

By _____

Sky Woodruff, City Attorney

Date: _____, 2014

CONTRACTOR

By: _____

Printed: _____

Title: _____

Date: _____, 2014

ATTEST:

By _____

Cheryl Morse, City Clerk

Date: _____, 2014

Attachments:

- | | |
|--------------|---|
| Attachment 1 | Request for Proposal and Technical Specifications |
| Attachment 2 | Street Sweeping Map and Schedule |
| Attachment 3 | Contractor's Cost Proposal |
| Attachment 4 | El Cerrito Business License |
| Attachment 5 | Proof of Insurance and Additional Insured Endorsement |



CITY OF EL CERRITO REQUEST FOR PROPOSALS TO PROVIDE STREET SWEEPING SERVICES

The City of El Cerrito ("City") requests proposals from qualified street sweeping companies or agencies ("Contractor") to provide street sweeping services.

1. Services Requested

Furnish all necessary materials, equipment, labor, and incidentals as required to perform street sweeping services in the City. The work involved shall include mechanical sweeping of all curbed flow-lines, including all cross gutters, streets and paved center median islands. The description of areas to be swept consist of all designated streets located within the portion of the City described in **Attachment 1** and **Attachment 2**.

2. Term

Unless earlier terminated as allowed for in the Draft Agreement (**Attachment 4**) the term shall be for a period of five (5) full fiscal years. The term is intended to commence in October 2014, after City Council approval of an agreement, and terminate on June 30, 2020. The term of the agreement shall be extended for up to five (5) additional one (1) year terms with the extensions to commence upon the expiration of the initial term or any extended term, unless the City notifies Contractor in writing at least thirty (30) days before the end of the initial term or any extended term, of its intent to terminate the agreement at the conclusion of the initial term or any extension.

3. Performance Standards

Street sweeping shall be performed in accordance with accepted standards for routine and emergency municipal street cleaning. Additional performance standards include:

- a. Sweeping in all areas shall occur per the schedule described in **Attachment 1** and **Attachment 2**.
- b. Contractor shall maintain the sweeping schedule as approved by the City and shall maintain standby equipment to be used in the event of equipment breakdown or an emergency.
- c. When necessary for proper street cleaning, more than one pass will be made on the street without additional charge.
- d. Additional sweeps requested by the City for unsatisfactory performance shall be responded to immediately.
- e. Sweepers shall not be operated faster than 10 mph when sweeping paper, leaves or light trash, 5 mph when sweeping normal accumulation of dirt, sand and gravel, and 3 mph when sweeping heavy accumulation of dirt, sand and gravel.

- f. The City reserves the right to add additional streets and/or other right-of-way to the street schedule. The Contractor shall provide any additional sweeping services at costs agreed to by the City and the Contractor.
- g. Contractor shall be responsible for disposal of all street sweeping spoils collected by hauling the same to the City of El Cerrito Solid Waste Transfer Station location at 7501 Schmidt Lane, El Cerrito. Contractor shall be responsible for disposing of all street sweeping spoils into bins designated by the City, and shall be responsible for immediate clean-up of any materials spilled out of trucks or designated bins.
- h. The City shall be the sole authority for canceling scheduled street sweeping due to inclement weather. When inclement weather prevents adherence to the regular sweeping schedule for two or less days in a given week, the sweeping areas so affected by the inclement weather shall be swept within seven days of the scheduled sweeping without interruption of regular sweeping schedule. Contractor shall perform all make up work due to inclement weather without additional charge.
- i. In the case of prolonged inclement weather, the City, at its discretion, will consider the Contractor's request to eliminate sweep days not completed. If sweep days are eliminated, the Contractor shall credit the City for street sweeping services not performed.
- j. Contractor shall not sweep on Saturday, Sunday or City recognized holidays.
- k. Contractor will submit a list of the type of equipment to be utilized, including the year, make and model of each sweeper proposed for providing these services to the City for approval. At a minimum the Contractor shall provide equipment with regenerative air vacuum sweepers that comply with South Coast Air Quality Management District (SCAQMD) Rule 1186.1 Less Polluting Sweepers.
- l. Contractor shall spray street with water during street sweeping operations to the extent required to minimize blown dust/dirt in compliance with AQMD - PM10 requirements.

4. Proposal Format

Proposals are to be submitted in envelopes clearly marked with the Contractor's name, address and phone number. Proposal packages including **five copies** of the proposal are to be submitted to the City on or before September 30, 2014 at 5 p.m. Proposals received after the stated deadline shall not be accepted. Proposal packages are to be delivered to:

Yvetteh Ortiz, Public Works Director
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

5. Selection Process

It is the City's intent to select the Contractor with the best combination of qualifications and cost proposal. The proposals received by the City will be reviewed by a Selection Committee comprised of City staff. The Committee will rank the proposals for agreement negotiations based upon the materials submitted by the proposing Contractors. The Committee may choose to interview two or more closely-ranked Contractors, but will not expect or schedule time for elaborate presentations. Contractors are encouraged to keep their proposals brief and relevant to the specific work required. The City will open agreement negotiations with the top ranked Contractor. The successful Contractor will be expected to enter into the attached Professional Services Agreement (**Attachment 4**).

Proposals shall include the following items submitted in **five complete copies**:

a. Cover Letter

- i. The name, address and phone number of the Contractor's contact person for the remainder of the selection process.
- ii. Any qualifying statements or comments regarding the proposal, the information responsive to the criteria specified in the request for proposal for street sweeping services and the proposed the proposed Agreement.
- iii. Proof of commercial general and automobile liability insurance, as specified in Section 10 "Insurance" of the attached Agreement.
- iv. Identification of subcontractors and their responsibilities.

b. Statement of Qualifications

- i. A listing of proposed project personnel, including personal experiences and individual resumes for prime contractors and sub-contractors.
- ii. Contractor's and subcontractor's experience with similar work, including names and current phone numbers of reference for existing and past clients.
- iii. A listing of proposed project equipment, including street sweepers and other equipment.
- iv. A listing of any relevant certifications, permits, or licenses for personnel, equipment, or the Contractor.

c. Cost

- i. The Contractor is to submit a detailed cost proposal for all services and materials anticipated in completing the project using the forms provided in **Attachment 3**.

6. Questions

Questions about this Request for Proposals should be submitted to Garth Schultz, Operations + Environmental Services Division Manager via email to gschultz@ci.el-cerrito.ca.us by September 19, 2014.

Responses to all questions will be posted by September 22, 2014 to the City's website at <http://www.el-cerrito.org/proposals>

ATTACHMENT 1

Technical Specifications

- A. **Commercial.** On a once per week basis, sweep curbs (and gutters, and median curbs where present) to remove litter and debris. Sweeping in these areas to be performed between the hours of 12:00 midnight and 6:00 a.m., at a frequency of once per week. Document and report work performed to City in commercial areas defined as:

Street	Limits	Median Length One-Way [LF]	Approx. Length One-Way [LF]
San Pablo	SCL to NCL	13,500	13,500
Schmidt	San Pablo to Liberty	0	700
Portola	San Pablo to Liberty	0	700
Moeser	San Pablo to Richmond	1,400	1,400
Liberty	Hill to Key	0	400
Key	Liberty to Cutting	0	350
Carlson	San Pablo to NCL	1,950	2,200
Fairmount	Carlson to Colusa	650	3,500
Central	Carlson to WCL	700	1,700
Stockton	San Pablo to Ashbury	0	2,200
Potrero	S. 55th to San Pablo	460	800
Eastshore Blvd.	Potrero to San Pablo	0	950
Hill	San Pablo to Liberty	0	1,400
Cutting	Key to WCL	0	950
Kearney	Knott to Cutting	0	400
Kearney	Potrero to Madison	0	850
Kearney	Conlon to Wall	0	700
Conlon	San Pablo to Kearney	0	150
Knott	I-80 to Key	0	950

Wall	San Pablo to Kearney	0	200
NCL = North City Limit SCL= South City Limit WCL = West City Limit			
Commercial Approximate Totals =		18,660	34,000 LF

- B. **Residential Arterials.** On a twice per month basis, sweeping curbs (and gutters, and median curbs where present) to remove litter and debris. Sweeping in these areas to be performed between the hours of 6:00 a.m. and 9:00 p.m., at a frequency of twice per month. Document and report work performed to City in residential arterial areas defined as:

Street	Limits	Median Length One-Way [LF]	Approx. Length One-Way [LF]
Richmond	Fairmount to Potrero	0	6,200
Ashbury	SCL to Fairmount	1,800	1,800
Ashbury	Fairmount to Moeser	0	5,000
Arlington	ECL to NCL	0	12,500
Cutting	Pebble Beach to Key	0	5,000
Colusa	SCL to Eureka	0	2,100
Kearney	Manila to Schmidt	0	650
Manila	San Pablo to Schmidt	0	200
Moeser	Richmond to Arlington	850	5,600
Barrett	Arlington to Carlston	0	4,400
NCL = North City Limit SCL= South City Limit WCL = West City Limit			
Residential Arterials Approximate Totals =		2,650LF	43,450 LF

- C. **Public Parking Lots.** On a twice per month basis, sweep parking lots, to remove litter and debris. Sweeping in these areas to be performed between the hours of 12:00 midnight and 6:00 a.m., at a frequency of twice per month. Document and report work performed to City in public parking lot areas defined as:

Parking Lot	Location	Approx. Area
Senior Center & Library	Stockton at Kearney	20,000 SF
Community Center	Moeser at Pomona	26,000 SF
Recycling Center	At East End of Schmidt	11,000 SF

Corporation Yard	At East End of Schmidt	28,000 SF
Parking Lot Approximate Total =		85,000 SF

- D. **All Other Residential Streets.** On a once per month basis, sweep curbs (and gutters, and median curbs where present) to remove litter and debris. Sweeping in these areas to be performed between the hours of 6:00 a.m. and 9:00 p.m., at a frequency of once per month. Document and report work performed to City in residential areas defined as:

Street	Limits From To	Median Length One-Way [LF]	Approx. Length One-Way [LF]
Tuller	Silva Barrett		600
Brooks	Silva Barrett		300
Yuba	NCL Barrett		900
Sonoma	NCL Barrett		600
Edwards	Charles Barrett		1,300
Ellerhorst	Charles Barrett		350
Tulare	Charles Barrett		2,300
Mira Vista	NCL Canyon Trail		2,300
Francisco	NCL Carquinez		600
Carquinez	NCL Hagen		600
Tassajara	NCL Lagunitas		1,800
Monta Vista	Alta Vista Arlington		600
La Honda	Alta Vista Barrett		500
Tamalpais Dr.	Arlington Ganges		3,500
Tamalpais Ct.	All		150
Del Monte	NCL Arlington		600
Nason	Edwards Jordan		300
Alva	Lagunitas Tassajara		700
Humboldt	Poinsett Key		900
Mono	Poinsett Conlon		950
Macdonald	Ludwig ECL		1,150
Cedar	Alta Punta Fern		450

Edith	Alta Punta	Fern		340
Gloria	Alta Punta	Fern		330
Edna	Jordan	Fern		100
Jordan	Nason	Tamalpais		2,850
Harvard	All			150
Scenic	Cutting	Arlington		480
Pebble Beach Drive	Cutting	Cutting		1,300
Pebble Beach Way	All			400
Pebble Beach Court	All			150
Junction	Conlon	Cutting		420
Hagen	Junction Canyon Trail		570	2,500
Harper	Hagen	Hagen		1,100
Tapscott	Gatto	Hagen		1,400
Wilson	Ganges	Cutting		1,800
Fairview	Cutting	Ganges		700
Ganges Ave	Fairview	Blake		1,650
Ganges Ct	All			100
Wesley	Walnut	Blake		1,100
Walnut	All			825
Peerless	All			150
S. 53rd	Potrero	Cypress		400
S. 55th	Potrero	Cypress		600
S. 56th	Potrero	Cypress		600
F St.	All			200
Fall	WCL	End		200
Ernest	WCL	End		400
Victor	WCL	End		500
Gordon	WCL	End		400
School	WCL	S. 55th		650

Cypress	WCL	S. 55th		650
Cypress	S. 56th	San Pablo		600
Lexington	Hill	Gladys		1,900
Lexington	Moeser	Stockton		1,400
Lexington	Eureka	Fairmount		2,450
Liberty St	Key	Stockton		7,800
Liberty St	Eureka	Fairmount		2,000
Liberty Ct	All			150
Manor Cir	All			1,000
Elm St	Cutting	Schmidt		4,600
Elm St	Moeser	Willow		3,400
Elm Ct	All			200
Everett	Blake	Schmidt		3,100
Everett	Portola	Fairmount		5,100
Norvell St	Everett	Schmidt		3,200
Norvell St	Moeser	Fairmount		4,350
Norvell Ct	All			200
Lawrence Ct	All			150
Scott	Navallier	Moeser		1,800
Navellier	Blake	Moeser		4,500
Contra Costa	Devonshire	SCL		5,800
Brewster Dr.	Arlington	Arlington		2,800
Brewster Ct.	All			100
Buckingham	Arlington	End		1,500
Madera Dr.	Arlington	Madera Cir		500
Madera Cir	All			1,400
Madera Ct	All			300
Douglas	All			900
Devonshire Dr	All			1,200

Linda Vista	All		300
Rifle Range	Arlington NCL		2,750
Wildcat	All		1,200
Bel View	All		500
Betty	Buckingham Brewster		1,100
James	All		350
Regency	All		800
Gayle	All		250
Noble	All		250
Cabrillo	Manila Schmidt		600
Rivera	Manila Schmidt		600
Ranchito	All		150
Park Vista	All		450
Shevlin Dr	King Terrace		2,600
Shevlin Pl	All		150
King Dr	Contra Costa Terrace		2,700
King Ct	All		150
Havens	Arlington Terrace		900
Villa Nueva	Terrace Don Carol		800
Don Carol	All		1,600
Edgehill	All		700
Ivy	All		300
Leneve	Ivy Terrace		1,500
Kensington Rd	All		800
Clark	All		200
Roberta	All		400
Terrace	Kensington Stockton		9,500
Park	All		400
Midcrest	All		250

Hancock	All		250
Avila Pl.	All		400
Craft	All		500
Bates	Moeser End		1,200
Gelston	All		1,100
Bay Tree	All		400
Seaview Dr	Moeser Terrace		1,900
Seaview Dr	Terrace Colusa		3,100
Seaview Pl	All		700
Galvin	Moeser Terrace		1,600
Balra	North end SeaView		4,700
Avis	Moeser Stockton		1,000
Pomona Ave	Moeser Eureka		2,600
Pomona Ct	All		100
Albermarle	Ashbury Fairmount		3,000
Colusa	Terrace Fairmount		3,600
Colusa (west curb only)	Fairmount Santa Fe		2,700
Clayton	Ashbury Fairmount		2,400
Village	Errol SeaView		1,000
Bonnie	Errol SeaView		1,900
Susan	All		150
Santa Fe (west curb only)	Colusa SCL		800
San Carlos	Fairmount SCL		2,200
Carmel	Fairmount SCL		2,300
Ramona	Fairmount SCL		2,250
Pomona Ave	Fairmount SCL		2,100
Ashbury	Moeser SCL	1,700	6,700
Behrens	Fairmount SCL		1,600

Victoria	All		450
Tahoe	All		250
Coronado	All		500
Adams	All		100
Yosemite	Avila St SCL		1,600
Santa Clara	Central SCL		1,250
Belmont	Central SCL		1,250
Yolo	El Dorado SCL		300
San Mateo	NCL SCL		500
Lassen	Belmont Carlson		700
San Diego	WCL San Pablo		1,250
Avila St	Santa Clara San Pablo		950
El Dorado	San Mateo San Pablo		1,550
Ward	Pomona Santa Fe		950
Lynn	Ashbury Colusa		1,400
Curry	Pomona Colusa		1,000
A St	All		250
B St	Behrens Ashbury		400
C St	Behrens Ashbury		425
Lincoln	San Pablo Ashbury		2,800
Rockway	Ashbury Colusa		750
Eureka	San Pablo Ashbury		2,650
Eureka	Ashbury Colusa		700
Eureka	Balra ECL		1,200
Errol	Colusa SeaView		1,150
Ricardo	All		100
Leviston	Balra Colusa		600
Hotchkiss	Pomona Colusa		750
Stockton	Ashbury Shevlin		3,350

Waldo Ave	San Pablo Pomona		2,350
Waldo Ln	Pomona Avis		400
Earl	All		300
Duke	All		150
Baron	All		150
Burns	All		300
Willow	Liberty Oak		150
Willow	Elm Richmond		200
Oak	All		450
Portola	Liberty Navellier		2,100
Glenwood	All		150
Schmidt	Liberty Navellier		2,050
Manila	Kearney Navellier		2,750
Donal	Liberty Navellier		2,200
Gladys	Lexington East end		2,600
Potrero	WCL Arlington		7,600
Mound	All		450
Plank Ave	All		600
Plank Ct	All		250
Roger	All		650
Julian Dr	All		800
Julian Ct	All		900
Carol Ct	All		250
Blake	San Pablo Navellier		2550
Key	Cutting Liberty		300
Morris	Junction Hagen		250
Knott	West end Hagen		1,350
Gatto	Harper Canyon Trail		1,750
Canyon Trail	All		250

Kenilworth	Cutting Ganges		1,000
Snowdon	Cutting Ganges		1,100
Glen Mawr	Cutting Ganges		1,150
Downey	Wilson Kenilworth		500
Hudson	Wilson Glen Mawr		850
Irma	Carquinez Alma		250
Fern	Cedar East end		950
Conlon	Key Macdonald		1,200
View	Harvard Scenic		450
Ludwig	Poinsett Jordan		700
Alta Punta	Macdonald Tulare		1,150
Lagunitas	Carquinez Cutting		1,600
Jordan	Poinsett Tamalpais		3,300
Poinsett	Tulare WCL		1,500
Rosalind	Edwards WCL		1,800
Harris	Barrett Rosalind		250
Hillside	Harris Rosalind		600
Alvarado	All		300
Silva	WCL Zara		350
Zara	WCL Yuba		600
Charles	Sonoma Tulare		650
Ray	Ralston Tulare		250
Alta Vista	NCL Arlington		650
NCL = North City Limit SCL= South City Limit WCL = West City Limit			
Monthly Residential Approx. Totals =		2,270 LF	274,820 LF

#1 Commercial Route

The following streets are currently swept weekly with the commercial route. Is it the City's intent to reduce frequency to once per month? **NO. THE CITY INTENDS TO HAVE THESE STREETS SWEEPED ON THE CURRENT WEEKLY SCHEDULE.**

- a. Central Ave. from San Pablo Ave to Richmond Street. (Note: Central Ave from San Pablo Ave to Ashbury is not on any list)
- b. Liberty St. from Central Ave to Fairmount Street
- c. First 100 feet of Cypress (west of SP Ave.)
- d. First 100 feet of Carlos (west of SP Ave.)
- e. First 100 feet of Madison (west of SP Ave.)
- f. First 100 feet of Jefferson (west of SP Ave.)
- g. First 100 feet of Alameda (west of SP Ave.)
- h. First 100 feet of Bayview (west of SP Ave.)
- i. South 56th St from Potrero to Cypress

#2 Arterial Route

#1 The following streets are currently swept twice per month with the Arterial Route. Is it the City's intention to reduce frequency to once per month? **NO. THE CITY INTENDS TO HAVE THESE STREETS SWEEPED ON THE CURRENT BI-WEEKLY SCHEDULE.**

- a. Elm Street from Potrero to Cutting
- b. Key Street from Elm to Mac Donald (note: this section is not on any list)
- c. Potrero Ave. from San Pablo Ave to Arlington

#2 The Residential Arterial Street list Manila is listed from San Pablo Ave to Schmidt. Schmidt Lane and Manila do not intersect. Where is the stopping point? **MANILA SHOULD BE SWEEPED FROM SAN PABLO AVE. TO NAVELLIER ST.**

#3 Residential Route

#1 The following streets are not listed on the street list. Should they be swept? **YES, ON A MONTHLY BASIS.**

- a. Lambrecht
- b. Thors Bay Rd
- c. Arbor Dr
- d. Lawrence St
- e. Kent Dr
- f. Kent Ct
- g. Betty Ln (Between Brewster & Contra Costa)
- h. Eureka (Between Balra & Errol)
- i. Nason (Between Poinsett & Edwards)
- j. Alva (Between Lagunitas & Cutting)

#2 Peerless is listed on the Residential List. Peerless is part of a shopping center now. Is it still swept? **NO.**

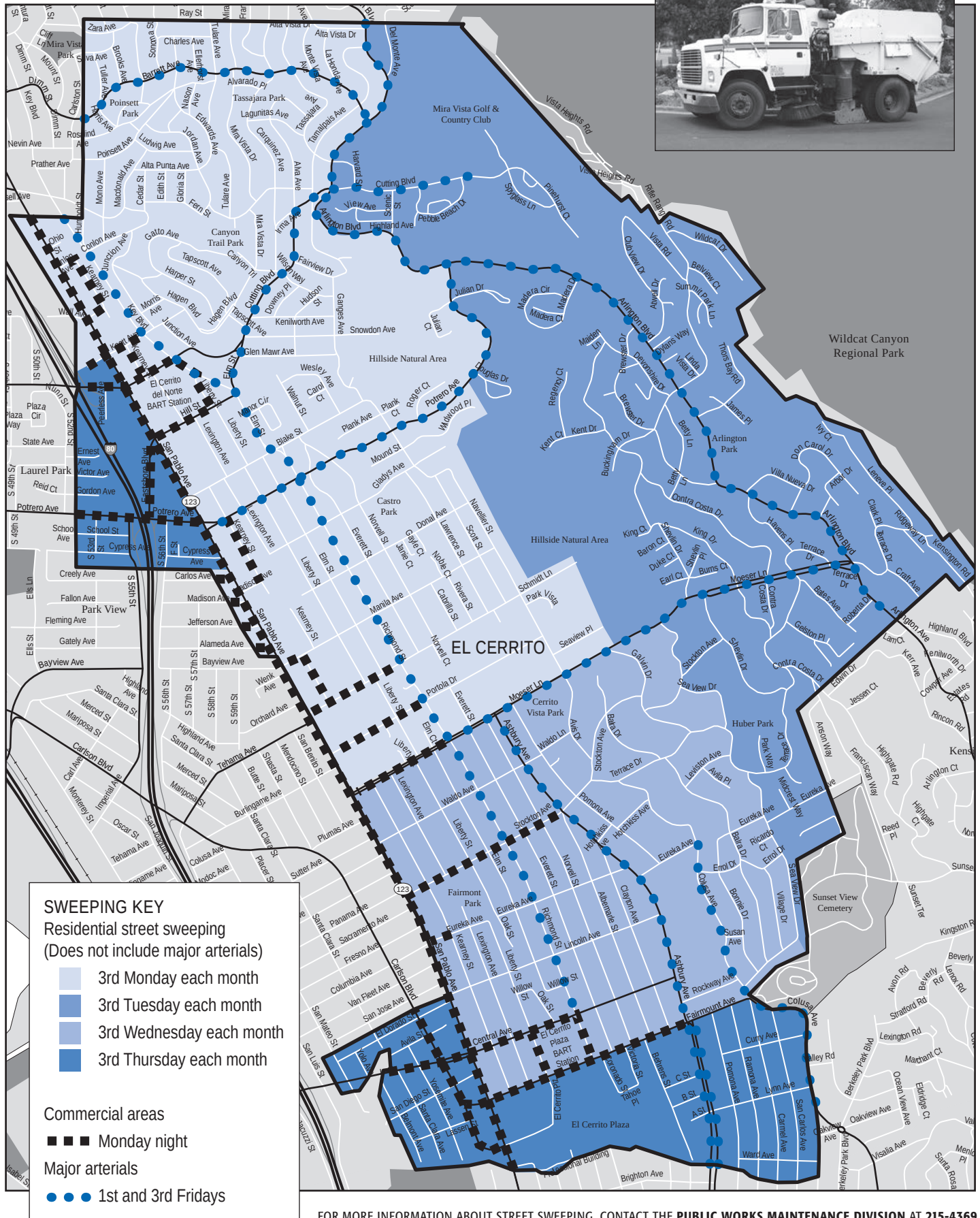
#3 Colusa (from Fairmount to Santa Fe) is both on the Residential Arterial Route as well as the Residential Route. Does the City want this section swept 3 times per month? **THIS STREET SECTION SHOULD BE ON RESIDENTIAL ARTERIAL ONLY.**

#4 Ashbury (from Moeser Ln to the South City Limit) is both on the Residential Arterial Route as well as the Residential Route. Does the City want this section

swept 3 times per month? THIS STREET SECTION SHOULD BE ON
RESIDENTIAL ARTERIAL ONLY.

Street Sweeping Agreement Attachment 2 - Map and Schedule

CITY OF EL CERRITO



FOR MORE INFORMATION ABOUT STREET SWEEPING, CONTACT THE **PUBLIC WORKS MAINTENANCE DIVISION** AT **215-4369**.
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Street Sweeping Agreement Attachment 3 -
Cost Proposal

City of El Cerrito | Street Sweeping Agreement RFP

Due September 30, 2014

ATTACHMENT 3

Cost Proposal

Item No.	Item Description	Proposal Unit Price
1.	Sweep Commercial Areas	\$ <u>2552.45</u> Per Month
2.	Sweep Residential Arterial Streets	\$ <u>1178.22</u> Per Month
3.	Sweep Public Parking Lots	\$ <u>109.50</u> Per Month
4.	Sweep All other Residential Streets	\$ <u>3337.56</u> Per Month
TOTAL	ALL SERVICES	\$ <u>7177.73</u> Per Month

Hourly rates for labor to perform work not included in Technical Specifications

During the agreement term, City may request Contractor to perform work not listed in the Technical Specifications. The Contractor offers the specified labor categories at the indicated hourly rate for these additional services. Hourly rates shall include all direct and indirect costs. For labor not listed below which is needed to perform additional work, the hourly rate shall be agreed upon between the City and Contractor before additional services are performed.

The City specifically requests an hourly rate for manual/hand sweeping of hard to reach areas such as angled street parking spaces, bulb-outs, or other areas that cannot be fully swept via mechanical means. Please list an hourly rate for manual/hand sweeping of these areas in the table below, along with any other hourly rates that may apply to work not included in the Technical Specifications.

LABOR CLASSIFICATION	HOURLY RATES		
	STRAIGHT TIME	OVERTIME	SUNDAY/HOLIDAY
1. MANUAL/HAND SWEEPING	\$ 45.00	\$ 67.50	\$ 112.50
2.	\$	\$	\$
3.	\$	\$	\$
4.	\$	\$	\$
5.	\$	\$	\$

Hourly rates for equipment to perform work not included in Technical Specifications

Hourly rates shall include all costs necessary to provide equipment in good working order, including cost of fuel, maintenance, direct and indirect cost, but excluding operating labor costs.

For equipment not listed below which is needed to perform additional work, the hourly rate shall be agreed upon between the City and the Contractor before such additional equipment is used.

The equipment listed below will not be paid for if required in the performance of the work called out in the Technical Specification. It will only be paid for if specifically requested, required and previously approved by the City.

CLASSIFICATION OF EQUIPMENT	DESCRIPTION (MODEL, SIZE, ETC.)	HOURLY RATES		
		PER HOUR	PER DAY	PER WEEK
1. Street Sweeper	Tynco 600 Air	\$ 55.00	\$ 440.00	\$ 2,200.00
2. Street Sweeper	Broom Mobile	\$ 55.00	\$ 440.00	\$ 2,200.00
3.		\$	\$	\$
4.		\$	\$	\$
5.		\$	\$	\$

Adjustments in Scope or Quantity of Work

The City reserves the right to increase or decrease quantities of work included by the Technical Specification or to delete entire proposal items from the proposal schedule, either before execution of the agreement or during the agreement term.

If related services are desired by City which are not covered by the Technical Specifications or by the hourly rate schedule, the fee shall be negotiated and a written work order issued accordingly by the City. Contractor shall not be entitled to compensation for additional services unless a prior written work order has been executed describing the work and specifying the compensation therefore.

Street Sweeping Agreement Attachment 4 -
Proof of Business License



10890 San Pablo Avenue
El Cerrito, CA 94530
(510) 215-4335 FAX (510) 215-4319
Website: www.el-cerrito.org

November 06, 2014

EAST BAY SANITARY
MARK FIGONE
P.O. BOX 1316
EL CERRITO, CA 94530

Dear Business Person,

The City of El Cerrito appreciates the contribution your enterprise has made to our local economy. Below is your Business License. It is in effect until the expiration date shown on the left hand corner of the license.

It is the responsibility of the business owner to be aware of the Business License tax due date and to remit payment in a timely manner. To avoid penalties, payment must be made within thirty days from the expiration date.

This Business License does not imply conformance with applicable City codes and ordinances. Approval from the City Planning Department for compliance with zoning codes and use restrictions must be received before operating your business.

Please cut your license off at the line below and post it in a conspicuous place in your business.

Again, thank you for choosing to do business in the City of El Cerrito.

Sincerely,

Lisa Malek-Zadeh

Finance Director/City Treasurer

Business No: 11025

Business Class: CONTRACTOR A

Expires: June 30, 2015

License No. : 15-0002285

POST IN A CONSPICUOUS PLACE

Under provisions of El Cerrito
Municipal Code, a non-transferable
License is hereby granted to:

1. License must comply with City zoning requirements.
2. This license is issued without verification that the license is subject to or exempt from licensing by the State of California.

EAST BAY SANITARY
1432 KEARNEY STREET
EL CERRITO, CA 94530

Lisa Malek-Zadeh

Finance Director



Street Sweeping Agreement Attachment 5 -

Proof of Insurance and Endorsements

EASTBA0-08

HBCT10

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/23/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0564249 Heffernan Insurance Brokers 101 Second Street, Suite 120 Petaluma, CA 94952	CONTACT NAME:		
	PHONE (A/C, No, Ext): 1 (707) 781-3400	FAX (A/C, No): 1 (707) 781-0800	
INSURED East Bay Sanitary Company Inc P.O. Box 1316 El Cerrito, CA 94530	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Financial Pacific Insurance Company		31453
	INSURER B: RSUI Indemnity Company		
	INSURER C: Insurance Company of the West		27847
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY		60421983	12/20/2013	12/20/2014	EACH OCCURRENCE	\$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000
	☐ CLAIMS-MADE ☒ OCCUR					MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
							\$
		GEN'L AGGREGATE LIMIT APPLIES PER:					
	☐ POLICY ☐ PRO-JECT ☐ LOC						
A	AUTOMOBILE LIABILITY		60421983	12/20/2013	12/20/2014	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	☒ ANY AUTO					BODILY INJURY (Per person)	\$
	☐ ALL OWNED AUTOS	☐ SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	☐ HIRED AUTOS	☐ NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident)	\$
							\$
							\$
B	UMBRELLA LIAB	☒ OCCUR	NHA231940	12/20/2013	12/20/2014	EACH OCCURRENCE	\$ 10,000,000
	☒ EXCESS LIAB	☐ CLAIMS-MADE				AGGREGATE	\$
	☐ DED	☐ RETENTION \$				Aggregate	\$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	☐ Y/N	WPL5020987-01	4/1/2013	4/1/2014	☒ WC STATUTORY LIMITS ☐ OTHER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐				E.L. EACH ACCIDENT	\$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
As per contract or agreement on file with insured.

CERTIFICATE HOLDER**CANCELLATION**

City of El Cerrito 10890 San Pablo Ave. El Cerrito, CA 94530	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
3/28/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER InterWest Insurance Services (UNIVE01) License #0B01094 100 Pringle Avenue, Suite 550 Walnut Creek CA 94596	CONTACT NAME: PHONE (A/C, No, Ext): 925-977-4100 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Travelers P/C Co of America INSURER B: Cypress Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	FAX (A/C, No): 925-932-9311 NAIC # 25674 10855
INSURED Universal Building Services 3120 Pierce Street Richmond CA 94804		

COVERAGES

CERTIFICATE NUMBER: 740672640

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC	Y		8603413N140	4/1/2014	4/1/2015	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS	Y		8103413N140	4/1/2014	4/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☐ N/A		3300064139141	4/1/2014	4/1/2015	☒ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Additional Insured status applies to requested entities if required by written contract per the attached endorsement(s). Coverage is Primary and Non-Contributory per attached endorsement.
City of El Cerrito, its elected or appointed officials, employees, and agents are named as additional insured for General and Automobile liability per the attached endorsements for the operations defined in the contract. Coverage is primary. Waiver of Subrogation applies to Workers Compensation endorsement to follow from carrier.

CERTIFICATE HOLDER**CANCELLATION**

City of El Cerrito City of El Cerrito 10940 San Pablo Ave. Foster City CA 94404 10890 San Pablo Ave. El Cerrito, CA 94530	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (CONTRACTORS OPERATIONS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
 - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
 - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
 - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
 - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
 - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
 - ii. Supervisory, inspection, architectural or engineering activities.
 - c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard".
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
 - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
 - i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:

- i. Immediately record the specifics of the claim or "suit" and the date received; and
- ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insur-

ance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. - DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Liability Coverage, Paragraph A.1. Who Is An Insured Provision**:

Any person or organization that you are required to include as additional insured on the Coverage Form in

a written contract or agreement that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period is an "insured" for Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OTHER INSURANCE – ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), Paragraph 4. (**Other Insurance**), is amended as follows:

1. The following is added to Paragraph a. **Primary Insurance**:

However, if you specifically agree in a written contract or written agreement that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:

- a. The "bodily injury" or "property damage" for which coverage is sought occurs; and

- b. The "personal injury" or "advertising injury" for which coverage is sought arises out of an offense committed

subsequent to the signing and execution of that contract or agreement by you.

2. The first Subparagraph (2) of Paragraph b. **Excess Insurance** regarding any other primary insurance available to you is deleted.
3. The following is added to Paragraph b. **Excess Insurance**, as an additional subparagraph under Subparagraph (1):

That is available to the insured when the insured is added as an additional insured under any other policy, including any umbrella or excess policy.



AGENDA BILL

Agenda Item No. 5(G)

Date: November 18, 2014

To: El Cerrito City Council

From: Garth Schultz, Operations + Environmental Services Division Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Authorize the Appropriation of \$12,000 from the Park In-Lieu Fund for
Park and Athletic Field Improvements in Fiscal Year 2014-15

ACTION REQUESTED

Adopt a resolution authorizing the appropriation of \$12,000 in the Park In-Lieu Fund for park and athletic field improvements as an amendment to the FY 2014-15 Budget.

BACKGROUND

During the year-end review of the City of El Cerrito's funds, the City Finance Department identified \$12,000 in unspent and uncommitted funds in the Park In-Lieu Fund, which accounts for monies received through negotiations with developers to be used for park improvements.

The Public Works Department has identified park and athletic field improvement projects that require attention in order to improve safety and quality of play in El Cerrito parks. Although the value of all potential projects far exceeds \$12,000, top priority projects identified by the Department, based on concerns expressed by community members, sports leagues, and the members of the Parks and Recreation Commission, include renovation of the baseball infield at Tassajara Park, and improvements to other playfield surfaces throughout the City.

The infield at Tassajara Park, in particular, has been identified as a safety concern, and will require improvement prior to the 2015 youth baseball season in order to remain playable. Depending on the scope of the improvement project at Tassajara Park, additional projects that could be considered include an infield renovation at Central Park, and irrigation improvements at other parks. The City is actively seeking the financial support and partnership of the El Cerrito sports leagues, and other community organizations in order to maximize the scope of improvements to El Cerrito parks that can be accomplished during the upcoming winter off-season.

STRATEGIC PLAN CONSIDERATIONS

Authorizing the proposed appropriation is consistent with El Cerrito Strategic Plan Goal D – *Develop and rehabilitate public facilities as community focal points*. Specifically,

appropriating funds to renovate play field surfaces fulfills a portion of the “Develop a plan to address ongoing and deferred maintenance of facilities and infrastructure.”

ENVIRONMENTAL CONSIDERATIONS

The park and athletic field improvements are categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) because the project is a repair to an existing facility involving negligible or no expansion of use beyond that presently existing. More specifically, restoration or rehabilitation of deteriorated or damaged facilities to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood, is exempt from CEQA.

In addition, from the standpoint of environmental considerations, any irrigation improvements performed will include installation of water conserving irrigation controllers, which should reduce water use in El Cerrito parks.

FINANCIAL CONSIDERATIONS

Funding was not appropriated in the adopted FY 2014-15 Budget to make the improvements discussed in this staff report. If approved by Council, funding of \$12,000 from the Park In-Lieu Fund will be appropriated in an amendment to the FY 2014-15 Budget.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:


Scott Hanin, City Manager

Attachment:

1. Resolution

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
AUTHORIZING THE APPROPRIATION OF TWELVE THOUSAND DOLLARS
(\$12,000) FROM THE PARK IN-LIEU FUND FOR PARK AND ATHLETIC FIELD
IMPROVEMENTS IN FISCAL YEAR 2014-15**

WHEREAS, during year-end review of the City's funds, the El Cerrito Finance Department identified \$12,000 in unspent and uncommitted funds in the Park In-Lieu Fund; and

WHEREAS, Park In-Lieu Fund monies are eligible for park improvements; and

WHEREAS, the Public Works Department has identified eligible park and athletic field improvement projects, including renovation of the baseball infields at Tassajara Park and other playfield surface improvements, that will improve safety and quality of play in El Cerrito parks; and

WHEREAS, the park and athletic field improvements are categorically exempt from review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) because the project is a repair to an existing facility involving negligible or no expansion of use beyond that presently existing and more specifically, restoration or rehabilitation of deteriorated or damaged facilities to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood, is exempt from CEQA; and

WHEREAS, funding is not currently available in the Fiscal Year (FY) 2014-15 Budget to make these improvements.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito, that it hereby authorizes appropriation of \$12,000 in the Park In-Lieu Fund for park and athletic field improvements as an amendment to the FY 2014-15 Budget.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 18, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November X, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(H)

Date: November 18, 2014
To: El Cerrito City Council
From: Melanie Mintz, Community Development Director
Subject: Economic Development Committee Appointment

ACTION REQUESTED

Approve an Economic Development Committee recommendation to appoint George Gager to the Economic Development Committee, effective January 1, 2015.

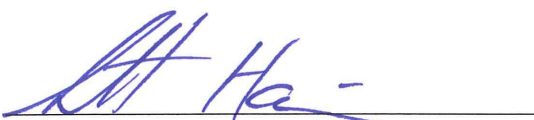
BACKGROUND

An application to the Economic Development Committee (EDC) was received from George Gager, who has attended three meetings of the Economic Development Committee. During the Regular Committee Meeting on October 16th, the Committee voted unanimously to recommend to the City Council that Mr. Gager be appointed to the Economic Development Committee.

Mr. Gager is a business professional and executive. He has demonstrated through his application and participation in EDC meetings that he is committed to economic prosperity and community in keeping with the mission of the Committee. He has the skills necessary to support the activities of the Committee.

If the Council approves this recommendation, the number of Committee members will be 7 out of a possible membership total of 15, as established by Resolution 2013-66.

Reviewed by:



Scott Hanin, City Manager



**November 18, 2014
Regular City Council Meeting**

**Agenda Item 5(H)
Economic Development Committee Appointment
Attachment 1 - Application**

Hardcopies are available for review at:

Office of the City Clerk
10890 San Pablo Avenue
El Cerrito, CA
(510) 215-4305

and

The El Cerrito Library
6510 Stockton Avenue
El Cerrito, CA



AGENDA BILL

Agenda Item No. 6

Date: November 18, 2014

To: El Cerrito City Council

From: Garth Schultz, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Proposed Integrated Waste Management Fees and East Bay Sanitary Garbage & Green Waste Collection and Processing Rates -- Effective January 1, 2015

ACTIONS REQUESTED

1. Conduct a public hearing and upon conclusion adopt a resolution setting Integrated Waste Management (IWM) Fees, effective January 1, 2015.
2. Conduct a public hearing and upon conclusion adopt a resolution setting maximum allowable East Bay Sanitary (EBS) garbage and green waste collection, disposal and processing rates, effective January 1, 2015.

BACKGROUND & ANALYSIS

Integrated Waste Management Fee

In 1990, the City of El Cerrito established IWM Fees to cover integrated waste management services. Services funded by IWM Fees include the City-run operations of the El Cerrito Recycling + Environmental Resource Center, curbside collection of recyclable materials, and other waste collection, reduction, recycling and environmental programs currently operated by the Department of Public Works, Operations + Environmental Services Division (OESD). IWM Fee revenues are collected by EBS as a component of the monthly charges for solid waste collection, processing and disposal services, via EBS's regular billing cycle. After collection, these revenues are transferred to the City of El Cerrito's IWM Fund.

Over the past eight years, the City Council has considered and adopted annual increases to the IWM Fees. As part of the Fiscal Year (FY) 2014-15 Budget the City Council approved a forecast for the IWM Fund that included increasing IWM Fee revenue by 8%, from the \$1,805,266 budgeted for collection in calendar year 2014 to \$1,949,687 in calendar year 2015, an increase of \$144,421. This increase in needed revenue is primarily due to a \$74,500 increase in vehicle maintenance service expenses, as authorized by the Council on October 15, 2013 (Resolution 2013-57) and again in August 19, 2014 (Resolution 2014-41). As reported to the Council in the staff reports that accompanied the aforementioned resolutions, no prior adjustments have been made to IWM Fee revenue to cover these increased vehicle maintenance service expenses. The remaining amount of additional revenue (\$69,921 or 3.87% of the proposed 8%

increase) is required to cover normal increases in expenses, most of which is attributable to personnel costs. The proposed 2015 IWM Fees necessary to generate \$1,949,687 in IWM Fee revenues during calendar year 2015 are included in Attachment 1.

East Bay Sanitary Garbage and Green Waste Collection Rates

In contrast to IWM Fees (which the City sets and EBS collects), EBS sets and charges the rates for garbage and green waste collection based upon maximum rates authorized by the Council, pursuant to El Cerrito Municipal Code Chapter 8.12. EBS rates have been adjusted annually for many years. Most recently, EBS rates were increased effective January 1, 2013 and 2014; there was no adjustment made in 2012.

In late 2012, the City and EBS completed a Rate and Operations Review that culminated in Council's adoption of a Fifth Amendment to the East Bay Sanitary Franchise Agreement (Resolution 2012-89, November 20, 2012). The Amendment provided for lower rates, greater services, and an extension of the Franchise Agreement through December 31, 2025. The Review process resulted in the development of an annual adjustment to EBS's annual revenues via a Refuse Rate Index (RRI).

EBS has calculated and proposed a 2015 RRI revenue adjustment of 3.49%, which combined with an additional \$15,618 due to the EBS as a result of projected under-collection of revenue in 2014 (which is in keeping with the terms of the Fifth Amendment) would result in a 2015 revenue requirement for collection operations of \$4,242,299, an increase of \$158,155 over the adjusted 2014 revenue requirement of \$4,084,144¹. Staff has reviewed the RRI adjustment figure and the proposed 2015 collection revenue requirement for accuracy, consistency, and reasonableness. The proposed 2015 Collection Rates necessary to generate \$4,242,299 in EBS Collection revenues during calendar year 2015 are included in Attachment 1.

East Bay Sanitary Post-Collection Rates: Processing and Disposal

Prior to 2014, processing and disposal rates – which fund the transfer, transport, processing and disposal of garbage and green waste, household hazardous waste programs, and other post-collection services – were set by the West County Integrated Waste Management Authority (RecycleMore). RecycleMore historically set these rates for El Cerrito because the City was party to the Integrated Resource Recovery Facility (IRRF) Agreement, which was administered by RecycleMore and expired on December 31, 2013. Prior to the expiration of the IRRF Agreement, the City Council approved the Post-Collection Agreement between the City and Republic Services for processing and disposal services (Resolution 2013-54) effective January 1, 2014. The Council also set Post-Collection Rates (Resolution 2013-64) to cover expenses for processing and disposal of 11,402 tons of waste at a cost of \$90.30 per ton, totaling to \$1,029,601, as stipulated by the Post-Collection Agreement.

¹ The original 2014 Revenue Requirement, which included increasing EBS's Franchise Fee from 12% to 15% of applicable rate revenues, was calculated to be \$4,106,331. This figure has been revised down to the \$4,084,144 stated in this report as a result staff's analysis of the proposed 2015 rates, with EBS's agreement.

Per the terms of the Post-Collection Agreement, Republic Services has calculated and proposed 2015 Post-Collection costs of \$1,046,267, at a rate of \$93.40 per ton over a projected 11,202 tons. Staff has reviewed the proposed 2015 per ton rate and the projected 2015 tons for accuracy, consistency, and reasonableness. The proposed 2015 Post-Collection Rates necessary to generate \$1,046,267 in Post-Collection revenues during calendar year 2015 are included in Attachment 1.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the IWM Fees, EBS Collection Rates, and Post-Collection Rates would help fulfill Goal F (*Implement the City's Climate Action Plan, including reducing the amount of waste generated in El Cerrito*) of the City of El Cerrito Strategic Plan. Specifically, the proposed rates and fees will support continued reductions in the amount of El Cerrito waste sent to landfills.

ENVIRONMENTAL CONSIDERATIONS

The services being funded by the proposed 2015 IWM Fees, EBS Collection Rates and Post-Collection Rates will continue to enable El Cerrito to reduce its environmental impact via further decreases in the number tons of solid waste sent to landfill. Specifically, the proposed rates and fees will enable the City and EBS to continue expanding and improving the range of diversion services to commercial businesses and multifamily dwellings, and maintain services for all other solid waste customers.

FINANCIAL CONSIDERATIONS

The proposed IWM Fees and EBS Collection and Post-Collection Rates are included in Attachment 1 (2015 Garbage, Green Waste and Recycling Rates) and, respectively, in Attachments 2 and 3 (Resolutions). Adoption of the proposed combined IWM Fees and EBS Rates, will result in total monthly cost increases of \$1.21 for 20 gallon customers (39% of cart subscriptions), \$1.69 for 35 gallon customers (57% of cart subscriptions), and \$3.64 for 64 gallon customers (4% of cart subscriptions).

Bulk commercial collection costs will increase \$14.60 to \$28.66 per month for once weekly pickup of garbage (including recycling fees). Collection of commercial green waste (and collection of residential green waste over the 64 gallons per week included in the base residential rates) will increase by \$0.98 to \$1.90 per month for once weekly pickup (97 subscriptions total).

The primary reason for the proportionately larger increase to commercial rates – as compared to residential rates – is that commercial subscriptions continue to have the greatest potential for diversion and migration towards smaller container sizes. Adopting the rates as proposed supports both the recovery of rate revenue from the appropriate waste sectors and provides incentives to reduce waste generation while also mitigating the effects of continued migration (due to higher rates).

LEGAL CONSIDERATIONS

The City Attorney has reviewed proposed actions and found that legal considerations have been addressed. Notices of public hearing were publicly posted and were

Agenda Item No. 6

published in the November 8, 2014 and November 13, 2014 editions of the West County Times.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. 2015 Garbage, Green Waste and Recycling Rates
2. Resolution 2014-XX (IWM Recycling fees)
3. Resolution 2014-YY (EBS Collection and Post-Collection rates)
4. Presentation

The City of El Cerrito



2015 Solid Waste Collection, Processing and Disposal Rates

Residential Rates | Single Family Homes and Multi-family Dwellings up to 4 units

Residential Solid Waste Services include weekly collection of recycling (grey), green waste (green), garbage (blue); limited free on-call collection of larger quantities from your home; free access to the regional Household Hazardous Waste (HHW) Facility, and free access to most services at the El Cerrito Recycling + Environmental Resource Center. Additional recycling carts are available at no extra cost.

Weekly Collection of Recycling, Green Waste, and Garbage						
<i>Monthly Cost based on garbage container size</i>						
Container Size	Collection	Post-Collection	IWM Fee	2015 Total Monthly Cost	2014 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon Cart	\$ 18.13	\$ 3.60	\$ 9.77	\$ 31.50	\$ 30.29	\$ 1.21
35 Gallon Cart	\$ 25.01	\$ 6.30	\$ 10.77	\$ 42.08	\$ 40.39	\$ 1.69
64 Gallon Cart	\$ 50.68	\$ 12.65	\$ 21.10	\$ 84.43	\$ 80.79	\$ 3.64
Weekly Collection of Additional Green Waste Containers (one 64 gallon container serviced weekly included in above rates)						
<i>Monthly Cost based on size of additional green waste container(s)</i>						
Container Size	Collection	Post-Collection	IWM Fee	2014 Total Monthly Cost	2014 Total Monthly Cost	\$ Change in Monthly Cost
35 Gallon Cart	\$ 27.51	Included	\$ -	\$ 27.51	\$ 26.53	\$ 0.98
64 Gallon Cart	\$ 53.20	Included	\$ -	\$ 53.20	\$ 51.30	\$ 1.90

Integrated Waste Management (IWM) Fee: The IWM Fee covers curbside recycling collection for El Cerrito residents and businesses and supports the daily operations of the El Cerrito Recycling Center. The Fee is set and assessed on each trash container collected by East Bay Sanitary Company, based on trash container size.

2015 Solid Waste Collection, Processing and Disposal Rates

Commercial Rates | Businesses and Multi-family Dwellings over 4 units

Commercial Solid Waste Services include collection of recycling (grey), green waste (green), garbage (blue) and most services at the El Cerrito Recycling + Environmental Resource Center. Additional recycling carts are available at no extra cost.

Once Weekly Collection of Garbage						
Monthly Cost based on garbage container size						
Container Size	Collection	Post-Collection	IWM Fee	2015 Total Monthly Cost	2014 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon Cart	\$ 18.13	\$ 3.60	\$ 9.77	\$ 31.50	\$ 30.29	\$ 1.21
35 Gallon Cart	\$ 25.01	\$ 6.30	\$ 10.77	\$ 42.08	\$ 40.39	\$ 1.69
64 Gallon Cart	\$ 50.68	\$ 12.65	\$ 21.10	\$ 84.43	\$ 80.79	\$ 3.64
One Cubic Yard	\$ 173.03	\$ 32.50	\$ 75.79	\$ 281.32	\$ 266.72	\$ 14.60
Two Cubic Yards	\$ 329.84	\$ 65.00	\$ 151.58	\$ 546.42	\$ 517.76	\$ 28.66
Multiple Weekly Collections of Garbage						
Monthly Cost based on garbage container size and number of pickups per week						
Container Size	Pickups per week					
	1	2	3	4	5	6
20 Gallon Cart	\$ 31.50	\$ 63.00	\$ 94.50	\$ 126.00	\$ 157.50	\$ 189.00
35 Gallon Cart	\$ 42.08	\$ 84.15	\$ 126.23	\$ 168.30	\$ 210.38	\$ 252.45
64 Gallon Cart	\$ 84.43	\$ 168.86	\$ 253.29	\$ 337.72	\$ 422.15	\$ 506.58
One Cubic Yard	\$ 281.32	\$ 530.53	\$ 779.74	\$ 1,028.95	\$ 1,278.16	\$ 1,527.37
Two Cubic Yards	\$ 546.42	\$ 1,044.84	\$ 1,543.26	\$ 2,041.68	\$ 2,540.10	\$ 3,038.52
Green Waste Collection						
Monthly Cost based on green waste container size and number of pickups per week						
Container Size	Pickups per week					
	1	2	3	4	5	
35 Gallon Cart	\$ 27.51	\$ 55.02	\$ 82.53	\$ 110.04	\$ 137.55	
64 Gallon Cart	\$ 53.20	\$ 106.40	\$ 159.60	\$ 212.80	\$ 266.00	
On-Call Bulk Collection (Debris Boxes and Compactors)						
Rates listed are per pickup, and are not inclusive of all charges for these services. Please call East Bay Sanitary for complete rates and fees at 510-237-4321.						
Container Type	Collection	Post-Collection	IWM Fee	Total		
Compacted Rates (per yard)	\$ 66.06	\$ 65.00	\$ 75.79	\$ 206.85		
Roll-off (Debris Box)	Market Rate (per load)	Market Rate (per ton)	\$75.00 (per load)	Varies - Call East Bay Sanitary at 510-237-4321 for price quote.		

Integrated Waste Management (IWM) Fee: The IWM Fee covers curbside recycling collection for El Cerrito residents and businesses and supports the daily operations of the El Cerrito Recycling Center. The Fee is set and assessed on each trash container collected by East Bay Sanitary Company, based on trash container size.

RESOLUTION 2014–XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO FIXING AND
SETTING THE INTEGRATED WASTE MANAGEMENT FEES
EFFECTIVE JANUARY 1, 2015**

WHEREAS, the City of El Cerrito has established Integrated Waste Management Fees (IWM Fees) for Integrated Waste Management Services provided by the Department of Public Works Operations + Environmental Services Division (OESD), including operation of the El Cerrito Recycling + Environmental Center, curbside collection of recyclable materials, and other waste collection, reduction, recycling and environmental programs; and

WHEREAS, the City Council of the City of El Cerrito sets and charges the IWM Fees, and the Fees are collected by East Bay Sanitary Company as part of the garbage bills and transferred in whole to the City of El Cerrito’s Integrated Waste Management fund; and

WHEREAS, the City has reviewed and considered financial information as a part of the regular budget process to determine whether increases to IWM Fee revenues are warranted and justified; and

WHEREAS, the City Council intends to adopt IWM Fees to be effective January 1, 2015, thus keeping the OESD’s Integrated Waste Management functions as an on-going concern; and

WHEREAS, the City Council finds that setting IWM Fees is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3). Additionally, setting IWM fees provides a government funding mechanism (CEQA Guidelines section 15378(b)(4) and is categorically exempt from CEQA under CEQA Guidelines section 15308 (Protection of the Environment).

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that the monthly rates for the IWM Fee shall be as follows, effective January 1, 2015:

Garbage Container Size	IWM Fee
20 Gallon Cart	\$9.77
35 Gallon Cart	10.77
64 Gallon Cart	21.10
One Cubic Yard	75.79
Two Cubic Yards	151.58
35 Gallon Green Waste	0.00
64 Gallon Green Waste	0.00
Compacted (per yard)	75.79
Roll-off (per load)	75.00

Agenda Item No. 6
Attachment 2

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 18, 2014, the City Council passed this resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2014.

Cheryl Morse, City Clerk

Approved:

Janet Abelson, Mayor

RESOLUTION 2014 – XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
ESTABLISHING MAXIMUM ALLOWABLE RATES FOR THE COLLECTION OF
GARBAGE AND GREEN WASTE EFFECTIVE JANUARY 1, 2015

WHEREAS, the City of El Cerrito and East Bay Sanitary Company (the Company) have entered into that certain Franchise Agreement dated September 2, 1997 (as amended, the “Franchise Agreement”); and

WHEREAS, the Company has submitted a request for rate increases to be effective January 1, 2015, and that such increases were calculated pursuant to the methodology established in the Fifth Amendment to the Franchise Agreement, dated December 14, 2012; and

WHEREAS, the rate adjustments submitted to the City have been reviewed for accuracy, consistency with the adjustment methodology, and reasonableness by the City’s Operations + Environmental Services Manager; and

WHEREAS, the City Council finds that setting these rates is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”) under the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment, and in this case it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (CEQA Guidelines § 15061(b)(3). Additionally, setting IWM fees provides a government funding mechanism (CEQA Guidelines section 15378(b)(4) and is categorically exempt from CEQA under CEQA Guidelines section 15308 (Protection of the Environment).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the maximum monthly rates that East Bay Sanitary Company may charge, effective January 1, 2015, are as follows:

Garbage Container Size	EBS Collection Rate (\$)	Post-Collection Rate (\$)
20 Gallon Cart	18.13	3.60
35 Gallon Cart	25.01	6.30
64 Gallon Cart	50.68	12.65
One Cubic Yard	173.03	32.50
Two Cubic Yards	329.84	65.00
35 Gallon Green Waste	27.51	0.00
64 Gallon Green Waste	53.20	0.00
Compacted Rates (per yard)	66.06	65.00
Roll-off (per ton)	NA – Market Rate	NA – Market Rate

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

Agenda Item No. 6
Attachment 3

I CERTIFY that at a regular meeting on November 18, 2014, the City Council passed this resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2014.

Cheryl Morse, City Clerk

Approved:

Janet Abelson, Mayor

Public Hearings on Proposed 2015 IWM Fees and EBS Rates

Presentation to the El Cerrito City Council
November 18, 2014

Garth Schultz
Operations + Environmental Services Manager

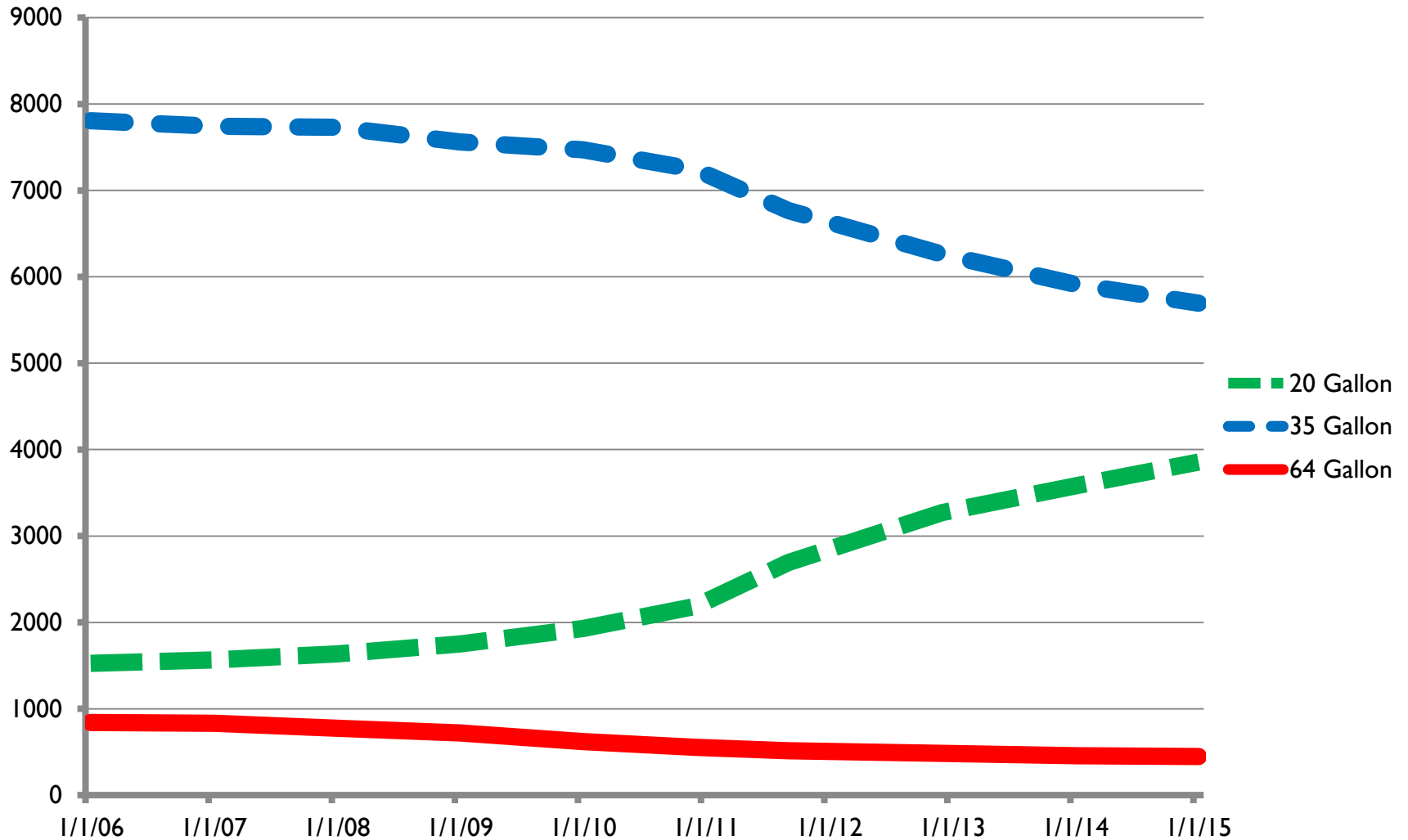
Integrated Waste Management Fees

- ▶ Council sets IWM Fees, charged on EBS bills
- ▶ IWM Fees fund 85+% of curbside recycling and Recycling + Environmental Resource Center
- ▶ FY 14/15 Adopted Budget included a projected 8% increase in IWM Fee revenue starting 1/1/2015
- ▶ 8% increase covers new vehicle maintenance services, and other increases, mainly personnel

East Bay Sanitary Rates

- ▶ Maximum Rates set by Council, charged by EBS
- ▶ Collection: 3.49% revenue increase per Franchise
- ▶ Post-collection: Based on per ton rate of \$93.40 as submitted by Post-Collection provider Republic
- ▶ Effects of subscription “migration” continues...

Subscription Migration by Year



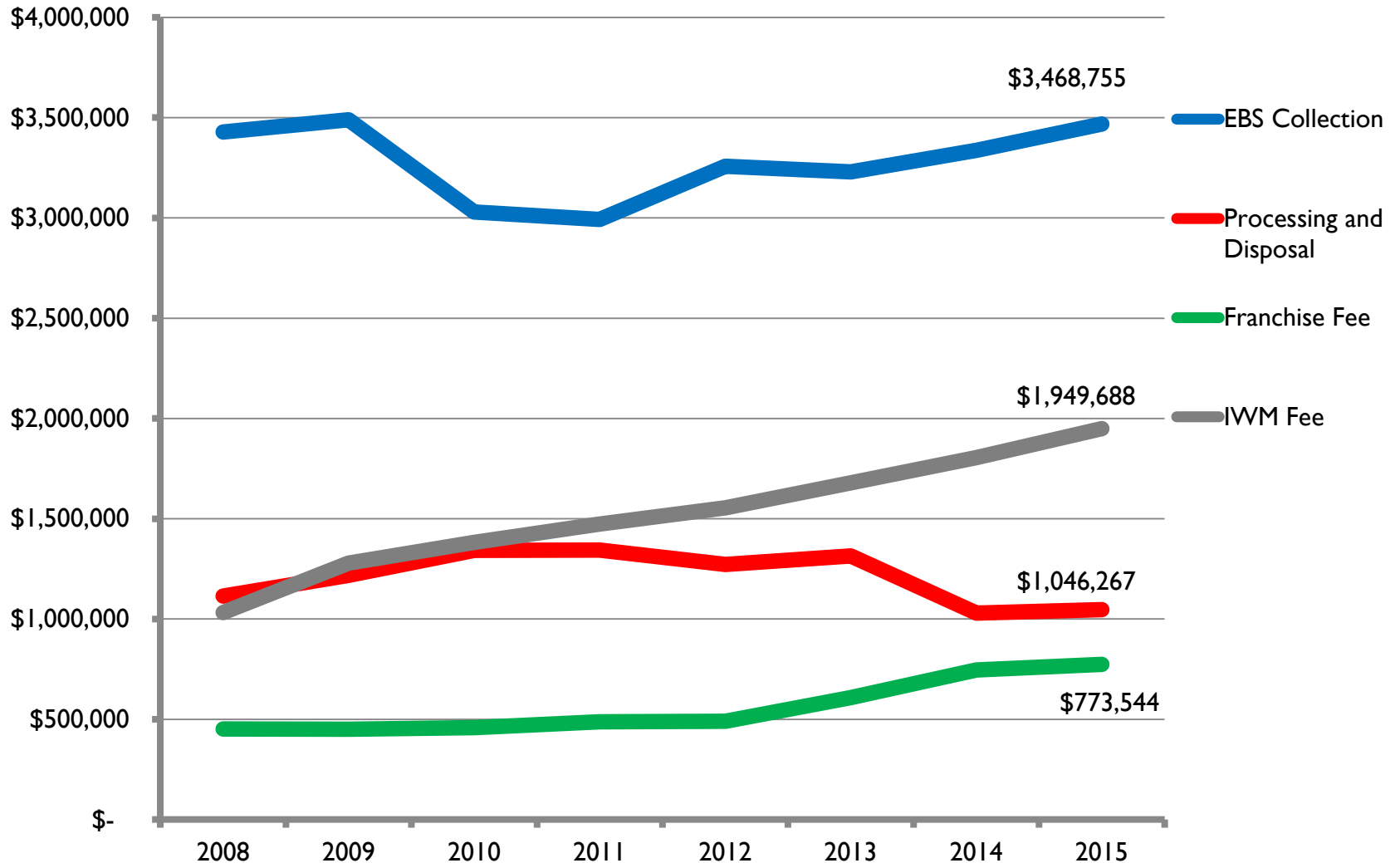
Proposed 2015 Total Rates

Container Size	EBS Collection	Post-Collection	IWM Fee	2015 Total Monthly Cost	2014 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon "Mini-can"	\$18.13	\$3.60	\$9.77	\$31.50	\$30.29	\$1.21
35 Gallon Cart	25.01	6.30	10.77	42.08	40.39	1.69
64 Gallon Cart	50.68	12.65	21.10	84.43	80.79	3.64
One Cubic Yard	173.03	32.50	75.79	281.32	266.72	14.60
Two Cubic Yards	329.84	65.00	151.58	546.42	517.76	28.66
Extra Green Waste 35	27.51	Included	NA	27.51	26.53	0.98
Extra Green Waste 64	53.20	Included	NA	53.20	51.30	1.90

2015 Revenue Projections

- ▶ \$7,238,253 in overall revenues (4.61% over 2014)
- ▶ \$4,242,299 to EBS
 - ▶ \$3,468,755 in Revenue Requirement
 - ▶ \$773,544 in Franchise Fees
- ▶ \$1,949,688 to IWM
- ▶ \$1,046,267 to Post-Collection

Revenue Streams by Year



Conclusions and Questions

- ▶ The proposed 2015 EBS Rates and IWM Fees:
 - ▶ Continue reductions in waste sent to landfills
 - ▶ Maintain high-levels of recycling and diversion service
- ▶ For more information, and to ask questions:
 - ▶ Garth Schultz | Manager
 - ▶ Operations + Environmental Services Division
 - ▶ City of El Cerrito | Public Works Department
 - ▶ 510-559-7684 | gschultz@ci.el-cerrito.ca.us
- ▶ Conduct Public Hearings

Public Hearing:

Proposed 2015 IWM Fees

Garbage Container Size	IWM Fee
20 Gallon Cart	\$9.77
35 Gallon Cart	10.77
64 Gallon Cart	21.10
One Cubic Yard	75.79
Two Cubic Yards	151.58
35 Gallon Green Waste	0.00
64 Gallon Green Waste	0.00
Compacted (per yard)	75.79
Roll-off (per load)	75.00

Public Hearing:

Proposed 2015 EBS Rates

Garbage Container Size	EBS Collection Rate	Post-Collection Rate
20 Gallon Cart	\$18.13	\$3.60
35 Gallon Cart	25.01	6.30
64 Gallon Cart	50.68	12.65
One Cubic Yard	173.03	32.50
Two Cubic Yards	329.84	65.00
35 Gallon Green Waste	27.51	Included
64 Gallon Green Waste	53.20	Included
Compacted Rates (per yard)	66.06	65.00
Roll-off (per ton)	NA – Market Rate	NA – Market Rate



AGENDA BILL

Agenda Item No. 7

Date: November 18, 2014

To: El Cerrito City Council

From: Maria Sanders, Environmental Analyst
Melanie Mintz, Interim Community Development Director

Subject: Study Session to Provide Policy Direction Regarding Membership in
Marin Clean Energy's Community Choice Aggregation Joint Powers
Agency

ACTION REQUESTED

Receive a presentation on the results of the "Marin Clean Energy Applicant Analysis for the City of El Cerrito" and the risks and benefits associated with joining Marin Clean Energy, and provide policy direction regarding joining Marin Clean Energy's Community Choice Aggregation Joint Powers Authority.

BACKGROUND

The City of El Cerrito's *Climate Action Plan* (CAP), adopted May 2013, contains a strategy to "Explore opportunities for instituting or joining a regional Community Choice Aggregation (CCA) effort" (Strategy EW-3.2). Joining a CCA with a high renewable energy portfolio is identified in the CAP as one of the most cost-effective ways to reduce greenhouse gas emissions in El Cerrito, yielding an estimated 4,200 - 6,700 annual tons of CO₂ reductions by 2020 with relatively little investment.

In 2002, passage of Community Choice Aggregation (AB 117, Migden) allowed CCAs to operate in California. This legislation enables California cities, counties, public agencies, and joint powers agencies to aggregate the electricity demand of its constituents and to procure electricity that meets their desired electricity supply portfolio, while still having the local utility (PG&E, in El Cerrito's case) provide transmission, distribution, billing, and repair services. Participation in a CCA is automatic for electricity account holders in a jurisdiction that offers a CCA. Customers who do not want to participate and prefer to purchase power from PG&E can opt out of the CCA. CCA participation rates are high due to this opt-out approach, allowing CCA agencies to compete for competitive energy contracts in California's monopoly-dominated energy markets. Energy transmission, distribution, repair, most customer service, and billing would continue to be administered by PG&E.

In 2010, Marin Clean Energy (MCE) launched California's first CCA. MCE is a joint powers authority (JPA) currently consisting of all jurisdictions in Marin County, the City of Richmond, and more recently Napa County and the cities of Benicia and San Pablo. The mission of MCE is to address climate change by reducing energy-related greenhouse gas emissions, while also securing energy supply, price stability, energy

efficiencies, and local economic and workforce benefits. Consistent with that mission, MCE sources energy from 51% renewable sources (compared to PG&E's 22% renewable energy portfolio) at rates that are currently slightly less than those of PG&E.

Given the success of MCE to procure renewable supplies of electricity at competitive rates, many communities throughout California are taking a fresh look at instituting CCAs. Sonoma County launched their county-wide CCA this year. Nine other counties, including Alameda County, are also exploring CCAs as an option. Closer to home, the City of Richmond successfully joined MCE in 2012. In the past few months, San Pablo, Benicia, and Napa County also joined MCE, setting the stage for a new electricity procurement cycle with MCE to begin early in 2015.

The City of El Cerrito has taken several steps to investigate the various CCA options potentially available to the City. On October 2, 2012, the City Council received a presentation by MCE and the City of Richmond regarding CCA, their membership process, and their program offerings. During the spring of 2014, the El Cerrito Environmental Quality Committee (EQC) hosted several presentations from various groups involved in CCAs in the Bay Area. Agreeing that joining MCE represented the least cost, lowest risk, and most time-efficient option currently available in Contra Costa County, the EQC passed a unanimous motion at its June 2014 meeting requesting that the City Council consider a resolution requesting that MCE conduct a membership analysis for El Cerrito. Additionally, Community Development staff, in partnership with the City of Albany, successfully applied for a small grant (\$15,000 per city) from the World Wildlife Fund to contract with MCE to complete the membership analysis.

On July 15, 2014 the City Council adopted Resolution 2014-28, authorizing the Mayor to submit a letter to MCE requesting that it conduct a membership analysis for El Cerrito, and authorizing the City Manager to execute a contract with MCE for \$18,000 to conduct the membership analysis and to participate in El Cerrito community meetings.

DISCUSSION

MCE Membership Analysis for El Cerrito: The *MCE Applicant Analysis for the City of El Cerrito* (Attachment 1) was completed in October and presented to the MCE Board on October 21, 2014. The analysis indicates that expansion of MCE membership to include El Cerrito would result in "an approximate 1% rate reduction for MCE customers, including all existing and prospective accounts." It is important to note that, for the purpose of determining rate impacts, the analysis assumed "that any rate/financial impacts were based wholesale electricity pricing at the time the analysis was completed. Such pricing is subject to change. Actual rate/financial impacts will be based on wholesale electricity pricing that is offered to MCE at the time of power supply contract execution" (see Attachment 1, p.1).

In terms of environmental benefits, the analysis indicated that including El Cerrito in MCE's membership would increase the amount of renewable energy being used in California's energy market by approximately 16,000 megawatt hours (MWh) per year resulting in a greenhouse gas (GHG) emissions reduction of approximately 5 million pounds of CO₂e per year.

Because the analysis demonstrates that expansion of MCE membership to El Cerrito would be beneficial to MCE's current and prospective rate payers, El Cerrito may move forward with the membership process (detailed on page 8). However, the rate impact analysis, the primary criteria determining eligibility to join MCE, assumes that MCE would be extending service to El Cerrito customers by Spring 2015. If the City Council is interested in joining MCE, but chooses to defer joining MCE after MCE has entered into this year's energy contracts, this would delay El Cerrito's membership until the following year, early 2016. At that point, organizational and market conditions may have changed and El Cerrito's membership analysis would need to be updated, at an additional cost.

Since the time MCE was formed in 2010, several local governments have contracted with third parties to review legal and organizational issues associated with joining the MCE JPA. In 2010, the legal firm of Davis Wright Tremaine reviewed for the City of Mill Valley the potential legal risks and liabilities associated with participation in MCE. In 2011, the energy consulting firm MRW & Associates conducted a Risk Assessment for the City of Richmond.¹ Finally, the City of Benicia, which is currently evaluating joining MCE, contracted with these firms to update their assessments (see Attachment 2, *Davis Wright Tremaine Letter* and Attachment 3, *MRW Risk Assessment*). As the conclusions of these reports also pertain to El Cerrito, below is a discussion of the most salient points for the City to consider.

Benefits of Joining MCE: If the City were to join MCE, the following services and programs would be available to El Cerrito electricity rate payers. A more detailed assessment of these and other benefits can be found in Attachment 3, *MRW Risk Assessment*, p.4.

- **Consumer Choice:** Joining MCE would provide El Cerrito residents and businesses with a choice in regard to their energy provider and the degree to which their energy comes from renewable and non-nuclear sources. See Attachment 4, *MCE and PG&E Power Mix Comparison*, for more details.
- **Competitive Electricity Rates:** MCE customers are currently receiving cleaner electricity at rates that are slightly lower than those of PG&E (see Attachment 5, "Electricity Rate Comparison," for the 2014 rate comparison). While lower rates are not guaranteed from year-to-year, it is reasonable to anticipate rate savings to persist into 2015 because PG&E's electricity generation rates are projected to increase (Attachment 3, *MRW Risk Assessment*, p. 23). Rate savings to MCE customers could be compounded by favorable rate impacts projected by the expansion in MCE territory.
- **Renewable Incentive Programs:** MCE offers a solar net energy metering (NEM) program that provides better terms than comparable PG&E programs. This program would be available to all current PG&E NEM customers in El Cerrito. See Attachment 6, *NEM Program Comparison*, for more details.
- **Access to PG&E and MCE Energy Efficiency Programs:** Because PG&E still provides MCE customers with transmission and generation services, they are

¹ Both assessments are available in the Community Development Department for review.

also PG&E customers and will still have access to the energy efficiency and other programs provided by PG&E. In addition, MCE operates energy efficiency programs that are more specifically targeted to the constituents in its territory.

- **Support of Community Programs and Projects:** As a non-profit public agency, MCE allocates a portion of revenues to local projects and programs within its service area.

Risks of Joining MCE: The *Davis Wright Tremaine Letter* and the MRW Risk Assessment review three inter-related areas of risks: (1) those related to MCE being able to procure electricity at competitive rates over the long term; (2) how these risks may affect the City's electricity consumers; and (3) any potential financial obligations by the City to MCE. The MRW Risk Assessment also discusses MCE's organizational soundness and MCE/PGE rate comparison for reasonableness. It is worth noting that Sections 1-3 (assessing benefits and risks) of the MRW report is an update to similar sections from the 2011 Richmond Assessment, whereas Section 4 was more recently developed for the City of Benicia. This latter section evaluates many of the same risks discussed in the first sections, but contains less equivocal statements on the relative importance of these risks.

- **JPA Debts and Liabilities:** Pursuant to Government Code section 6508.1, MCE has limited the liability of their members by including in the JPA agreement a provision explicitly stating that the debts, liabilities and obligations of the JPA shall not be debts, liabilities and obligations of the individual members. While this provision limits the risks of liability to members, it does not insulate them from all risk. A discussion of these risks is contained in Attachment 2, *Davis Wright Tremaine Letter*. That discussion identifies the two primary forms of potential liability for the City, despite the provision in the JPA. First, Government Code section 895.2 excludes tort liability from the general rule that JPA members cannot be held liable for the acts of the JPA. If MCE were sued for negligence or other wrongful acts or omissions, and a court ruled in favor of the plaintiff, the individual members of the JPA could be held liable. Second, the general "alter ego theory" which allows the owners of a corporation to be held liable for the acts of the business also applies to JPA's. As outlined in the *Davis Wright Tremaine Letter*, the standard is high for a plaintiff to meet, and the City Attorney notes that this theory is not well developed in case law as it would apply to JPA's.

Those risks are potentially significant in particular circumstances. As required by the JPA agreement, MCE has obtained significant insurance coverage for its risks and pursuant to the agreement would provide a defense to members. In most circumstances, the City would not need to provide its own defense or incur the associated legal fees, and MCE's insurance would be sufficient to protect against any adverse judgment.

The El Cerrito City Attorney's view is that the risks to the City are greatest in the event of a significant disruption in the energy market. If history is a guide, plaintiffs' attorneys and significant investors would view such a disruption as an opportunity to recover losses through litigation. They might view MCE and its public agency members as a potential pocket for recovery. Such litigants would be likely to include both tort claims and allegations to support application of the alter ego theory as a

means of increasing their likelihood of success on at least one theory. If a court ruled in their favor and MCE's insurance were insufficient to cover the liability, then the City and other members of the JPA might be required to contribute toward the monetary judgment. Although that scenario requires a number of conditions to be satisfied, it is something that was considered by the original members of MCE at the time of formation. Ultimately, all of the agencies in Marin County decided to accept the risk.

- **MCE's Organizational Soundness:** The *MRW Risk Assessment* concludes that MCE's governance structure is reasonable, the management is experienced and competent, and the finances are sound. MCE has been able to increase its operating reserves consistently from year to year; and while its long-term financial plan may be optimistic in certain years, less optimistic assumptions also result in net surplus revenues (Attachment 3, *MRW Risk Assessment*, p. 30).
- **Competitive Rates:** Currently MCE rates are less than PG&E's rates. Due to a variety of regulatory, environmental, and market factors, MCE may not always be able to provide rates that "meet or beat" PG&E's rates. The converse is also true: PG&E's rates are influenced by similar, as well as separate, price pressures that may make their rates higher in any given season. These factors are discussed at length on page 23 of the *MRW Risk Assessment*, which concludes, "Given all the factors that drive rate changes, it cannot be stated with certainty that the relationship between PG&E and MCE rates observed in August 2014 [where MCE rates were lower] will continue year-to-year; however, it is reasonable to expect that MCE rates on average will remain competitive with PG&E's" and likely be lower in 2015 (Attachment 3, *MRW Risk Assessment*, p. 23).

Other Considerations Prior to Joining MCE:

- **JPA Participation and Voting Share:** If the City were to join MCE, assuming it did so for the 2015 procurement cycle, one El Cerrito City Councilmember would represent the City on the MCE Board of Directors. El Cerrito would have equal participation rights as any city in Marin. Pursuant to the MCE Joint Powers Agreement (Attachment 7, *MCE JPA Agreement*), each member is given a weighted voting share based on two factors: (1) pro rata, so that each member, regardless of energy usage or size, is awarded an equal weight; and (2) annual energy usage, so that each member is awarded a voting weight determined by annual energy consumption. As a function of the weighted voting formula, El Cerrito's JPA voting share would be 5.34% of the total JPA². The relative voting weights are provided below in **Figure 1**.

Figure 1: JPA Voting Shares if El Cerrito Joins

Community	kWh (2013)	Pro-Rata	Energy Usage	Voting Share
Belvedere	9,973,170	3.13%	0.20%	3.33%
Ross	13,529,793	3.13%	0.27%	3.40%

² With the new membership of the City of Benicia, the voting shares for all members will be slightly less.

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Fairfax	24,700,647	3.13%	0.50%	3.62%
Tiburon	40,913,144	3.13%	0.83%	3.95%
San Anselmo	46,642,417	3.13%	0.94%	4.07%
Sausalito	48,099,763	3.13%	0.97%	4.10%
Corte Madera	62,093,107	3.13%	1.25%	4.38%
Larkspur	63,174,199	3.13%	1.27%	4.40%
Mill Valley	69,176,164	3.13%	1.40%	4.52%
San Pablo	97,383,170	3.13%	1.96%	5.09%
El Cerrito	109,836,169	3.13%	2.22%	5.34%
Novato	286,565,119	3.13%	5.78%	8.91%
Unincorp. Marin	330,023,521	3.13%	6.66%	9.78%
San Rafael	347,362,327	3.13%	7.01%	10.13%
Unincorp. Napa	348,095,521	3.13%	7.02%	10.15%
Richmond	581,012,267	3.13%	11.72%	14.85%
16	2,478,580,498	50.00%	50.00%	100.00%

- **JPA Culture and El Cerrito Time Commitment:** Participating in a new JPA requires a certain level of commitment on the part of both staff and Councilmembers. As such, it is a consideration to know if the culture of MCE as an organization and its Board is compatible with that of the City of El Cerrito. As a public entity, MCE shares a similar responsibility to conduct its business in a professional and transparent way. MCE invites all interested members of the public to attend any of its Board, Technical, and Executive Committee meetings, which are posted on their website <http://www.marincleanenergy.org/meetings>. All Board meetings are recorded and are available for web viewing, which may be a good way for City Council to gauge the culture of the JPA.

Another important consideration is staff and Councilmember time. If El Cerrito joins MCE, El Cerrito's Council liaison would be expected to attend one Board meeting per month. It is anticipated that there will be a need to provide staff support to the El Cerrito MCE board member. MCE staff provides most of the support needed, but staff from the City of Richmond estimates that approximately 2 to 4 hours of city staff time per month is required once the program is fully operational.

- **Impacts on Municipal Accounts:** As an electric customer and ratepayer, the City of El Cerrito would have the choice of purchasing electricity for municipal accounts from MCE or Pacific Gas & Electric. In 2013, the City spent nearly \$305,000 on electricity bills, excluding the City's solar accounts, and used 1,304,000 kilowatt hours with PG&E. Because electric rates change several times per year, staff recommends that the City complete a thorough rate comparison for the City's municipal accounts prior to enrolling municipal accounts into MCE. Using current electric rate comparisons, staff estimates that the annual potential financial impact could result in a 3.8% cost decrease of approximately \$11,700. Using current emissions factors, enrolling municipal accounts in MCE would reduce GHG emissions by 82 tons of CO₂e, or about 10% of the tons needed to reach our 2020 municipal GHG reduction goal of 803 tons. In addition, the city currently has 5 solar

NEM accounts. Given the complexity of solar NEM rates, the actual benefit of enrolling these in MCE would need further analysis.

- **Environmental Compliance:** The City has received a letter from the law firm of Adams Broadwell Joseph and Cardoza on behalf of the International Brotherhood of Electrical Workers (IBEW), contending that joining a CCA requires completion of an Environmental Impact Report (Attachment 8, *IBEW Letter*). The letter said that the core purpose of joining a CCA is to cause customers to purchase electricity from a different electricity provider and that this could result in a change in the environment. This same letter was sent to almost all jurisdictions considering CCAs. The contention was subsequently dismissed by those that have gone through the CCA adoption process. Below paraphrases the analysis used by MCE, Napa County, and the City of San Pablo³ regarding joining a CCA and CEQA compliance, to which the El Cerrito City Attorney concurs:

The action of a local government to join MCE is an administrative action that will not result in a direct physical change to the environment or a reasonably foreseeable indirect change to the environment, and thus is not a project as defined by the California Environmental Quality Act (CEQA) Guideline Section 15378. CEQA Guidelines Section 15378(b)(5) states that a project does not include "Organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment." Per CEQA Guidelines Section 15378, there cannot be a project unless the proposed action will result in "either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment."

The instant action also does not commit the City to any action that would have a significant effect on the environment per CEQA Guideline Section 15061. A local government joining MCE will not directly change the present amount of power produced or purchased for the city, will not directly result in construction (or removal) of any power generating facility, and, therefore, will not result in a direct physical change to the environment. Decisions by MCE as to what power to purchase for an unknown number of City residents in an unknown quantity, where such power is produced, and for how long a term, are market driven decisions that occur over a period of months and years. To the extent new power supplies might be needed in the future to meet MCE's power demands, or existing facilities need to modify their operations outside their current operating permits, such actions would be subject to further site-specific CEQA evaluation. As those potential future actions are unknowable and speculative, it is impossible to conduct any meaningful CEQA analysis about them. It is not reasonably foreseeable that the City's decision to join MCE would result in an indirect physical change to the environment.

Finally, PG&E operates in the identical marketplace, and decisions made by PG&E as to their future power supply for the City of El Cerrito are likewise unknowable and speculative. Forming or joining a CCA presents no foreseeable significant adverse impact to the environment over PG&E because California regulations such

³ City of San Pablo City Council Meeting, August 4, 2014. Agenda Item 14, Attachment 4, "MCE Response to Napa IBEW Letter."

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as the Renewable Portfolio Standard (RPS) and Resource Adequacy (RA) requirements equally apply to CCAs and IOUs.

Potential Next Steps and Policy Considerations: If City Council finds MCE membership to be beneficial and elects to proceed, next steps would include:

- A community engagement process to solicit community comments on joining CCA;
- A public hearing to adopt a resolution formally requesting membership in MCE and to conduct the first reading of an ordinance approving the MCE JPA Agreement and authorizing the implementation of a CCA program;
- A second reading of the ordinance; and
- Signing onto the MCE JPA Agreement as a party and assigning a City Councilmember to sit on the MCE Board.

Upon completion of the steps described above, MCE would begin procuring additional electricity supplies and begin the community outreach process to provide El Cerrito customers the option of remaining with PG&E service. The community outreach process takes several months, and includes the mailing of five multi-lingual notices and other public workshops to educate the community on their new electricity options. Costs of community outreach at that point are borne by MCE.

Staff is seeking policy direction from City Council on the following:

1. Should the City continue pursuing membership in MCE?
2. If yes, should the City pursue an accelerated timeline to join MCE in order to be included in the MCE 2015 procurement cycle?
3. Are there any areas that staff should further investigate or clarify?

Because MCE will be expanding its electricity service this year to include Napa, San Pablo, and possibly Benicia, MCE must begin its annual procurement cycle by the beginning of the year. This accelerates El Cerrito's timeline if the City Council wishes to join the 2015 procurement cycle. In this scenario, City Council would need to hold the public hearing to adopt the CCA ordinance on December 16, 2014. This would give staff one month between tonight's meeting and the December meeting to gain feedback from the public and prepare for the City Council hearings. While this timeline is not ideal, staff has made all the necessary arrangements to immediately launch public outreach and get feedback from the community through the Open El Cerrito portal on the City's website and a public workshop (tentatively scheduled for Wednesday, December 3).

If City Council wishes to join, but elects to defer participation until the 2016 procurement cycle in order to extend the public input process, the Membership Analysis would need to be updated, at an additional cost and future terms, conditions, and rights of MCE membership for new communities may be different than they are today.

STRATEGIC PLAN CONSIDERATIONS

Goal F, "Foster environmental sustainability citywide," of the El Cerrito Strategic Plan contains an objective to implement the City's *Climate Action Plan* by facilitating

“energy and water efficiency and greater adoption of clean energy.” Because CCAs in the Bay Area are being formed to procure electricity from renewable energy sources, joining a CCA is identified in the CAP as one of the more powerful and cost-effective strategies for reducing greenhouse gas emissions in El Cerrito. There is no other strategy in the CAP that provides a similar magnitude of reductions at a similar cost.

If the City joined MCE, GHG emissions reductions are estimated to be 2,500 tons of CO₂e in the first year of full enrollment – providing an additional 1.7 percentage points annually towards the City’s 2020 15% emissions reduction target. By 2020 this reduction is likely to increase and was estimated by the CAP to be approximately 4,200 tons.

ENVIRONMENTAL CONSIDERATIONS

As discussed above, if El Cerrito did ultimately join MCE, this would be an administrative action that will not result in a direct physical change to the environment or a reasonably foreseeable indirect change to the environment, and thus is not a project as defined by the California Environmental Quality Act (CEQA) Guideline Section 15378.

FINANCIAL CONSIDERATIONS

There are no direct financial impacts to the City’s General Fund if the City Council elects to join the MCE. MCE electricity and programs are funded by ratepayers that choose to participate in MCE. If City Council wishes to further pursue MCE membership by early 2015, no additional outside expenses are anticipated. If it elects to pursue membership in 2016, an additional membership analysis would need to be funded and conducted. The cost of community outreach to assist community members in understanding the opt-out system, once the City joins, would be borne by MCE. However, there may be internal expenses related to legal review of the JPA agreement and other related documents, as well as staff time to support El Cerrito’s JPA member, as discussed above.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the two risk assessment documents prepared for the City of Benicia and generally agrees with their conclusions, with the additional comments included in this report under the *JPA Debts and Liabilities* section above. The process for joining MCE is as described in this report. The City Attorney has reviewed the MCE JPA Agreement, the template resolution for requesting membership in MCE, and the template ordinance for implementing the CCA in El Cerrito by participating as a member of MCE and for approving the JPA agreement. If Council elects to further pursue membership, staff will bring these documents to Council at the time of the public hearings for the Council’s consideration.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. *Marin Clean Energy Applicant Analysis for the City of El Cerrito (MCE Applicant Analysis)*
2. Letter to City of Benicia from *Davis Wright Tremaine*, October 22, 2014 (*Davis Wright Tremaine Letter*)
3. *Risk Assessment of Participation in the Marin Clean Energy Community Choice Aggregation Program on Behalf of the City of Benicia*. Prepared by MRW and Associates, October 2014 (*MRW Risk Assessment*)
4. MCE and PG&E Power Mix Comparison
5. Electricity Rate Comparison
6. Net Energy Metering Program Comparison
7. MCE Joint Powers Authority Agreement (*JPA Agreement*)
8. Letter to City of El Cerrito City Council from Adams Broadwell Joseph and Cardozo on behalf of the International Brotherhood of Electrical Workers. May 16, 2014 (*IBEW Letter*)

Marin Clean Energy Applicant Analysis for the City of El Cerrito

October 7, 2014

SUMMARY

MCE's currently effective policy regarding new membership requires the completion of a quantitative analysis as part of the preliminary evaluative process. The primary focus of the quantitative analysis is to determine the anticipated net rate impacts that would affect MCE's existing customer base following the addition of the prospective new community – in particular, the quantitative analysis must demonstrate that the addition of the prospective new community will result in a projected net rate reduction for MCE's existing customer base; this is a threshold requirement that must be met before proceeding with further membership activities. In addition, the quantitative analysis addresses the projected environmental impacts that would result from offering CCA service to the prospective new community. More specifically, the analysis prospectively determines whether or not the new community will accelerate greenhouse gas (GHG) reductions (beyond those reductions already achieved by MCE's existing membership) while increasing the amount of renewable energy being used within California's energy market.

MCE has been in discussion with the city of El Cerrito periodically since September of 2013. In July of 2014, MCE received a formal letter from the city of El Cerrito requesting consideration as a member of MCE. The electric accounts to be considered as part of this membership request include all accounts located within the city of El Cerrito. On September 4, 2013, the MCE Board of Directors authorized completion of a quantitative membership analysis related to El Cerrito's membership request. This analysis has been completed and the results are discussed below in this summary report.

In general, the quantitative analysis indicated that rate benefits would likely accrue to existing MCE customers following the addition of prospective CCA accounts located within the city of El Cerrito. The additional customer base within El Cerrito would likely result in an approximate 1% rate reduction for MCE customers, including all existing and prospective accounts. The analysis also indicated that including El Cerrito in MCE's membership would increase the amount of renewable energy being used in California's energy market by approximately 16 thousand MWh per year while reducing GHG emissions by an estimated 5 million pounds of carbon dioxide equivalent per year.¹

ANALYSIS

MCE conducted an analysis of the potential new electric customers to estimate the revenues and costs associated with extending MCE service to El Cerrito. The analysis incorporated historical monthly electric usage data provided by PG&E for all current electric customers located within the city of El

¹ GHG emission reduction estimates are based on MCE's actual 2012 emission factor of 373 lbs CO₂e/MWh and PG&E's reported 2012 emission factor of 445 lbs CO₂e/MWh, as released in June 2014: <http://www.pgecurrents.com/2014/02/06/new-numbers-confirm-pge%E2%80%99s-energy-among-the-cleanest-in-nation/>. The projected GHG savings of 72 lbs CO₂e/MWh (based on the difference between MCE's emission factor and PG&E's emission factor) was multiplied by the projected increase in MCE's annual sales volume resulting from the addition of CCA customers located within El Cerrito, a volume approximating 64,000 MWh/year. Note that these projections are subject to change.

Cerrito. The data indicate the potential for over 11,500 new MCE customers with a potential increase in annual electricity sales approximating 80,000 MWh per year. The aggregate peak demand of these customers is estimated at 14 MW.²

Table 1: 2013 El Cerrito Electricity Data

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (KWh)
Residential	10,778	45,460	351
Small Commercial	654	11,203	1,428
Medium Commercial	60	9,422	13,086
Large Commercial & Industrial	29	13,644	39,207
Agricultural and Pumping	0	0	0
Street Lighting	61	820	1,121
Total	11,582	80,550	580
Peak Demand (MW)			14

² These figures are for all electric customers of PG&E within the City of El Cerrito. These figures are unadjusted for expected customer participation rates.

As compared to the current MCE customer base shown in Table 2 below, El Cerrito includes proportionately more residential and fewer commercial and agricultural accounts. Those residential accounts make up more than half of the energy usage in El Cerrito. Power usage per customer in all classes is also lower across El Cerrito than in MCE's current communities.

Table2: 2013 MCE Electricity Data (Including Napa and San Pablo)

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (KWh)
Residential	126,665	730,136	480
Small Commercial	14,126	243,692	1,438
Medium Commercial	1,158	214,681	15,455
Large Commercial	452	259,144	47,771
Industrial	21	134,704	543,253
Agricultural and Pumping	1,466	19,286	1,096
Street Lighting	1,058	15,700	1,237
Total	144,944	1,617,343	930
Peak Demand (MW)			276

In regards to seasonal consumption patterns, El Cerrito electric usage peaks during the winter months consistent with the current MCE load profile. Comparison of Figure 1 and Figure 2 below shows a very similar seasonal consumption pattern between El Cerrito and the existing MCE program.

Figure 1: El Cerrito Hourly Load Profile (KW)

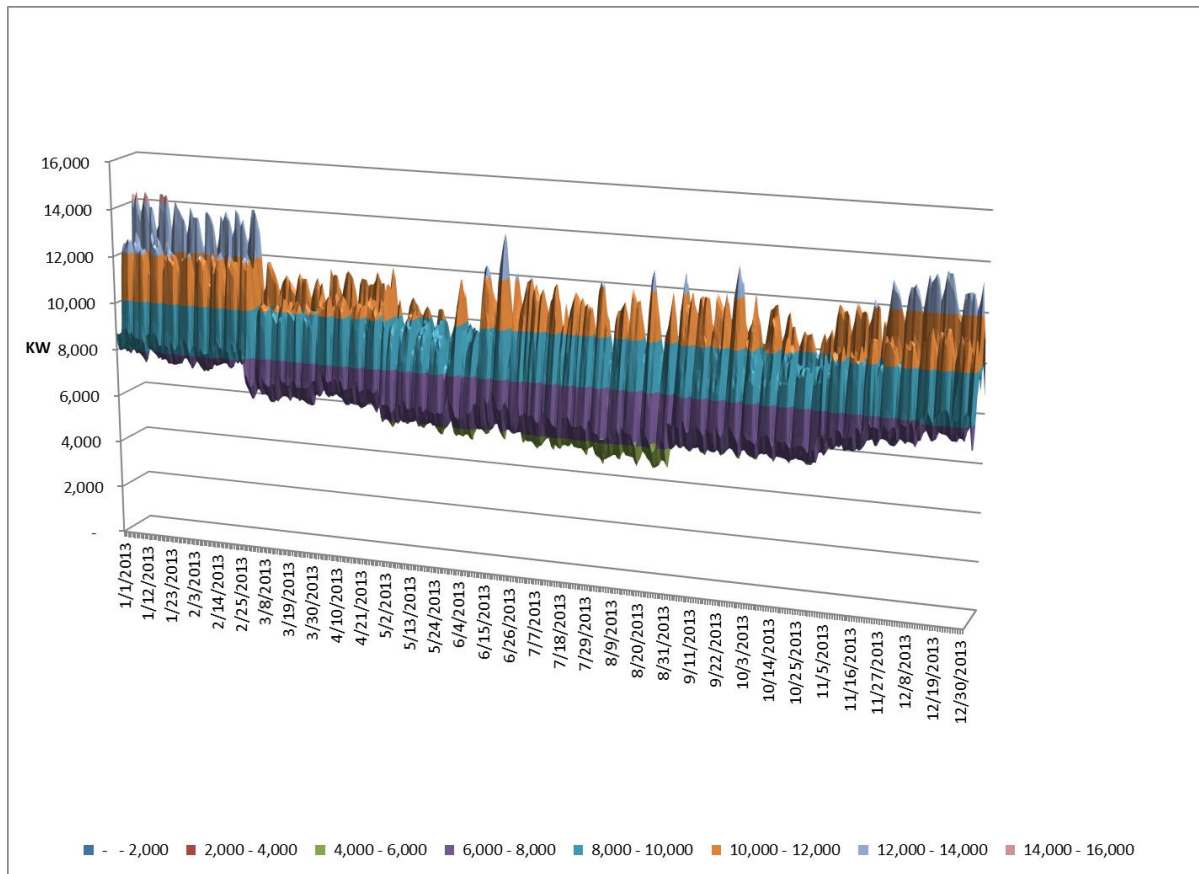
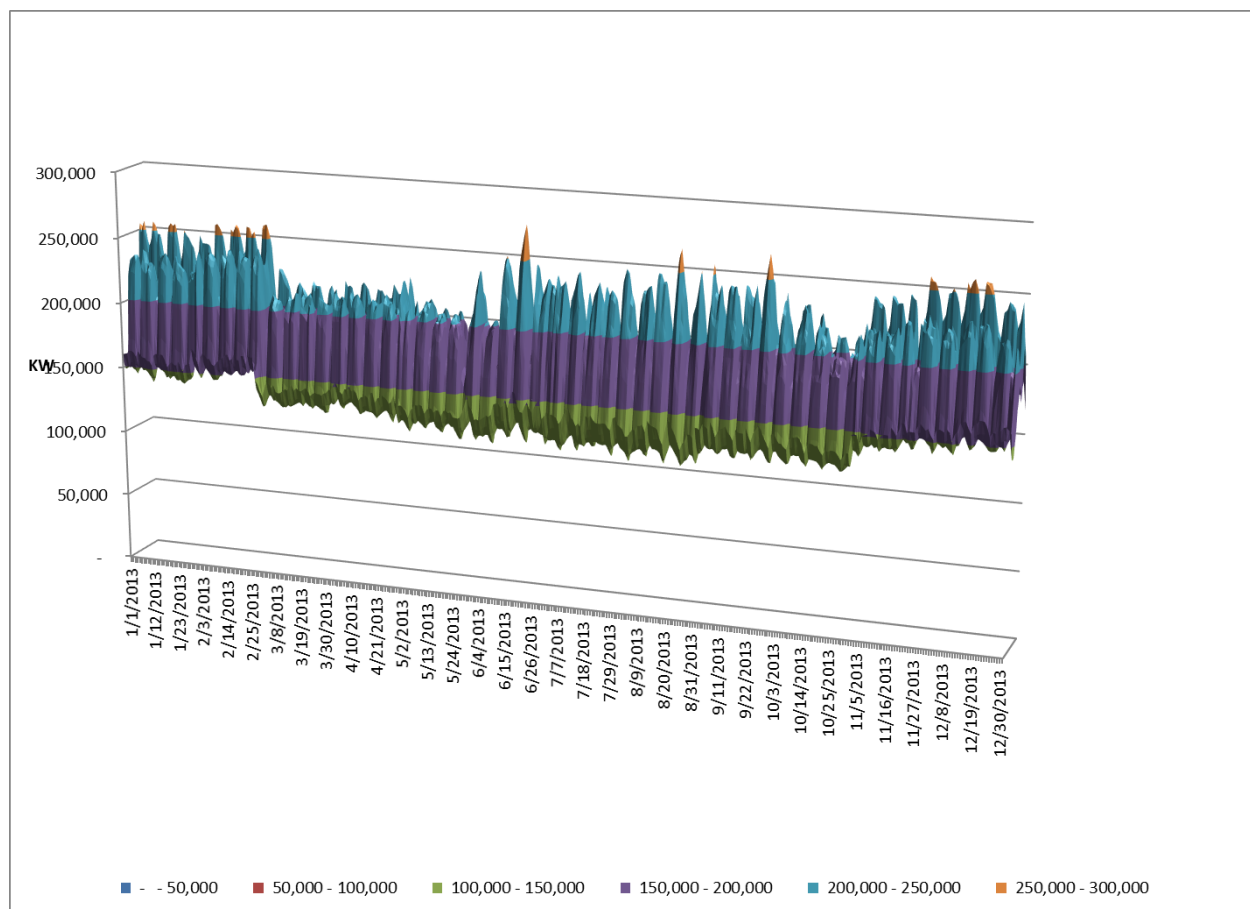


Figure 2: MCE Hourly Load Profile (KW)



RATE IMPACTS

For purposes of the rate impact analysis, it was assumed that service would be initiated to El Cerrito customers in May, 2015 and that 80% of customers who would be offered CCA service would elect to participate in the MCE program. This would equate to an increase in annual MCE electricity sales of 64,440 MWh or approximately 4%. The rate impact was examined beginning with the 2015/2016 fiscal year, with the new service accounts switched to MCE service during the month of May (May 1st through May 31th, depending on each customer's scheduled meter reading schedule).³ It is important to note that any rate/financial impacts were based on wholesale electricity pricing at the time the quantitative analysis was completed. Such pricing is subject to change. Actual rate/financial impacts will be based on wholesale electricity pricing that is offered to MCE at the time of power supply contract execution.

Incremental revenues and costs were quantified for the additional El Cerrito customers, and the revenue surplus (based on the difference between projected revenues and costs directly related to the addition of El Cerrito customers) was also calculated for the year. The surplus is assumed to offset a share of MCE's fixed costs and can be used to reduce overall MCE rates. The incremental cost analysis accounts for ongoing costs related to additional power supplies, customer billing, customer service support (call

³ During the first year, the increase in annual sales volume is slightly lower, estimated at 59,153 MWh, due to the gradual transfer of accounts to MCE service during the first month.

center), and PG&E service fees associated with the additional customers. One-time costs associated with the expansion of MCE to El Cerrito are not included in these figures and are discussed below. Table 3 presents the estimated rate impact for the 2015/2016 fiscal year.

Table 3: FY2015/2016 MCE Rate Impact from El Cerrito

Volume (MWh)	59,153
Revenue	\$ 4,754,861
Costs	
Power Supply Cost	\$ 3,473,502
Billing and Other Costs	\$ 222,734
Total Cost	\$ 3,696,236
Rate Benefit	\$ 1,058,624
MCE Rate Impact	1%

The rate impact analysis indicates that the addition of El Cerrito customers to MCE's total customer base would provide benefits to MCE ratepayers; it is estimated that expanding MCE service to El Cerrito would allow for MCE rates to be 1% lower than without such customers.

Additional costs related to the expansion would be incurred prior to initiation of service to the new customers. These costs would be incurred for regulatory, resource planning and procurement activities that would be necessary to incorporate the new member community and its customers into MCE as well as for communication and outreach to the new customers. The projected implementation costs related to an El Cerrito expansion are expected to be less than the \$250,000 expended in preparation for the expansion to Richmond. This appears to be a reasonable assumption because existing staff (previously added to support the Richmond expansion) and technical resources can be leveraged to support the El Cerrito expansion; the number of prospective customer accounts within El Cerrito is also less than a third of the prospective customer base that was transitioned to MCE service during the Richmond expansion. It should also be noted that the regulatory, resource planning and procurement costs would not be entirely attributable to El Cerrito if there are other new members brought into MCE at the same time. To the extent that other municipalities are contemporaneously added, such activities could be performed jointly rather than at separate times for each new member.

RENEWABLE ENERGY IMPACTS

Renewable energy requirements were calculated for El Cerrito to ensure compliance with the statewide Renewables Portfolio Standard (RPS) as well as the more aggressive MCE renewable energy content standards adopted by MCE. The total renewable energy requirement associated with prospective expansion to El Cerrito would be approximately 32 thousand MWh annually. This renewable energy volume is equivalent to the energy produced by 4 MW of geothermal capacity (or a similar baseload renewable generating technology using a fuel source such as biomass or landfill gas) or approximately 12 MW to 18 MW of solar generating capacity, depending upon location and technology. Including El Cerrito's electric customers in MCE service will increase the amount of renewable energy being used in

California's energy market by approximately 16 thousand MWh annually based on the increased renewable energy procurement targets voluntarily adopted by MCE's governing Board relative to California's then-current RPS mandate (which must be followed by PG&E).

GHG IMPACTS

With regard to projected GHG emission reductions that would result from the expansion of MCE service to El Cerrito, estimates were derived by comparing the most current, validated emission statistics related to the MCE and PG&E electric supply portfolios. With regard to these statistics, PG&E and MCE both recently reported their respective emission statistics for the 2012 calendar year. Due to typical timelines affecting the availability of such information, PG&E's current statistics (focused on the 2012 calendar year) will generally reference data related to utility operations occurring 12 to 24 months prior to the current calendar year. This waiting period is necessary to facilitate the compilation of final electric energy statistics (e.g., customer energy use and renewable energy deliveries) and to allow sufficient time for data computation, review and third-party audit before releasing such information to the public. As noted by PG&E, its 2012 emission factor was determined to be 445 lbs CO₂/MWh. By comparison, MCE's aggregate portfolio emission factor for the 2012 calendar year was determined to be 373 lbs CO₂e/MWh, a difference of 19%.

MCE's 2012 emission factor was derived by using publicly available emission statistics determined by the California Air Resources Board (CARB) for certain unspecified electricity purchases included within the MCE supply portfolio as well as assumed zero carbon emission rates for various renewable energy purchases and deliveries from non-polluting power sources, such as hydroelectric generators. With regard to electricity purchases from unspecified sources, or "system power," as reported on a California retail electricity seller's annual Power Content Label, CARB has assigned an emissions rate of 943.58 lbs CO₂e/MWh. This emission rate can be referenced in section 95111(b)(1) of CARB's February 2014 update to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions: <http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2013-clean.pdf>. PG&E appears to have applied a similar factor when calculating emissions associated with unspecified generating sources.

In 2012, MCE's supply portfolio was heavily weighted towards non-carbon emitting resources. In fact, over 60% of MCE's energy supply was attributable to various renewable energy and hydroelectric purchases, which do not emit GHGs (MCE's 2013 and 2014 procurement percentages reflect similar ratios). When determining MCE's aggregate portfolio emission factor, the aforementioned CARB statistic of 943.58 lbs CO₂e/MWh was applied to MCE's system energy purchases, which totaled 225,593 MWh during the 2012 calendar year. All other non-emitting resources were assigned an emission factor of zero. As such, MCE's portfolio emissions for the 2012 calendar year totaled approximately 213 million pounds. This emission total was divided by MCE's aggregate sales volume of 570,144 MWhs, resulting in an MCE portfolio emissions rate of 373 lbs/MWh, for the 2012 calendar year. The following table provides additional detail regarding these emissions computations for MCE's 2012 supply portfolio.

Table 4: MCE 2012 Greenhouse Gas Emissions

2012 Calendar Year	MWh Purchased/Sold	% Total	Emission Rate (lbs CO ₂ e/MWh)	Total Emissions (lbs)
Total Renewable Energy	304,551	53.4%	0	0
RPS – Eligible	166,522	29.2%	0	0
Non-RPS Eligible Renewable	138,029	24.2%	0	0
Zero Carbon	40,000	7.0%	0	0
System Power	225,593	39.6%	944	212,864,133
Totals	570,144	100%	373	212,864,133

To estimate the projected GHG emissions reductions that would likely result from the addition of prospective CCA customers located within the city of El Cerrito, MCE calculated the difference between its own emission factor (373 lbs CO₂e/MWh) and the related metric reported by PG&E (445 lbs CO₂/MWh): 72 lbs CO₂/MWh. This difference was multiplied by the projected increase in annual electricity sales that would result from the addition of El Cerrito's CCA customers (64,440 MWh), resulting in a projected GHG emissions savings related to the transition of El Cerrito's customers to MCE's cleaner electricity supply. The projected emissions savings/reduction related to this service transition (from PG&E to MCE) was determined to be approximately 5 million pounds of carbon dioxide equivalent per year. It is noteworthy that the future emission factors reported by MCE and PG&E will likely differ from the statistics applied in this analysis – this is due to a variety of factors, including planned/unplanned changes in renewable energy procurement (including planned increases in California's RPS procurement requirements), variations in hydroelectric power production (which may change substantially from year to year based on prevailing regional hydrological conditions) and changes/adjustments in the general procurement policies of each service provider as well as many other factors. Also note that MCE has committed to assembling a power supply portfolio that not only exceeds the renewable energy content offered by PG&E but also provides customers with a "cleaner" energy alternative, as measured by a comparison of the portfolio GHG emission rate (or emission factor) published by each organization. As such, MCE plans to continue procuring electricity from non-GHG emitting resources in sufficient quantities to maintain an emission rate that is continually lower than PG&E's.

October 22, 2014

Ms. Heather McLaughlin
City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510

RE: City of Benicia's Possible Participation in the Marin Clean Energy Joint Powers Authority and Community Choice Aggregator Electric Service Program

Dear Ms. McLaughlin:

This letter is in response to your request to us to assist the City of Benicia (the "City") in evaluating its potential participation as a member in the community choice aggregation ("CCA") electric service program (the "Program") of Marin Clean Energy ("MCE"),¹ a joint powers authority ("JPA"). In particular, the City has reviewed the May 17, 2010 Independent Assessment of Potential Risks and Liabilities Associated with [the City of Mill Valley's] Participation in Marin Clean Energy (the "Assessment") prepared by Edward O'Neill when he was a partner of Davis Wright Tremaine LLP.²

You have asked us to perform a limited review of legal and regulatory developments pertaining to MCE in particular and CCAs in general since the date of the Assessment by performing the following tasks:

- 1) Review the current form of the Marin Clean Energy Joint Powers Authority agreement, dated December 19, 2008 and most recently amended on September 4, 2014;³

¹ The MCE JPA was formerly known as the "Marin Energy Authority." In 2013 the JPA changed its name to Marin Clean Energy, which is also the name of the JPA's CCA program. See MCE Board of Directors Resolution No. 2013-11, dated December 5, 2013.

² On May 13, 2014, Mr. O'Neill was appointed by Governor Brown to serve as a senior advisor on California Public Utilities Commission modernization and reform. He did not participate in the preparation of this letter.

³ Referred to as the "MCE JPA Agreement." A copy is accessible online at http://marincleanenergy.org/sites/default/files/key-documents/Amended_MCE_JPA_Agreement-San%20Pablo%26_Napa%209.15.14.pdf.

- 2) Review any new/amended statutes effective after issuance of the Assessment, regarding the rules, policies and procedures governing CCA;
- 3) Review any orders, rulings and/or decisions issued by the California Public Utilities Commission ("CPUC") after the issuance of the Assessment regarding the rules, policies and procedures governing CCA; and
- 4) Assess the likelihood that the City's existing interconnection agreements for Net Energy Metering ("NEM") with Pacific Gas and Electric Company ("PG&E") will be invalidated if the City were to join MCE and the likelihood of existing NEM service being transitioned to NEM 2.0 in mid-2017 when NEM 1.0 is set to sunset.

The results of our review of each of your requests are as follows:

1) The current form of the Marin Clean Energy Joint Powers Authority Agreement

MCE's foundational document is the MCE JPA Agreement. It created MCE and sets forth MCE's powers and governance rules. The Assessment considered, under the terms of the MCE JPA Agreement and under California law, whether members of MCE could held liable for the debts and actions of MCE. While the MCE JPA Agreement has been amended since the Assessment, none of the amendments affect the Assessment's analysis of the JPA. As indicated in the Assessment, the risks of liability related to joining the MCE JPA are limited, but under California law, the JPA cannot and does not insulate the City from all risk.

Joint powers authority agreements are authorized by the "Joint Exercise of Powers Act," (the "Act")⁴ The Act provides that governmental entities "by agreement may jointly exercise any power common to the contracting parties."⁵ Parties to a Joint Powers Agreement may form a separate entity to exercise those powers.⁶ Those parties are liable for the "debts, liabilities, and obligations" of the newly-created entity "unless the agreement specifies otherwise", and "[a] party to the agreement may separately contract for, or assume responsibility for, specific debts, liabilities, or obligations of the agency."⁷

The MCE JPA Agreement currently provides that the "debts, liabilities or obligations" of MCE are not debts of members unless the "governing board of a [member] agrees in writing to assume any of the debts, liabilities or obligations of the Authority."⁸ This limitation of liability tracks the language of section 6508.1 of the Government Code and is permitted and enforceable

⁴ Gov't Code § 6500 *et. seq.*

⁵ Gov't Code § 6502.

⁶ *Id.* §§ 6506, 6507.

⁷ *Id.* § 6508.1

⁸ MCE JPA Agreement § 2.3, "Formation."

under that section. Where JPA agreements include such provisions, California courts have upheld the limitation on the liability of individual members of JPAs.⁹

However, section 895.2 of the Government Code limits the effect of this limitation of liability to non-tort actions: “Whenever any public entities enter into an agreement, they are jointly and severally liable upon any liability which is imposed by any law [upon any JPA member or the entity created by the JPA] agreement for injury caused by a negligent or wrongful act or omission occurring in the performance of such agreement.” Non-contract claims based on section 895.2 have been upheld by California courts.¹⁰

Similarly, the City could also potentially be held liable for debts, liabilities and obligations of MCE under the “alter ego” doctrine. The doctrine developed in the context of “sham” corporate entities which operated as nothing more than “alter egos” of the shareholders. Because joint powers authorities are legitimate statutorily authorized entities, the California Court of Appeal has rejected the argument that JPAs are inherently the alter egos of the member entities.¹¹

For the alter ego doctrine to make individual JPA members subject to liability for the liabilities of the JPA, the usual elements of the doctrine must be shown: (i) there must be a unity of interests and ownership between the JPA and its individual members such that the separate personalities of the JPA and its members do not really exist, and (ii) there must be an inequitable result if the acts in question are treated as those of the JPA alone.¹² This is a high standard, and requires that the JPA members fail to treat the JPA as a discrete entity, such as by undercapitalizing the JPA, commingling funds, and failing to observe formalities such as conducting board meetings.¹³ We do not consider there to be any significant risk of liability to the City under this doctrine.

 Another factor bearing on the risk of the City joining MCE is MCE’s indemnification obligation to its members. The MCE JPA Agreement indemnifies members and their officers, agents, and employees from liability “arising directly or indirectly” from the conduct of MCE.¹⁴ MCE is obligated to obtain an insurance policy to effect this indemnification. We have no knowledge whether MCE has obtained such an insurance policy, or the terms of any such

⁹ *Tucker Land Co. v. State of California*, 94 Cal. App.4th 1191, 1193 (2nd App. Dist. 2001). *Tucker* concluded that under section 6508.2, the constituent members of a JPA created by a joint powers agreement were not liable for the contractual obligations of the JPA when the JPA failed to pay a judgment. In particular, the court found that the constituent members were not liable for the contractual obligations of the JPA where the joint powers agreement specified that they were not, and it also did not impose liability on any entity other than the JPA itself.

¹⁰ See e.g. *D.K. ex rel. G.M. v. Solano Cnty. Office of Educ.*, 667 F. Supp. 2d 1184, 1192 (E.D. Cal. 2009) (denying a motion to dismiss a complaint which related to student services the defendant school district provided); see also *Tucker Land Co.* 94 Cal. App.4th at 1198-99 (§ 895.2 only applies to tort claims).

¹¹ See *Tucker Land Co.* 94 Cal. App.4th at 1201 (rejecting the alter ego theory when plaintiff failed to show any of the usual elements of the alter ego doctrine).

¹² *Id.*

¹³ *Toho-Towa Co. v. Morgan Creek Prods., Inc.*, 217 Cal. App. 4th 1096, 1107 (2nd App. Dist. 2013).

¹⁴ MCE JPE Agreement § 8.3, “Indemnification of Parties.”

insurance policy, such as the scope of the policy, any applicable retention or deductible, and coverage limits. The existence of such an insurance policy should serve to reduce the City's risk exposure, though a risk always remains that an insurer would deny coverage or that the policy is prematurely exhausted.

In addition to risks of MCE members, as with any governing board, there is the risk that a plaintiff may choose to name MCE's Board of Directors in a lawsuit. While a discussion of available defenses to such a lawsuit is beyond the scope of this letter, we note that the MCE JPA Agreement also provides for the indemnification and defense of its directors and officers for any "acts or omissions in the scope of their employment or duties."¹⁵  do not know if MCE has an insurance policy which insures its directors and officers.

2) New/amended statutes effective after issuance of the Assessment, regarding the rules, policies and procedures governing Community Choice Aggregators

We have identified no new or amended statutes governing CCAs. Currently, CCAs are governed by sections 331.1 and 366.2 of the California Public Utilities Code. Recent attempts to limit the ability of CCAs to operate have failed. In 2010, voters rejected Proposition 16, sponsored in large part by PG&E. Proposition 16 would have required a two-thirds vote of the voters within the boundaries of a proposed CCA for approval of the proposed CCA. In 2014, Assembly Bill 2145 proposed to limit the abilities of CCAs to expand and operate, such as by restricting the operation of CCAs to three contiguous counties, but it did not pass. Of course, there may be future political efforts to modify the status of CCAs.

3) Orders, rulings and/or decisions issued by the California Public Utilities Commission after the issuance of the Assessment, regarding the rules, policies and procedures governing Community Choice Aggregators

The CPUC has taken significant actions to improve the regulatory landscape for CCAs since the issuance of the Assessment. The CPUC regulatory action involving CCAs after the date of the Assessment has principally been directed at supervision of the conduct of utilities in dealing with CCAs and does not affect the conclusions of the Assessment.¹⁶ For example, the CPUC has regulated the conduct of public utilities in competing or transacting with CCAs, and improved privacy protections of CCA customers.

Shortly after the date of the Assessment, the CPUC (i) prohibited utilities from making untrue or misleading statements about CCA service and provided CCAs a complaint remedy; and (ii) gave CCAs control over the opt-out mechanism for CCA customers.¹⁷

¹⁵ MCE JPA Agreement, § 8.2 "Liability of Directors, Officers, and Employees."

¹⁶ Since CCAs are governmental entities, the CPUC exercises just limited jurisdiction over them. *See, e.g.*, CPUC Decision ("D.") 05-12-041, mimeo at 60 (Conclusions of Laws 1 and 2) (December 15, 2005).

¹⁷ *See* D.10-05-050 (May 20, 2010), *rehearing denied*, D.12-07-023 (July 12, 2012).

In 2012, the CPUC adopted a “Code of Conduct” for utilities with respect to their relationships with CCAs. It includes certain internal organizational requirements for the utilities, and provides for audits of compliance by utilities with the Code of Conduct.¹⁸ Later in 2012, the CPUC extended privacy protections to customers of CCAs and other entities, similar to the privacy protections already enjoyed by utility customers.¹⁹

The overall effect of the foregoing actions by the CPUC is to level the competitive playing field and enhance the ability of CCAs to compete with the utilities for customers.

4) Assess the likelihood that the City’s existing interconnection agreements for NEM with Pacific Gas and Electric Company will be invalidated if the City were to join MCE and the likelihood of existing NEM service being transitioned to NEM 2.0 in mid-2017 when NEM 1.0 is set to sunset

The City’s existing interconnection agreements for NEM service with PG&E for solar photovoltaic generation facilities would not be invalidated were the City to join MCE. Upon the City joining MCE and the Program, PG&E would continue to supply transmission and distribution service to the City and MCE would supply generation service.

MCE has its own NEM tariff.²⁰ The CPUC requires PG&E to offer CCA customer generators the same NEM service it offers its own customers, with PG&E providing the transmission and distribution credits to eligible CCA NEM customers and the applicable CCA offering the generation credit to eligible CCA NEM customers.²¹ MCE would report its NEM generation credit to PG&E for inclusion in the PG&E bill to the City.²²

The CPUC has established a 20 year transition period for existing projects, such as the City’s, beginning with the year in which interconnection occurred. During the transition period, existing projects continue to take service on existing NEM tariffs (sometimes referred to as NEM 1.0).²³ At the end of the transition period, the existing projects would transition to service under the NEM successor tariff being developed (sometimes referred to as NEM 2.0).²⁴

We consider that the CPUC in establishing the transition period acted reasonably pursuant to its statutory authority.²⁵ Although Decision 14-03-041 does not specifically mention the situation in which a PG&E NEM customer joins a CCA during the transition period, we have not identified any reason to believe that joining a CCA would terminate or otherwise impact the

¹⁸ See D.12-12-036 (December 20, 2012).

¹⁹ D.12-08-045 (August 23, 2012).

²⁰ See Electric Schedule NEM – Net Energy Metering Service.

²¹ D.08-02-002, mimeo at 6 (February 14, 2008). See PG&E’s Electric Rule 23, § G.2.

²² See PG&E’s Electric Rate Schedule NEM, Applicability, Sheet 5, Rates.

²³ D.14-03-041, mimeo at 2, 5, 20, 22-23, 38 (Ordering Para. 1) (March 27, 2014). See PG&E’s Electric Schedule NEM, Applicability, Sheet 2, A. NEM Transition Provisions.

²⁴ *Id.*, mimeo at 38-39 (Ordering Para. 2).

²⁵ Pub. Util. Code § 2827.1(b)(6).

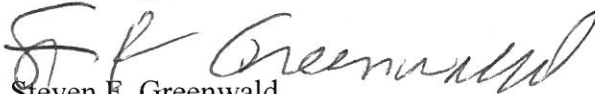
duration of the 20 year transition period chosen by the CPUC as a reasonable period for realization of payback of project investment.

We note that the City's interconnection agreements for NEM are subject to termination by PG&E, if there a change in law or regulation which "materially alters or otherwise affects" PG&E's ability or obligation to perform under the interconnection agreement.²⁶ PG&E may also unilaterally file an application to terminate an interconnection agreement with the CPUC.²⁷ The agreements are also subject to change or modification by CPUC action and by approved changes to PG&E's tariffs, which are incorporated by reference.²⁸

This concludes our comments. Please let me know if you have any comments about the foregoing.

Very truly yours,

Davis Wright Tremaine LLP


Steven F. Greenwald

²⁶ Interconnection Agreement for Net Energy Metering of Solar or Wind Electric Generating Facilities of 1,000 Kilowatts or Less, Other Than Facilities of 30 Kilowatts or Less ("Interconnection Agreement"), § 5.2.

²⁷ *Id.* §5.3.

²⁸ *Id.* at §§ 15.2, 15.3.

**Risk Assessment of Participation in the Marin Clean Energy
Community Choice Aggregation Program**
On Behalf of the City of Benicia



MRW & Associates, LLC
1814 Franklin Street, Suite 720
Oakland, CA 94612

October 29, 2014

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Acronyms Used

CARE	California Alternate Rates for Energy
CCA	Community Choice Aggregation
CAISO	California Independent System Operator
CPUC	California Public Utilities Commission
CRS	Responsibility Surcharge
GHG	greenhouse gas
JPA	Joint Powers Authority
kWh	kilowatt-hour
MCE	Marin Clean Energy
MEA	Marin Energy Authority
MRW	MRW & Associates, LLC
NEM	Net Energy Metering
PCIA	Power Charge Indifference Amount
PPA	Power Purchase Agreement
PG&E	Pacific Gas & Electric
PV	Photovoltaic
RPS	Renewable Portfolio Standard
SENA	Shell Energy North America

Executive Summary

Marin Clean Energy (MCE), formerly the Marin Energy Authority (MEA), is a Joint Powers Authority (JPA) consisting of the City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Larkspur, City of Mill Valley, City of Novato, City of Richmond, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, and the County of Marin. MCE is considering allowing the City of Benicia to become a member of the JPA and participate in the MCE Community Choice Aggregation (CCA) program.

Benicia retained MRW & Associates, LLC to examine the risks associated with joining MCE and review the “Marin Clean Energy Applicant Analysis for the City of Benicia” as part of its due diligence related to participation in MCE. MRW’s scope of work consists of the following tasks:

Risk Assessment. MRW developed an independent assessment of the following:

- Potential risks to City electricity customers including residents and businesses if Benicia joins MCE.
- Potential risks to the City itself including, potential financial issues/obligations if it chooses to join, including but not limited to:
 - a. earnings expectations and assumptions of customer base
 - b. investments, debt, and reserve goals and strategies,
 - c. Utility User Tax collections and remittance, and
 - d. Franchise Fees collection and remittance.
- Planned for and existing MCE service expansions.
- Status of MCE electricity generation projects and debt issued/owed associated with these projects.
- California Alternative Rates for Energy (CARE) customer issues.

Review of MCE Membership Analysis: For this task, MRW reviewed the analyses provided by MCE and assessed:

- reasonableness of assumptions and approaches used in the analysis;
- appropriateness of the analysis undertaken;
- reasonableness and completeness of the conclusions from the analysis including the revenue surplus predicted if Benicia joins; and
- the organizational capacity, stability, and long-term viability of MCE as a business/organization considering its guiding documents and financial statement, including but not limited to:
 - a. earnings expectations and assumptions of customer base,
 - b. ability to maintain its net metering credit payout program, and
 - c. investments, debt, and reserve goals and strategies.

Assess the impact of MCE membership on City solar accounts: For this task, Sage Renewables, a subcontractor to MRW, evaluated:

- Anticipated annual electrical energy costs for transitioning the ten City electrical accounts that currently have solar PV systems from PG&E to MCE.
- MCE's evaluation indicating that approximately \$60,000/year may be paid to the City under MCE's Net Energy Metering (NEM) program.
- Ability of MCE to maintain its net metering credit payout program
- Impacts to net-metering solar rates particularly as they relate to AB327.

Participation in MCE does not come without risks. However, remaining a customer of PG&E also involves risks, although those risks may be less easily identifiable. It is up to the policymakers of Benicia to determine if the benefits associated with participation in MCE justify the risks. If Benicia joins MCE, it would allow its citizens and businesses the opportunity to take commodity electric service from MCE. By law, if a customer does not make the conscious choice to opt out from the program and remain with PG&E for commodity electricity service, then they would, by default, become a customer of MCE. The opt-out requirement effectively means that despite the many opt-out notices that MCE is required to send out, some customers could become MCE customers without necessarily intending to do so. This could be a problem because different stakeholders have different values and risk preferences. For example, one customer might be extremely price-sensitive and would not tolerate higher rates for electric service, while another customer might be willing to pay more for electric service in order to obtain power from renewable energy sources.

According to MCE, participation in MCE can provide the citizens and businesses of Benicia with certain benefits. These include:

- Greater levels of power supply from renewable energy sources than offered by PG&E at competitive costs
- Reduced greenhouse gas emissions as a result of participation in MCE
- Alternative power supply opportunities for MCE customers, including self-generation of renewable energy through MCE-sponsored feed-in tariffs
- Development of local renewable resources to supply power to MCE
- Economic development benefits resulting in more jobs and tax revenues
- Rebates to encourage investments in energy efficiency improvements in homes and businesses
- Greater local control over power supply decisions and rate setting.

MRW generally concurs with these benefits, although as will be discussed at length, "competitive costs" may not always be achieved, while other elements, such as local economic development, are difficult if not impossible to quantify.

MRW has identified a wide range of potential risks that the City of Benicia, its residents and businesses (if they do not opt out of service from MCE) would face were it to join MCE. Some of these risks are more significant while others are less so. The types of risks fall into several broad categories:

- **Procurement Risks:** This broad category of risks relates to the ability of MCE to procure power at reasonable costs, to avoid significant under- or over-procurement, and the future success of MCE at renewing power supply agreements.
- **Regulatory Risks:** These risks consist of uncertainty in regulatory decisions by the California Public Utilities Commission (CPUC) that could adversely affect the costs that customers have to pay to take service from MCE, such as exit fees paid by customers and bonding requirements for MCE.
- **MCE Policy Risks:** While all JPA members have a voice on the MCE Board, no single city can control policy. Thus, given Benicia's differing demographic, economic, and business composition relative to Marin County and Richmond, Benicia might find that the interests of its citizens and businesses are not always well served by decisions of the MCE Board.
- **Customer Cost Risks:** These risks consist of the uncertainty in exit fees, whether MCE can continue to "meet or beat" PG&E's costs of service, how MCE will handle adding different tranches of customers in the future, and the uncertainty in costs that are passed through directly from the CCA's power supplier to customers. This also includes the risk that MCE may not be willing, or able, to provide low-income customers rates that will be no higher than PG&E's.
- **City-Specific Risks:** These risks relate to risks that Benicia might bear simply by becoming a member of MCE, separate and apart from any risks that it might bear as a customer purchasing power from MCE.

The table on the following page summarizes the risks discussed in greater detail in the body of the report. The table categorizes the risks based on the type of risk (e.g., procurement, customer costs), the entity that bears the risk (citizens or the City) as well as the relative importance of the risk in terms of the impact that it might have on customer costs or viability of the CCA.

While MRW expects that MCE will in general be able to offer competitive prices, the most significant risk is still whether MCE will ultimately be able to provide long-term power supplies at costs that are less than PG&E could provide. Thus, if the City's customers are highly price sensitive, then this risk may be of greater concern and would indicate that the City should place a premium on ensuring the its citizens and businesses are fully informed about the opt-out requirements of MCE.

Based on the legal analysis prepared by the Town of Ross and Davis Wright Tremaine, MRW does not believe that the City would have any financial liability in the event that MCE fails.

Description of Risk	Magnitude or Importance of Risk
Procurement Risks	
Volume Risk: Uncertainty in load can cause under- or over-procurement	Medium
Future Price Risk: MCE cannot procure power for incremental customers at competitive costs	Medium
Expansion of CCA: Can current contract accommodate all new customers?	low
Contract Renewal: MCE cannot procure power at competitive prices at end of current agreement	High
Regulatory and Policy Risks	
Adverse CPUC Decisions: Exit Fees and bonding costs may be higher than expected	Medium
MCE's lack of low-income ratepayer policy	Low
Benicia's interests may not always align with that of other JPA members	Medium
Customer Cost Risks	
PG&E Exit Fees: Who bears risk of changes in exit fees?	High
Uncertainty in Departing Load Fees: How much must customers pay to exit CCA after opt-out period ends?	Low
MCE Pricing Commitment: Will MCE meet or beat PG&E's rates?	High
MCE Pricing Commitment: Will MCE guarantee CARE customers won't pay more with MCE than they would have with PG&E?	High
City-Specific Risks	
Supplier Guarantees: City must provide guarantees to power suppliers	Low
New Generation Guarantees: City must provide support to obtain financing for new generation	Low
Financial liability if MCE fails	Low

With respect to the impact of MCE service on the City's solar accounts, Sage Renewables found:

- The City can expect between \$40,000 to \$80,000 in annual excess net energy metered (NEM) bill credit payments from MCE for the solar NEM accounts;
- While MCE's policy of paying for excess NEM bill credits will remain in place for at least the short term, it is at higher risk of change over time than other MCE rate policies; and

- The greatest short term risk to the value of solar PV generated energy is PG&E's proposal to limit its solar-friendly A-6 rate to only small commercial customers. This risk exists whether the City remains a PG&E customer or elects to transition solar PV accounts to MCE. (MCE is expected to mirror changes to PG&E's A-6 tariff with changes to its COM-6 tariff).

1. Introduction and Background

Marin Clean Energy (MCE), formerly the Marin Energy Authority (MEA) is a Joint Powers Authority (JPA) consisting of the City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Larkspur, City of Mill Valley, City of Novato, City of Richmond, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, and the County of Marin. MCE is considering allowing the City of Benicia to become a member of the JPA and participate in the MCE Community Choice Aggregation (CCA) program.

The City has asked MRW & Associates, LLC (MRW) to provide an assessment of the risks and benefits inherent in joining MCE.

1.1 Background on Marin Clean Energy

MCE is a Community Choice Aggregation (CCA) program. As a CCA program, MCE provides commodity electric service and other energy-related services to its customers. MCE, the first fully functioning CCA in California, has been providing these services to a subset of the customers in its service area since May 2010. Full service throughout all its initial Marin County service area was completed by July 2012. It began service to the City of Richmond in July 2013, and projects to begin service Napa County in February 2015, and to the City of San Pablo in May 2015.

Presently, MCE offers two electric supply products:

1. The Light Green product, which provides electric service that has a greater penetration of California Certified renewable resources (50%) than does the incumbent electric utility, Pacific Gas & Electric (PG&E). MCE contends that this energy supply option is cost-competitive with PG&E's retail rates.
2. The Deep Green product, which provides 100% California Certified renewable resources for a \$0.01 per kWh surcharge on top of the charges for the Light Green product.

1.2 Background on Potential MCE Membership for Benicia

After its successful expansion to the City of Richmond, a number of other cities and towns approached MCE about membership. In response, the MCE Board of Directors (MCE Board) adopted Policy 007, which laid out the requirements of new affiliate membership. These include:

1. All applicable membership criteria (listed below) are satisfied;
2. New community is located in a county that is not more than 30 miles from MCE existing jurisdiction; and
3. Customer base in new community is 40,000 or less.

In some circumstances, MCE will consider allowing a special consideration member to join if all membership criteria are met and the community is more than 30 miles from MCE's existing jurisdiction or the customer base in the new community is greater than 40,000.

MCE's membership criteria include:

- Allowing for MCE service in new community will result in a projected net rate reduction for existing customer base;
- Offering service in new community will enhance the strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale;
- Including new community in MCE service will increase the amount of renewable energy being used in California's energy market;
- There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels;
- New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed-In Tariff;
- Greater demand for jobs and economic activity is likely to result from service in new community; and
- The addition of the new community is likely to create a stronger voice for MCE at the State regulatory level.

The "Marin Clean Energy Applicant Analysis for the City of Benicia" report (MCE Applicant Analysis), dated August 29, 2014, demonstrates compliance with the first criterion. The remaining criteria are qualitative, but we have no reason to believe that Benicia's application would fail any of them.

1.3 Scope of Assignment

The office of Benicia's City Manager approached MRW to conduct an independent third-party analysis of the potential risks to Benicia associated with joining MCE. The Scope of MRW's analysis includes the following:

Risk Assessment: MRW developed an independent assessment of the following:

- Potential risks to City electricity customers including residents and businesses if Benicia joins MCE;
- Potential risks to the City itself, including potential financial issues/obligations if it chooses to join;
- Planned and existing MCE service expansions;
- Status of MCE electricity generation projects and debt issued/owed associated with these projects; and
- California Alternative Rates for Energy (CARE) customer issues.

Review of MCE Membership Analysis: For this task, MRW reviewed the analysis provided by MCE and assessed:

- Reasonableness of assumptions and approaches used in the analysis;

- Appropriateness of the analysis undertaken;
- Reasonableness and completeness of the conclusions from the analysis including the revenue surplus predicted if Benicia joins; and
- The organizational capacity, stability, and long-term viability of MCE as a business organization, considering its guiding documents and financial statement, including but not limited to:
 - Earnings expectations and assumptions of customer base;
 - Ability to maintain its net metering credit payout program; and
 - Investments, debt, and reserve goals and strategies.

In addition, attached to this report as Appendix 2 is a supplement prepared by Sage Renewables addressing the impact of changing electric energy service providers from PG&E to MCE for the ten City electricity accounts that have solar PV systems currently installed.

Appendix 1 summarizes MRW's and Sage Renewables qualifications related to this assignment.

It is important to note that this report cannot attempt to evaluate or quantify all possible benefits and risks to all possible Benicia stakeholders (e.g., residential customers, businesses, municipal accounts) or all associated benefits and risks of remaining on PG&E service. The perspectives of all that might be impacted are too diverse and unforeseeable events can occur. As such, the assessment must be viewed as being only one part of the assessment of participation by Benicia in MCE.

One additional point must be stressed: If Benicia decides to join MCE, the City is merely providing its citizens and businesses with *the opportunity* to take service from MCE: customers have the ability to opt-out from MCE and to remain customers of PG&E. However, customers must take conscious action to remain with PG&E; if they do nothing, they will become customers of MCE. MCE is required, by law, to provide at two notices prior to starting service (post-cards, flyers, etc.) to all potential MCE customers informing them of this opt-out option. After MCE begins service, customers' bills will clearly identify MCE as their power provider. Again by law, customers then have an additional 60 days to opt-out with no consequences. Once a CCA is in place, new electric customers starting service in the CCA's area are automatically enrolled in MCE service. Both PG&E and MCE notify the new customer that they are automatically an MCE customer, and informed that they have 60 days to opt-out of MCE service. Customers may opt out after 60 days of MCE service, but are subject to an MCE charge of \$5 (residential) or \$25 (non-residential) and cannot return to MCE service for one year.

Even with the opt-out notices, it is likely that some citizens or businesses would become MCE customers effectively without their knowledge or consent. This could be a problem for Benicia's policymakers if the potential benefits and risks of participation in MCE are not consistent with the risk preferences and other goals of the citizens and businesses that become MCE customers by default.

2. Benefits of Participation in MCE

Since its inception, and even prior to delivering its first kilowatt-hour, MEA and then MCE has outlined the benefits it sees to its members of joining MCE and taking service from MCE. This section reiterates and comments upon these benefits.

Some of the primary benefits potentially offered by MCE to Benicia include:

Greater levels of power supply from renewable energy sources than offered by PG&E at competitive costs. It is clear that MCE's policy and supply portfolio is designed to, and will likely achieve, greater renewable penetration than is projected to be achieved by PG&E. It will likely be able to do so at costs comparable to, or less than, PG&E. Currently PG&E does not offer an equivalent "deep green" option. However, it has proposed a Green Option program that would provide 100% renewable power to customers. That program has not been approved by the CPUC and the proposed participation fee will likely be higher than MCE's rates for 100% renewable electricity.

Competition between electric service providers will lead to more competitive rates and prices for Benicia residents and businesses. In theory, competition among suppliers will reduce prices to consumers and offer a wider variety of products in the marketplace. MCE, through its light-green and dark-green products, clearly is providing customers greater choice, but it is uncertain whether it will necessarily result in more competitive rates.

Reduced greenhouse gas emissions as a result of participation in MCE. Again, it is clear that MCE's policy and supply portfolio is designed to, and will likely achieve, a net reduction in greenhouse gas (GHG) emissions associated with electricity supply to its customers. This is because the average GHG emissions from the CCA would be lower than the marginal emissions from PG&E (i.e., the actual incremental emissions that PG&E would incur if it were serving that load). However, because PG&E has large amounts of carbon-free (but not necessarily "renewable" according to the Renewable Portfolio Standard (RPS)) generation (large hydroelectric dams and the Diablo Canyon nuclear plant), PG&E's average GHG emissions rate may at times be lower than MCE's average emissions, even if MCE has more qualifying "renewable" generation. Even so, as long as fossil fuel is on PG&E's generation margin, which it will be for the foreseeable future, MCE's policies would result in reduced GHG emissions.

Provision of more robust incentives to businesses and residents to sell power back to MCE and thus stimulate the local economy. Both PG&E and MCE offer net energy metering and feed-in-tariffs for small renewables generators. However, the rates paid by MCE to small renewables generators through its feed-in-tariff are greater than those offered by PG&E, and its net energy metering program is less restrictive. To the extent that MCE can maintain this price advantage over PG&E, and do so with lower transaction costs (i.e., fewer "hoops" to jump through), incremental local renewable development should occur, providing local economic stimulus.

Attraction of more green businesses to locate in Benicia and thus increase business-related revenues to the City and create jobs for residents, and the creation of more employment opportunities for Benicia residents and contractors through the CCA power procurement contracts. To the extent that MCE has local purchase preferences and green businesses are attracted to MCE's offerings, incremental economic development in Benicia may occur.

Greater local control over power supply decisions and rate setting. Given that its policies are set by MCE's Board of Directors, MCE would offer greater local control of procurement and rate-making decisions. This is in contrast to PG&E, which not only has a very large service area beyond the general Bay Area but also must comport to specific procurement orders from the CPUC. While the CPUC has some legislatively directed authority over MCE, such as setting resource adequacy or renewable standards applicable to all utilities and CCAs, the CPUC cannot dictate to MCE which power resources it can or cannot use or how to set rates. Furthermore, MCE offers more local control of the energy efficiency and distributed generation (i.e., rooftop solar) programs and policies that its member cities' residents and businesses can participate in. This can be seen, for instance, in MCE's more favorable net energy metering policies. On the other hand, since Benicia would only have a single vote on the MCE Board, it might find that the interests of the City and its residents and businesses are not always well served by Board decisions, especially in cases where Benicia's interests do not align with those of the other MCE members.

3. Risks of Participation

This section presents MRW's assessment of the major risks facing customer groups and the City as a result of participation in MCE. It then examines potential risks faced by City residents if the City joins MCE. It concludes by examining potential risks to the City itself if the City were to join MCE.

The following table summarizes the risks discussed in the following sections. The table categorizes the risks based on the type of risk (e.g., volume, procurement, customer costs), the entity that bears the risk (e.g., citizens or the City) as well as the relative importance of the risk in terms of the impact that it might have on customer costs or viability of the CCA.

Table 1 Risk Summary

Description of Risk	Magnitude or Importance of Risk
Procurement Risks	
Volume Risk: Uncertainty in load can cause under- or over-procurement	Medium
Future Price Risk: MCE cannot procure power for incremental customers at competitive costs	Medium
Expansion of CCA: Can current contract accommodate all new customers?	low
SENA Contract Expiration: MCE cannot procure power at competitive prices at end of current agreement	High
Regulatory and Policy Risks	
Adverse CPUC Decisions: Exit Fees and bonding costs may be higher than expected	Medium
MCE's lack of low-income ratepayer policy	Low
Benicia's interests may not always align with that of other JPA members	Medium
Customer Cost Risks	
PG&E Exit Fees: Who bears risk of changes in exit fees?	High
Uncertainty in Departing Load Fees: How much must customers pay to exit CCA after opt-out period ends?	Low
MCE Pricing Commitment: Will MCE meet or beat PG&E's rates?	High
MCE Pricing Commitment: Will MCE guarantee CARE customers won't pay more with MCE than they would have with PG&E?	High
City-Specific Risks	
Supplier Guarantees: City must provide guarantees to power suppliers	Low
New Generation Guarantees: City must provide support to obtain financing for new generation	Low
Financial liability if MCE fails	Low

3.1 Procurement-Related Risks

In late 2011, MRW provided an assessment of risks to the City of Richmond related to participation in MCE. At that time, MRW identified a number of risks that existed in the agreements and policies of MCE. Since then, MCE has extended its power supply agreement with Shell Energy North America (SENA), entered into numerous PPAs with renewable generating facilities to procure power to satisfy its customer load base, established a Feed-In

Tariff program to purchase power from small renewable generators located in the MCE service area, and begun to establish processes and procedures for resource acquisition after the end of the SENA agreement.¹ This section discusses the status of the major risks that MRW identified in its review for the City of Richmond (although not all are relevant anymore).

3.1.1 Background on MCE's Power Procurement Program

MCE is responsible for procuring sufficient electrical energy, capacity, ancillary services and transmission rights to meet its customers' needs. When MCE began serving customers, MCE outsourced most of these services to SENA under a 5-year agreement. Under that agreement, SENA would provide energy, capacity, ancillary services, scheduling coordination services, and other services to allow MCE to meet its customers' needs and to comply with requirements associated with the State's Renewable Portfolio Standard, the CPUC's Resource Adequacy requirements, the California Independent System Operator's (CAISO's) scheduling requirements, and other requirements. The specific agreement with SENA consisted of an overarching form agreement and a set of "confirmations" that specified the key provisions of the agreement (e.g., price of products, quantities, obligations for under- or over-procurement). The agreement was flexible in that it allowed MCE to substitute its own resources (e.g., power purchased from parties other than SENA) for products formerly purchased from SENA.

MCE's initial rollout consisted of serving a small subset of MCE's customers. After this "Phase 1," MCE expanded the number of customers being served in Marin (i.e., Phase 2a), which was also a small expansion of the load being served by MCE. With the final expansion of MCE's first set of customers (i.e., Phase 2b), MCE was serving all customers in its service territory that had not opted out. It is important to note that Phase 2b did NOT include the expansion to serve City of Richmond. With each expansion, MCE and SENA negotiated amended confirmations to its initial agreement.

Since it started serving customers, MCE has been evaluating different power supply options (consistent with its agreement with SENA). At the present time, MCE has purchase agreements with 23 different entities. These different entities provide a variety of services (e.g., renewable or non-renewable energy, capacity, renewable energy certificates²). Some of these arrangements are short-term (e.g., one year) and others are long-term (e.g., more than 10 years). These agreements are discussed in MCE's latest Integrated Resource Plan.³

¹ MCE entered into a second amended and restated confirmation with SENA on February 2, 2012. This amended and restated confirmation extended the term of SENA's energy supply obligation and scheduling coordination agreement through the end of 2017. At the same time, MCE entered into a confirmation with SENA to provide capacity through December 31, 2015. Although not mentioned in the Board package, it appears that SENA provides renewable energy through 2016 to MCE under the same confirmations. The purpose of the amended and restated confirmation for energy and scheduling coordination services appears to be to lock in low non-renewable prices through the end of 2017. It is not clear why the capacity confirmation was not extended except that it appears that MCE wanted to have separate agreements for these two services, which is consistent with industry practices. To see the source documents, click on this [link](#).

² Renewable energy certificates (RECs) represent the renewable attribute associated with renewable generation. As part of meeting its RPS requirements, MCE is required to "retire" RECs. Once a REC is retired, it cannot be used again to meet RPS obligations.

³ MCE Integrated Resource Plan, November 7, 2013, pp. 10-12.

3.1.2 Uncertainty in Amount of Power to Procure

Based on the draft confirmation approved by the MEA Board in February 2012, SENA provides full non-renewable requirements to MCE.⁴ In addition, SENA provides a pre-specified quantity of renewable energy to MCE.⁵ Thus, MCE had to specify the quantity of renewable energy that it would receive from the supplier. In order to ensure that it received adequate renewable energy to meet its obligations, MCE either had to establish some other mechanism whereby its renewable energy requirement would be met or be willing to have SENA purchase renewable energy on a short-term basis and face price uncertainty associated with those incremental renewable purchases. This was a concern because in the event that MCE over-procures, it has to resell its excess supplies into the market (at unknown prices) and could face significant costs (or gains) from those sales. On the other hand, if MCE under-procures, then it needs to purchase power in the future at unknown rates, which could be higher (or lower) than the fixed prices specified in its Agreement when originally signed.

MCE's average retention rate since its initial customer enrollments has been 77%.⁶ However, MCE's customer retention rate has increased with the last phase of its rollout to the City of Richmond (about 85%).⁷ MCE notes that once a new set of customers is enrolled, the customer base shows considerable stability. Thus, the largest uncertainty regarding participation levels appears to be linked to opt-outs during the initial enrollment period.

While there is still significant uncertainty associated with customer opt-outs⁸, this uncertainty may not be as much of a risk to MCE as it was in the past. This is because the renewable portion of the SENA contract, which required specific levels of renewable purchases, is ending at the end of 2015. While MCE might enter into another agreement with SENA or another supplier, MCE notes that it is "continuing a transition from the initial full requirements contract that was used to launch MCE" and that MCE "has put into place a robust renewable energy buying program that now supplies the majority of the MCE renewable energy supplies," and that MCE "is similarly developing an independent buying program for non-renewable energy and capacity."⁹ While this program is not in place for non-renewable resources as yet, MCE appears intent on developing this capability, which might give MCE somewhat more flexibility to manage opt-out risk.¹⁰

⁴ A "full requirements" contract obligates the seller to meet all requirements of the buyer. In the case of SENA's agreement with MCE, it appears that the full requirements obligation is for non-renewable energy. There is likely a price specified for the power supplied under this agreement. However, it is not possible to be certain about this since the key attachments to the confirmations were not included in the Board package.

⁵ The quantity is redacted from the draft agreement.

⁶ MCE Integrated Resource Plan, November 7, 2013, p. 7.

⁷ *Ibid.*

⁸ When MCE first started operations, it had assumed a 25% opt-out rate but found that its opt-out rate was actually 20%. The last tranche of customers from Richmond had an opt-out rate of 15%. Thus, while the percentage of opt-outs is decreasing, MCE is still being conservative in its assessment of opt-outs, which means that it could be over-procuring power.

⁹ MCE Integrated Resource Plan, November 7, 2013, pp. 7-8.

¹⁰ Under a full requirements agreement, MCE likely has to specify a quantity of energy that it wants to procure and a price for that energy. If its loads are higher than expected, then the supplier (e.g., SENA) would procure power on behalf of MCE and MCE would be obligated to pay market price for that extra power. Similarly, if loads are less than expected, then SENA would have to sell MCE's excess energy and MCE would be at a risk for the difference between the contract price and the market price. If MCE were to have its own buying program, then MCE would likely have more flexibility to determine how much or little of its power supply it would need to hedge (i.e., how

3.1.3 MCE's Current Power Supply Agreement May Not be Able to Accommodate the City's (or Other Cities') Loads at Comparable Prices

As specified in the renegotiated contract between MCE and its power supplier (SENA), the power supplier has an obligation to serve all of MCE's non-renewable power requirements services. However, the agreement only specifies a fixed quantity of renewable energy that the power supplier must provide. Thus, there is some uncertainty as to the pricing of power for MCE if it is successful in recruiting Benicia and other cities or counties (such as El Cerrito or Albany) because the confirmation that was signed in 2012 did not anticipate MCE's expansion to other cities or counties.¹¹ This has not proven to be a problem for MCE, since it has procured a significant amount of renewable energy outside of the agreement with SENA.¹² In fact, MCE's most recent amended and restated confirmation with SENA is supposed to have renewable prices that are much lower than the original confirmation.

3.1.4 Term of Power Supply Agreement

The MCE agreement with SENA for non-renewable and renewable energy has been extended until 2017 and 2016, respectively. As discussed above, it does not appear that MCE plans to enter into another full requirements arrangement with a power supplier after the end of the SENA agreement. Whether or not MCE enters into another agreement with SENA or another full requirements supplier, there is still some uncertainty over the price of power that MCE will pay to supply its customers after 2017, since MCE's "Net Open"¹³ position goes from 56 GWh in 2017 to 1,001 GWh in 2018 (i.e., from total energy contract coverage of 96% in 2017 to 19% in 2018).¹⁴ If other cities or counties join MCE, then the Net Open position will be even larger in 2018. The pricing of the power needed to cover this Net Open position is unknown. Thus, there is some uncertainty regarding the ability of MCE to "meet or beat" PG&E's price when it is time to renew the MCE power purchase agreement (PPA). This is because the price for market-based non-renewable energy (which is what MCE will be purchasing to satisfy its Net Open position) is highly dependent on volatile natural gas prices. PG&E's power supply portfolio has a significant amount of generation that is not linked to natural gas prices (e.g., its hydroelectric system and its nuclear generation).

3.1.5 Approach for Providing "Green" Power

MCE uses a variety of approaches for providing a power supply that has a lower carbon footprint than PG&E. It purchases physical certified renewable power (that helps MCE meet its RPS

much of its supply would have fixed price). Unlike with a full requirements agreement, this quantity could change over time as market conditions evolve.

¹¹ The confirmation was amended in February of 2012 explicitly to serve Phase 2b of MCE's load. This was several months before Richmond requested to join MCE. Thus, it is clear that the 2012 amended and restated confirmations did not anticipate the expansion of MCE.

¹² In MCE's 2013 Integrated Resource Plan, MCE had a total of 282 GWh of renewable resources, of which a total of 175 GWh were attributable to SENA. The remainder of MCE's renewables in 2013 (i.e., 107 GWh) were attributable to agreements entered into outside of the SENA agreement. By 2015, MCE projects that SENA will supply only 140 GWh out of MCE's total renewable requirements of 307 GWh.

¹³ The "Net Open" position is the difference between the expected load and the amount of energy that is either under contract or to be generated by MCE. Thus, a small Net Open position means that almost all of the expected load will be served by existing agreements. Conversely, a large Net Open position means that MCE does not currently have agreements in place to serve much of its expected load.

¹⁴ MCE Integrated Resource Plan, November 7, 2013, Appendix A, p. 23.

obligations), it purchases carbon-free power (e.g., power from large hydroelectric facilities that is not eligible to meet MCE's RPS requirements), and unbundled renewable energy certificates (RECs), which may or may not help MCE meet its RPS obligation in the long-run. This approach is reasonable. However, customers should be aware that purchasing RECs to "supply" renewable energy is not exactly the same as purchasing physical renewable energy. When MCE purchases RECs, it also must obtain "null energy," which is typically not renewable. There is nothing unusual about this approach but Benicia may wish to make this distinction clear.¹⁵

3.2 Regulatory and Policy Risks

This section addresses two areas. First, there are the risks to the CCA and its customers of changes in State policies, in particular the regulatory decisions made at the California Public Utilities Commission (CPUC). Second, there are the risks to the JPA member cities and their residents and businesses associated with MCE policies. We raise this second risk area because while all JPA member cities have a voice on the MCE Board, no single city can control policy. Thus, given Benicia's differing demographic, economic and business composition relative to Marin County, Benicia's needs and policy preferences might not be fully addressed in MCE Board decisions.

3.2.1 Departing Load Fee

MCE has entered into a number of long-term PPAs for renewables, and per its integrated resource plan, intends to enter into more PPAs in the next few years. Furthermore, to undertake any future construction programs, MCE will issue debt (as is typically the case for other utilities). MCE developing its own resources or entering into long-term PPAs means it would have fixed debt service obligations to pay for its renewable resources.

When MCE customers choose to leave MCE's service after the end of the opt-out period, then either the departing customers must pay a fee to MCE or the electric rates for remaining customers could increase. MCE's current fee for returning back to PG&E service is \$5 for residential customers and \$25 for commercial customers. This fee would be only applicable to customers who did not opt out during the four month opt-out window and then subsequently, at some later date, chose to take electric service from someone other than MCE.¹⁶

The current fee covers MCE's administrative costs to return the customer to PG&E service. In the future this could include fixed MCE costs that otherwise would have to be borne by the remaining MCE customers. (PG&E's exit fee charged to CCA customers covers such costs).

3.2.2 CCA Bonding Obligation

Pursuant to CPUC Decision 05-12-041, a new CCA must include in its registration packet evidence of insurance or bond that will cover such costs as potential re-entry fees, i.e., the cost to PG&E if the CCA were to suddenly fail and be forced to return all its customers back to PG&E

¹⁵ RECs are essentially an accounting mechanism. They can either be combined with physical generation (i.e., Bundled RECs) or can be separated from the physical power and used for RPS compliance (i.e., Unbundled RECs). Under California's RPS law, MCE can only use a limited number of Unbundled RECs for RPS compliance. However, there is no limitation on the use of Unbundled RECs for other purposes (e.g., to "green" non-renewable power).

¹⁶ Also note that if an MCE customer returns to PG&E service after the end of the opt-out period, that customer would not continue to pay Exit Fees to PG&E; they would only have to pay Departing Load Fees to MCE.

bundled service. Currently, a bond amount for CCAs is set at \$100,000, which has already been met by MCE.

This \$100,000 is an interim amount. In 2009, a Settlement was reached in CPUC Docket 03-10-003 between the three major California electric utilities (including PG&E), two potential CCAs (San Joaquin Valley Power Authority and the City of Victorville) and The Utility Reform Network (TURN) concerning how a bonding amount would be calculated. The settlement was vigorously opposed by MCE and San Francisco, and never adopted.

Since then, the issue of CCA bond requirements has not been revisited by the CPUC. If it is, the bonding requirement will likely follow that set for Energy Service Providers (ESPs) serving direct access customers. This ESP bond amount covers PG&E's administrative cost to reintegrate a failed ESP's customers back into bundled service, plus any positive difference between market-based costs for PG&E to serve the unexpected load and PG&E's retail generation rates. Since the ESP bonding requirement has been in place, retail rates have always exceeded wholesale market prices, and thus the ESP's bond requirement has been simply the modest administrative costs.

If the ESP bond protocol is adopted for CCAs, during normal conditions, the CCA Bond amount will not be a concern. However, during a wholesale market price spike, the MCE's bond amount could potentially increase to millions of dollars. But the high bond amount would likely be only short term, until more stable market conditions prevailed. Also it is important to note that high power prices (that would cause a high bond requirement) would also depress PG&E's exit fee and would also raise PG&E rates, which would in turn likely provide MCE sufficient headroom to handle the higher bonding requirement and keep its customers' overall costs competitive with what they would have paid had they remained with PG&E. Per Section 3.4, MCE JPA member entities would not be individually liable for any increase in the bond amount.

3.2.3 Meaning of MCE's Commitment to "Meet or Beat" PG&E Rates

MCE has stated that one of the benefits for customers is "Costs at or below PG&E."¹⁷ In discussions with MRW, MCE has clarified that this is based on the *projected* overall costs of MCE versus forecast of PG&E's tariffed generation rate. In other words, the following inequality must occur for MCE to sign the Agreements:

$$\text{MCE Power Supply Costs} + \text{Customer Exit Fees} + \text{MCE Overhead} \leq \text{PG\&E Gen Rate}^{18}$$

At current rates, the total MCE cost of service (including the exit fees) is less than the PG&E generation rate. However, as discussed later, this has not always been the case, nor is it guaranteed to be so in the future.

3.2.4 CARE (Low-Income) Rate Policies

To protect low-income households against escalating electricity bills, the CPUC froze rates for the California Alternate Rates for Energy (CARE) program at July 2001 levels. Currently the effective CARE discounts now range from 35% in the lowest residential rate tier up to 52% in Tier 3. While ongoing Commission action is moving to adjust its rate design to narrow this gap,

¹⁷ E.g., MEA presentation, October 2009, p. 12.

¹⁸ MEA Power Supply Costs, Customer Exit Fees, MEA Overheads, and PG&E Gen Rate are all forecasted values in early February 2010.

CARE customers will continue to receive significant discounts relative to other residential customers.

The CARE discounts are administered through the “Conservation Incentive Adjustment”(CIA) element of PG&E’s residential tariffs. The CIA rate element is paid by all residential customers in PG&E’s service area, no matter if PG&E or MCE provides their power. This means that the absolute discount amount (in ¢/kWh) is independent of whether the customer is served by MCE or PG&E. However, if MCE’s residential generation rate plus the exit fee¹⁹ rate is greater than PG&E’s generation rate, the CARE customer on MCE could end up paying slightly more than they would had they taken service from PG&E. MCE can address this issue by either recouping any incremental amount from its remaining customers or use any cash reserves to ensure that CARE customers pay no more than they would have under PG&E service.

Additional CARE issues this from the customer perspective are discussed in Section 3.3.3.

3.2.5 Timing and Rates for Customers Taking Service in Later Phases of MCE’s Development

MCE initially procured power for its 8,000 Phase I customers in May 2010. It has since successfully added three additional blocks of customers: 5,000 Marin County accounts were added in August, 2011; the remainder of the Marin County accounts (32,650) in July 2012, and the City of Richmond (74,000 accounts) in July 2013. This experience demonstrates that MCE can expand its customer base without adverse impacts.

Furthermore, per Board Policy 007, MCE will not accept additional memberships unless it results in lower rates for the current members. This would preclude MCE from adding members at power prices higher than its existing power cost. What this means is that the risk of higher rates from additional members is very low, but that the timing of additions is more uncertain: if a community desires to join MCE but the prevailing power markets do not allow for it to do so at a net benefit for the current MCE members, it cannot do so until power market conditions change.

3.2.6 Planned For And Existing MCE Service Expansions

In July 2013, the City of Richmond became the first municipality outside of Marin County to receive power from MCE. MCE will further expand its program to municipalities outside of Marin County in the near future, with plans to begin delivering power to Napa County in February 2015, and the City of San Pablo in May 2015. Presently, several other municipalities outside of Marin County are also considering membership in MCE. Like the City of Benicia, the City of El Cerrito has also taken formal steps to consider joining MCE’s service territory in 2015.²⁰ The City of Albany has also taken formal steps to join MCE, and was approved to begin the membership analysis process by the MCE Board at the same time as Napa County in February of 2014.²¹ However, Albany postponed its efforts to join MCE due to the possibility

¹⁹ In PG&E’s Tariff the Exit Fee is the Power Charge Indifference Amount (PCIA).

²⁰ Comments of Marin Clean Energy Regarding California Compliance Plan for U.S. EPA Proposed Carbon Pollution Emissions Guidelines, Marin Clean Energy, September 23, 2014, p. 2.

²¹ Board of Directors Meeting Agenda, Marin Clean Energy, February 2014, p. 8.

that the county in which it resides, Alameda County, may vote to form its own CCA program, described in greater detail in the sections below.²²

Presently, two municipalities have publicly revealed that they are in the preliminary stages of considering membership in MCE. San Mateo County, for example, has requested information from MCE on how to join Marin's program, but has not yet passed local legislation to further explore membership.²³ The City of Arcata has also expressed the possibility of joining MCE,²⁴ as an alternative to Humboldt County's Redwood Coast Energy Authority's potential CCA program.²⁵

Municipalities That Have Decided Against Joining MCE. In recent years, the City of Berkeley and the City and County of San Francisco (CCSF), have each considered joining MCE but ultimately decided against it.

Berkeley considered enrolling in MCE after it failed to succeed in forming a CCA with Oakland and Emeryville. Efforts to form a program to include these three cities culminated in September 2008, with the publication of a business plan outlining the proposed CCA.²⁶ In November of 2008, the Emeryville City Council voted to terminate further CCA activities due to the high costs associated with program planning and the lack of City funds to pay for it.²⁷ Oakland and Berkeley Staff also recommended that their respective city councils reject further efforts to form a CCA, due to concerns regarding higher customer costs, and payment and credit guarantees for the formation of a new agency.²⁸ Despite Staff's recommendations, however, Berkeley and Oakland continued with the next phase of CCA studies, with the Berkeley Energy Commission (BEC) completing a study in June 2010 to inform the Berkeley City Council on the potential benefits and risks of a joint CCA between the two cities.²⁹ The report concluded that the CCA would face potential challenges maintaining rate parity with PG&E if attempting to offer customers electricity with a greater share of renewable generation. Increased rates may lead customers to opt-out of a CCA, making it difficult for the City to recoup its share of pre-implementation expenditures and start-up costs, ranging from \$200,000 to \$3.3 million. BEC found that risk associated with start-up costs would be minimal to the City if the CCA was able to retain most of its customers in the first five years.³⁰ Overall, however, the report noted that it was difficult to determine the extent of rate parity and financial risks in practice, because at the time of publication, MCE had just started delivering power. The report did cite MCE's success in securing a contract with SENA to supply more renewable electricity at rates equal to PG&E in its

²² *Ibid.*

²³ Board of Directors Meeting Agenda, Marin Clean Energy, July 3, 2014, p. 16.

²⁴ Memorandum re: Update on Community Choice Aggregation, Arcata City Council, December 19, 2013.

²⁵ Comprehensive Action Plan for Energy, Humboldt County, September 2012, p. 11.

²⁶ East Bay Cities Community Choice Aggregation Business Plan, Prepared by Navigant Consulting, Inc., September 2008.

²⁷ Progress Report – December 2008, Memorandum to Mayor and City Council from City of Emeryville City Manager Patrick D. O'Keeffe, December 2008, p. 1.

²⁸ Memo to Berkeley Energy Commission from City of Berkeley Secretary, October 22, 2008; and Memo to Oakland Office of the City Administrator from the Public Works Agency, December 16, 2008.

²⁹ Potential Benefits and Risks of Implementing Community Choice Energy, City of Berkeley Energy Commission, June 28, 2010.

³⁰ Potential Benefits and Risks of Implementing Community Choice Energy, City of Berkeley Energy Commission, June 28, 2010, pp. 3-4.

first year of operation as an early indication that such practice was possible among CCAs.³¹ The report stated that overall, the greatest financial risks of a CCA would be related to securing the debt necessary for the construction of CCA-owned electricity generation facilities.³² Efforts for a CCA in Oakland quickly extinguished due to city council issues associated with the Great Recession taking precedent over CCA formation.³³

Berkeley continued to consider CCA, with the City Council passing a resolution in January 2012 demonstrating Berkeley's intent to explore CCA with MCE, and East Bay Municipal Utility District (EBMUD), which provides water and/or wastewater services to several East Bay cities.³⁴ However, in December 2012, the EBMUD Board of Directors voted to discontinue further exploration of a CCA, due to concerns regarding EBMUD's fiscal health, credit rating, and financial reserves.³⁵ After EBMUD decided not to pursue CCA, Berkeley postponed efforts to join MCE or form its own program.

In February 2014 at the request of the Alameda County Board of Supervisors, the Berkeley and Oakland climate action coalitions prepared a CCA feasibility study for Alameda County.³⁶ In June 2014, the Alameda County Board of Supervisors approved funding (\$1.3 million) for a technical study on CCA program development.³⁷ If Alameda County continues to pursue a CCA, Berkeley, Oakland, and Emeryville would be among the cities that would be serviced by the program.

CCSF also considered joining MCE after it initially failed to form its own CCA program. Efforts to form a San Francisco CCA began in June 2007, when the CCSF Board of Supervisors passed an ordinance adopting a CCA program, Revenue Bond Plan, and Draft Implementation Plan.³⁸ In December 2011, the San Francisco Public Utilities Commission (SFPUC), the agency administering the City's CCA program, CleanPowerSF, approved a PPA between CleanPowerSF and SENA to provide the program's customers with renewable energy for over 4.5 years.³⁹ However, at a voting meeting held in August 2013, the SFPUC voted 3-2 against approving CleanPowerSF's proposed not-to-exceed customer rates, due to their high cost.⁴⁰ In response to the SFPUC's denial of the program's not-to-exceed rates, SFPUC President Art Torres, with Commissioners Courtney and Caen, commented that CleanPowerSF was not as environmentally friendly as it could be and that there remained unresolved labor issues. He encouraged the City to explore alternatives to the program.⁴¹

³¹ Potential Benefits and Risks of Implementing Community Choice Energy, City of Berkeley Energy Commission, June 28, 2010, p. 26.

³² Potential Benefits and Risks of Implementing Community Choice Energy, City of Berkeley Energy Commission, June 28, 2010, pp. 3-4.

³³ BondGraham, Darwin, When Will We Go Green?, *East Bay Express*, May 30, 2012.

³⁴ Resolution No. 65,586-N.S., Berkeley City Council, January 12, 2012.

³⁵ Meeting Minutes, EBMUD, December 11, 2012.

³⁶ East Bay Community Choice Energy, Berkeley Climate Action Coalition, Community Choice Working Group, Oakland Climate Action Coalition, and Clean Energy & Jobs Oakland Campaign, February 2014.

³⁷ Board of Directors Meeting Agenda, Marin Clean Energy, July 3, 2014, p. 16.

³⁸ Ordinance No. 07-0501, City and County of San Francisco Board of Supervisors, June 12, 2007.

³⁹ CleanPowerSF Not-to-Exceed Electric Generation Rates Staff Report and Resolution, SFPUC, August 13, 2013.

⁴⁰ Riley, Neal J., "PUC fails to set rates for CleanPowerSF," *SFGate*, August 13, 2013,

⁴¹ Ibid.

In April 2014 San Francisco Mayor Ed Lee, who had publicly opposed CleanPowerSF, released a draft budget in which he proposed to allocate the funds set aside by the SFPUC for the CCA to GoSolarSF, a separate program supported by Lee that provided incentives for property owners to install solar panels.⁴² In May 2014 the CCSF Board of Supervisors approved an ordinance to study the feasibility of implementing a CCA program in San Francisco through joining MCE.⁴³ The ordinance was returned unsigned by Mayor Lee shortly thereafter.⁴⁴

3.3 Potential Risks Faced by the City's Electric Consumers

As discussed above, there were and continue to be several risks that customers of MCE face. These are discussed below.

3.3.1 MCE May Be Unable to Procure Power for its Incremental Light Green Customers at Prices that Meet or Beat PG&E

In 2010, MCE successfully procured power for its Light Green customers at costs that allow those customers to have total energy bills that are less than they would have paid had they remained PG&E customers. However, at that time, PG&E's rate design for residential customers resulted in high usage customers having very high average electric rates. Thus, MCE was able to target the specific customers in its Phase I efforts that had very high rates. MCE has not been able to use this strategy since that first phase. PG&E rate design changes in 2011 resulted in a "flattening" of PG&E's generation rate for residential customers, meaning that high usage customers no longer pay higher—sometimes much higher—generation rates than low-usage residential customers. (Note that MCE essentially competes against PG&E's generation rate.) This risk is discussed in detail in Section 4.1, below.

3.3.2 Uncertainty in Exit Fees

Assembly Bill 117, which established the CCA program in California, included a provision that states that customers that remain with the utility should be "indifferent" to the departure of customers from utility service to CCA service. This has been broadly interpreted by the CPUC to mean that the departure of customers to CCA service cannot cause the rates of the remaining utility "bundled" customers to go up. In order to maintain bundled customer rates, the CPUC has instituted an exit fee, known as the "Power Charge Indifference Amount" or "PCIA" that is charged to all CCA customers. The PCIA is intended to ensure that generation costs incurred by PG&E before a customer transitions to CCA service are not shifted to remaining PG&E bundled service customers.

Even though there is an explicit formula for calculating the PCIA, forecasting the PCIA is difficult, since many of the key inputs to the calculation are not publically available, and the results are very sensitive to these key assumptions. For PG&E, the PCIA has varied widely; for example, at one time the PCIA was negative.

⁴² Lagos, Marisa, "SF board to consider deal on clean-energy plan," *SFGate*, June 12, 2014.

⁴³ Meeting Minutes, CCSF Board of Supervisors, May 20, 2014, p. 3.

⁴⁴ Legislation 140415, CCSF Board of Supervisors, May 29, 2014, available at: <https://sfgov.legistar.com/LegislationDetail.aspx?ID=1736467&GUID=D4E08EB6-F58A-42AA-BA0D-DFE4756E26B5>

MCE's current policy is that customers bear the financial risk associated with the level of exit fees they will pay to PG&E. Thus, for a customer taking MCE service to be economically better off (i.e., pay less for electricity), the sum of the MCE charges plus the PCIA must be lower than PG&E's generation rate. As noted above this has not consistently been the case for MCE residential customers.

MCE has intervened vigorously at the CPUC to minimize the size and scope of PG&E's exit fees. For example in 2009 is co-sponsored testimony in Rulemaking 07-05-025 which revised the PCIA to better account for renewable portfolio standard requirements. It has also petitioned the Commission to open a Rulemaking to reconsider all exit fees and participated the last two "ERRA" proceedings in which the annual exit fees are set. MRW expects MCE to continue to have an active presence at the CPUC, advocating for lower and more limited exit fees.

3.3.3 CARE Customer Issues

As mentioned in Section 3.2.4, current MCE policy does not ensure that CARE customers will not pay more under MCE than they would had they taken service from PG&E. The table below shows the generation rates offered by PG&E and MCE for a standard residential CARE customer. MCE's generation rate for residential customers (including those on CARE service) are 1.6¢/kWh less than PG&E's rates. However, MCE's rate does not include PCIA, a rate element that is applicable only to CCA customers. When adding in the PCIA, currently 1.1¢/kWh, the low-income customer taking service from MCE would still be paying a rate below that offered by PG&E. Thus, given current rates, low-income customers are better off with MCE. However, that has not always been the case. When MRW conducted an analogous analysis in 2011 for the City of Richmond, the rates in place at that time would have resulting in CARE customers (using 400 kWh per month) paying approximately \$100 more per year on MCE service than on PG&E service. However by the time Richmond joined MCE in 2013, PG&E's generation rates were greater than MCE's rate plus exit fee, so the issue of CARE customers paying higher bills under MCE was made moot.

Given current rate trends, MRW expects CARE customers to pay less for power with MCE in 2015 than they would with PG&E. Nonetheless, given MCE's current policies, there is no guarantee this will be the case in all years.

Table 2. CARE Rate Comparison (current tariffs), ¢/kWh

	PG&E Schedule EL-1	MCE Schedule RES-1	Difference
Generation Rate	9.5	7.9	(1.6)
PCIA (Vintage 2014)	n/a	1.1	1.1
Total	9.5	9.0	(0.5)

Issue: Other Customers Subsidizing CARE Customers

If MCE changes its policy and decides to ensure that MCE's net CARE rate is no higher than PG&E's CARE rate, then in years when the MCE rate plus exit fee is greater than PG&E's generation rate, MCE would need either to marginally raise rates for the other MCE customers, or use its reserves to finance the MCE CARE customers. A question that would likely be raised would be, how willing are MCE's ratepayers in other jurisdictions to subsidize low-income customers in Benicia, and vice versa? MRW does not know the answer to this question but we believe that it could present a political and public relations challenge for Benicia officials as well as MCE.

3.3.4 Regulatory Changes Adversely Affect MCE Customers

Regulatory changes could make MCE's power costs uncompetitive with PG&E. As discussed elsewhere, the CPUC establishes exit fees that customers of MCE have to pay. Such decisions have occurred in the past (e.g., MCE and others advocated strongly in opposition to PG&E's effort to flatten its generation rate, but these efforts proved unsuccessful). Also, as discussed above, the CPUC could adopt bonding requirements that would significantly increase the cost of security bonds for MCE, which would also tend to undermine the ability of MCE to provide electricity to its customers at a rate that meets or beats PG&E's rates.

3.4 City's Potential Financial Obligations to MCE

The City, as a consumer of electricity, faces many of the risks discussed above. However, the City also may face other risks as a participant in MCE. This section discusses those potential risks.

3.4.1 Need for City to Provide Backstop Support to MCE Power Suppliers

When MCE was originally established, it needed to fund its startup activities. At that time, it had no customers and no credit rating. Thus, MCE had to borrow funds from third parties, including the County of Marin and a number of individuals. However, shortly after it began operations, MCE was able to acquire a line of credit from River Bank, which it used to consolidate its prior start-up loans. Given its successful debt management, increase in operating reserves, and ability to enter into PPAs without member backstop support (see Section 4.3), MRW does not foresee MCE needing to rely on the City's credit as a backstop future power supplies. Also, the JPA would insulate City's from having to use their credit in any transaction between MCE and a power supplier (see legal analysis prepared by Davis Wright Tremaine).

3.4.2 Lenders Requiring MCE Members to Provide Balance Sheet Guarantees for Generation Assets

During MRW's 2010 review of the risks associated with participation in (then) MEA it asked MEA staff about the potential risk of cities needing to (or being forced to) provide balance sheet support to allow construction of generation assets that are owned by MEA. At that time, MRW received assurances that such balance sheet support from MEA members would not be required. This was reiterated by Executive Director Weisz at the September 27, 2010 Novato City Council meeting, where she went on to explain that the JPA structure itself protects the JPA's members from debts incurred by the JPA.

In general, this is a legal issue and is beyond the scope of MRW's assessment. However, MRW notes that the Town of Ross's city attorney, Hadden Roth, investigated Ross's liability should it join MCE. His conclusions were:

...that the Town's general fund will not be responsible for any financial obligations of MEA unless the Ross Town Council first specifically agrees in writing to assume the liability. This protection is provided under both the JPA agreement and State law.⁴⁵

Therefore, MRW understands that no liability could be placed on Benicia simply by being a member of the JPA. This is consistent with the legal analysis prepared by Davis Wright Tremaine for the City of Benicia.

3.4.3 Contingency for Dissoving MCE

Chapter 11 of MCE's Revised Implementation Plan outlines a contingency for program termination. In general, MCE cannot terminate service without a majority of the Member' governing bodies (e.g., boards of supervisors or city councils) explicitly passing an ordinance or resolution to terminate MCE. The MCE Board would then vote on termination (based on the weighted voting shares described above). If the MCE Board approved termination, the Board would disband per the provisions in the JPA agreement.

If possible, MCE would provide PG&E and the CPUC one year notice that it was intending to cease service and return its customers to PG&E. Customers would receive notice six months and sixty days prior to being returned to PG&E service.

In the event of an unplanned collapse of MCE, all its customers would return to PG&E with no break in service. I.e., customers are at no risk of not having electricity due to the failure of MCE. Furthermore, consistent with the discussion in Sections 3.4.3 and 3.4.3 above, neither Benicia nor any other MCE member would be liable for any debts MCE might have upon its unexpected demise.

3.4.4 Impacts on Utility Franchise Fee and Tax Collections and Remittances

PG&E's Electric Rule 23, Section B.16 explicitly states that "CCA customers shall continue to be responsible to pay all applicable fees, surcharges and taxes as authorized by law. PG&E shall bill customers for franchise fees as set forth in Public Utilities Code Sections 6350 to 6354."

Franchise fees are payments that a public utility makes to a city or county government for the nonexclusive right to install and maintain equipment on the government's right of ways. For PG&E, this includes the right to install and maintain equipment such as power poles on city sidewalks or gas pipelines underneath city streets. Franchise fees are generally calculated as a fraction of retail sales, typically on the order of a few percent.

Since PG&E's retail sales to CCA customers does not include the generation component of rates, a special adjustment must be made to ensure that a city participating in a CCA receives its fully due franchise fees. For PG&E, this is accomplished through Electric Schedule E-FFS. This

⁴⁵ Minutes to the Special Meeting Of The Ross Town Council, January 12, 2010.

schedule adds 0.06-0.07¢/kWh, which is the equivalent Franchise Fee amount of the value of the power being provided by a CCA such as MCE. Thus, Benicia will receive the same amount of franchise fees under MCE service than it would under PG&E service.

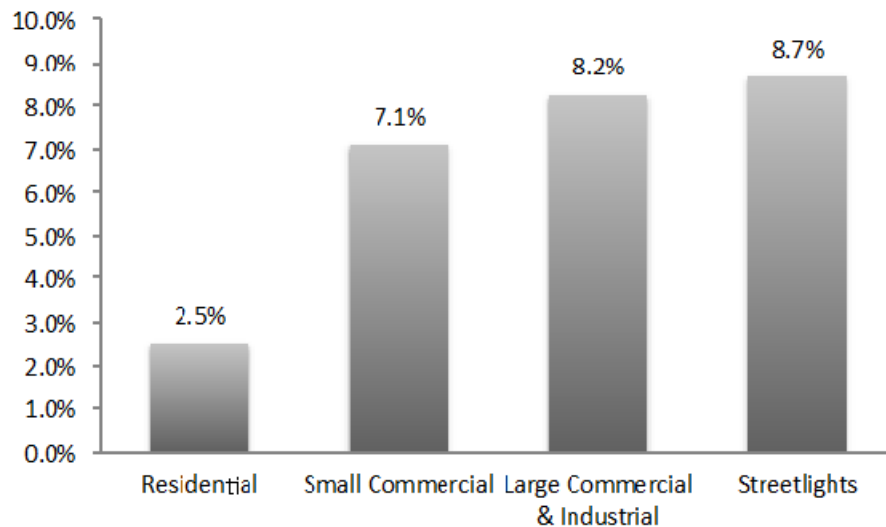
On behalf of the City, PG&E also collects a utility users tax equal to 4% of the PG&E bill, which PG&E remits directly to Benicia. Because PG&E would remain responsible for billing customers under MCE service, it would remain the responsible party for collecting and remitting Benicia's utility users taxes. This is the case for Richmond, where PG&E continues to calculate, charge customers and remit that city's utility users tax. To the extent that MCE customers' total bills are different than they would be under PG&E service, the utility users tax would also be different. For example, MCE estimated that based on current rates, Benicia's residents and businesses would save \$1.6 million per year with MCE service. This would translate into a reduction in the utility users tax of \$64,000. However this would be partially offset by an estimated annual savings of \$42,000 from municipal electric accounts being served by the lower-cost MCE.

A potential second order financial impact on the City would be changes to its property tax revenues. Given MCE's commitment to net energy metered solar, renewable purchase from its Feed-In Tariff and locally-sourced power, MCE membership is more likely to increase property tax revenues (by increasing the tax base) than not.

4. Review of MCE Rate Comparison and Applicant Analyses

The MCE rate comparison spreadsheet analysis developed by MCE for the City estimates savings of \$1.6 million for Benicia customers from joining the CCA. This amounts to 6.5% savings off the generation portion of Benicia customers' PG&E bills, with much higher levels of savings for non-residential customers (8%) than for residential customers (1.5%). Based on this analysis, nearly all customer types would be expected to benefit from joining the CCA,⁴⁶ with the largest direct benefitters being Benicia businesses, industries, and municipal accounts (Figure 1). MRW reviewed the key assumptions and methodology used in the rate comparison analysis to evaluate the reasonableness of these benefit projections.

Figure 1: Rate Savings under MCE Analysis, by Customer Class⁴⁷



MRW additionally reviewed the MCE Applicant Analysis, dated August 29, 2014. The primary purpose of the analysis is to assess whether Benicia's membership in MCE would reduce rates for existing MCE members, as is required for membership eligibility. The analysis for the City of Benicia does make this determination, finding that the added customer base from Benicia would likely reduce MCE rates by 3%. MRW reviewed this analysis to evaluate the likelihood of such rate reductions and implications for the rate comparison analysis.

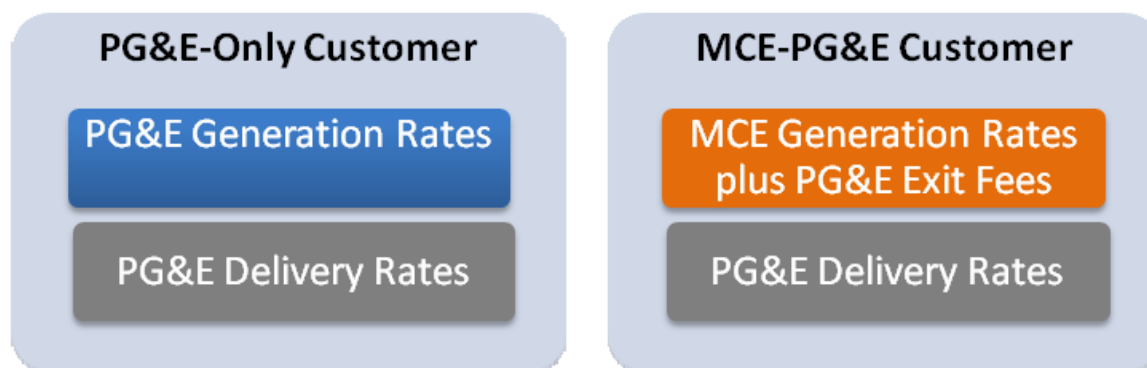
⁴⁶ Only the traffic control accounts were found to have higher rates under the CCA.

⁴⁷ Savings percentages are with respect to the generation portion of the electric bill only.

4.1 MCE Rate Comparison Analysis

MCE customers are all joint customers of both PG&E and MCE, with PG&E providing delivery services at the same rate as provided to PG&E-only customers and MCE providing generation services at its own rate. In addition to these two rate components, MCE customers must pay an exit fee to PG&E. All three components combine to make up the electricity bill for MCE customers (Figure 2).

Figure 2: Comparison of Electricity Charges for PG&E-Only Customers and for MCE-PG&E Customers



The rate comparison analysis developed by MCE provides a snapshot, high-level comparison of the annual electricity bills for Benicia residents and businesses under PG&E-only service versus under MCE-PG&E service. The comparison considers PG&E's generation rates compared to the combination of the MCE generation rates and the PG&E exit fees that are assessed on MCE customers. Since the delivery rates are the same regardless of whether the customer joins MCE, this rate component is not considered. Consideration of only the generation rates and exit fees is appropriate for this analysis.

The rate comparison was developed using average rates from August 2014 for each class of customers. For some commercial and industrial customers or residential customers on a time-of-use tariff (E-6), actual average rates vary depending on electricity usage patterns and may differ substantially from the class average rate.⁴⁸ For these customers, who represent a large share of the anticipated savings, MCE's rate comparison provides only an estimated result. Since these estimates are based on average rates specifically in MCE's service area of Marin County and the City of Richmond, they are likely, on average, to be reasonable approximations of the actual rates paid by Benicia's customers. To the extent that actual rates differ from the average rates used in the analysis, the overall level of savings could be either higher or lower than the 6.5% savings estimated by MCE but is likely to be roughly in that ballpark. Customers would need to

⁴⁸ For most residential and some small commercial customers, rates do not vary by usage pattern, and the average rates are equal to customers' actual rates. These customers comprise one-quarter of electricity usage in Benicia. For remaining customers, rates vary by usage pattern.

evaluate their own savings potential based on their particular usage patterns.

This 6.5% savings estimate is specific to August 2014 rates. The MCE rate comparison does not indicate whether August 2014 was a typical rate period or whether these savings can be anticipated going forward. This is an important consideration because PG&E's rates typically change several times a year, and MCE's rates change at least annually, so the relationship between PG&E's and MCE's rates changes frequently.

4.1.1 Key Factors

Key factors influencing PG&E's rates in the short term are the availability of water for hydroelectric generation and the costs of natural gas and renewable power. In the longer-term, a significant uncertainty with regard to PG&E's rates is the future of the Diablo Canyon nuclear plant. If the plant is shuttered when its licenses expire in 2024 and 2025 (or sooner), the nuclear power is likely to be replaced with more expensive gas-fired and renewable power. If PG&E instead pursues a 20-year license extension for the plant, PG&E will be required to complete expensive plant upgrades in order to meet compliance requirements.

On the MCE side, power procurement costs are largely driven by the costs of gas-fired and renewable power. Currently, MCE meets nearly 80% of its resource needs with conventional power, which is nearly all gas-fired power.⁴⁹ While MCE plans to reduce its dependence on natural gas-fired power over time, MCE's Integrated Resource Plan for 2013-2022 shows that this will be a slow process, with a 72% dependence on conventional power remaining at the end of the ten-year plan.⁵⁰

MCE customers are also obligated to pay exit fees to PG&E. In the long-term, these fees should fall, as the contracts and power plants that they support are removed from the exit fee assessment. In the short-term, however, year-to-year variability in either direction should be anticipated based on the price of natural gas and other factors.

Given all of the factors that drive rate changes, it cannot be stated with certainty that the relationship between PG&E and MCE rates observed in August 2014 will continue year-to-year; however, it is reasonable to expect that MCE rates will on average remain competitive with PG&E's.

For 2015 in particular, it is reasonable to anticipate rate savings under MCE because PG&E's generation rates are slated to increase by an estimated 9% in 2015 compared to August 2014.⁵¹ Some of this rate increase is due to the California drought, which has severely constrained the availability of water for PG&E's hydroelectric plants. While MCE relies on some hydroelectric

⁴⁹ MCE's power mix is made up of about 80% conventional power and also 50% renewable power. This adds up to 130% because about 30% of power deliveries are made up of conventional power that has been assigned Renewable Energy Certificates. These power deliveries are classified by MCE as renewable but they do not reduce MCE's dependence on conventional resources. (Renewable Energy Certificates link the renewable attribute of renewable resources that are typically outside of California and not connected to the California electricity grid to physical power deliveries that are made to MCE customers, typically from conventional resources.)

⁵⁰ Marin Clean Energy. Integrated Resource Plan Annual Update, November 2013, page 23.

⁵¹ PG&E's average generation rate in August 2014 was 9.185 cents per kWh, and PG&E's current estimate of its January 2015 generation rate is 9.992 cents per kWh. PG&E Advice Letter 4450-E-A, July 22, 2014, Attachment 2A and Advice Letter 4484-E, August 29, 2014, Table 3.

plants for its power, we do not expect MCE's rates to be affected by the drought to the same extent as PG&E because MCE has most of its resources under fixed-price contracts through 2017.⁵²

In subsequent years, the availability of rate savings will likely be driven by water availability, the price of natural gas, and the prices of renewable contracts entered into by MCE compared to those entered into by PG&E. MCE's rates are likely to generally remain competitive with PG&E's, but there are risks of higher costs under MCE in some circumstances. For example, while the Diablo Canyon plant is operational and exit fees are still high, an unexpected spike in natural gas prices could increase MCE's rates above PG&E's rates. There is little risk of this through 2017 because MCE has contracts in place to supply about 95% of its gas-fired power requirements at fixed prices through this time.⁵³

The longer-term risk depends on MCE's procurement choices after termination of its contract with SENA. According to MCE's Integrated Resource Plan, MCE will typically enter into contracts for conventional power and for natural gas that are either short term or medium term, meaning terms of less than five years.⁵⁴ Medium-term fixed-price contracts would provide security against short-term spikes in natural gas prices; however, MCE's Integrated Resource Plan does not specify the extent to which it will pursue such contracts and does not mention plans for financial hedging or other mechanisms to cushion rates from potential medium-term or long-term natural gas price increases. Since MCE's current contract with SENA is a fixed-price contract, it is reasonable to anticipate that MCE is sensitive to gas price variability and will develop plans to cushion rates from this variability; however, this cannot be determined with certainty because MCE's procurement plans for the period following expiration of the SENA contract in 2017 are still under development. In addition, it would not be reasonable to expect MCE to fully hedge against a long-term sharp increase in natural gas prices. This situation, which is not currently anticipated in the coming decades given shale gas supply estimates, would put more upward pressure on MCE rates than on PG&E rates.

MCE appears to have a long-term strategy to reduce this risk by increasing its procurement of renewable resources and reducing its dependence on natural gas-fired power. However, unless MCE significantly ramps up its procurement of renewable resources and/or Diablo Canyon is retired early, MCE is likely to remain more heavily dependent than PG&E on natural gas for the next few decades. This does place additional price risk on MCE, which, in the event of an extended period of high natural gas prices, could mean that MCE's rates will be higher than PG&E's. This risk is counterbalanced to some extent by the risk to PG&E from low water years and from nuclear plant outages, and, should MCE choose to do so, it could be partially managed through contractual choices. Moreover, the risk of higher costs under MCE declines over time as exit fees fall off. In the long run, with exit fees reduced to zero and Diablo Canyon retired, it is reasonable to expect that electricity bills through MCE will generally be lower than under PG&E.

⁵² Renewable energy certificates are excluded from this assessment as they typically cost just a small percent of the cost of physical power and therefore pose much less price risk than physical power requirements.

⁵³ Marin Clean Energy. Integrated Resource Plan Annual Update, November 2013, page 16.

⁵⁴ Ibid, page 20.

4.1.2 Rate Comparison Conclusions

The MCE rate comparison provides a reasonable estimate of rate savings under August 2014 rates, but it does not provide a good indication of how rates under MCE will compare with rates under PG&E going forward. MCE rates, PG&E rates, and exit fees will increase and decrease in the coming years at different rates, driven by different factors, so it cannot be determined whether MCE will continue to provide a rate benefit to Benicia customers in all years. However, given the current estimate of a 6.5% benefit under MCE, and considering the various pressures influencing PG&E and MCE rates as well as the long-term exit fee trends, it is reasonable to anticipate that MCE rates will generally remain competitive with PG&E's in the long-term, though not necessarily in each and every year and not necessarily at the same rate identified in the MCE rate comparison.

The MCE rate comparison was developed assuming full participation by all Benicia customers in the CCA. MRW additionally tested the results under scenarios with high levels of opt-outs. MRW found that applying a 50% opt-out rate to non-residential accounts reduces the Benicia-wide savings rate from 6.5% to 5.6% and that applying a 50% out-out rate to residential customers increases the Benicia-wide savings to 7.1%. MRW also found that should the city's largest customer choose to opt out of the CCA, substantial savings (5.5%) are still anticipated for remaining customers. Given these results, MRW concludes that while opt-outs could either increase or decrease the average savings for remaining customers, depending on which customers opt out, average savings are likely to remain robust for remaining CCA customers even if significant numbers of opt-outs occur.

4.2 MCE Applicant Analysis

The MCE Applicant Analysis found that MCE's rates would likely fall by 3% with the addition of Benicia customers to the CCA. If this rate decrease does occur, the rate savings for Benicia customers will increase by more than estimated in the rate comparison, all else being equal. MRW evaluated the Applicant Analysis to determine whether these rate savings should be anticipated.

The MCE Applicant Analysis is based on an estimate of the revenues from Benicia customers compared to the costs to serve these customers during the fiscal year that begins April 2015. The key assumptions are as follows:

1. **Benicia load served by MCE:** The analysis assumes a 20% opt-out rate, which is a reasonably conservative assumption. The analysis appropriately takes into account that first year loads will be lower because of the gradual transfer of accounts to MCE service over the course of April 2015 and assumes that 76% of the total electricity usage in Benicia will be served by MCE in this year.
2. **Revenue from Benicia customers:** The MCE rate comparison analysis was based on MCE's serving 100% of Benicia's electricity usage. The MCE Applicant Analysis finds that the revenue from serving 76% of Benicia's electricity usage will be 74% of the revenue identified in the rate comparison analysis. This appears reasonably conservative.
3. **Costs to serve Benicia customers:** The MCE report identifies two cost components: (i) power supply costs of \$12.5 million and (ii) billing and other costs of \$330,000. The

power supply cost estimate is equivalent to \$60.50 per Megawatt-hour, which is a reasonable estimate given current market prices. The billing and other costs are equivalent to \$26 per customer to cover customer billing, customer service support, and PG&E service fees. MEA's financial statement for 2014 shows the equivalent of less than \$14 per customer for Staff Compensation,⁵⁵ which likely covers customer service support and other functions. The financial statement additionally shows nearly \$50 per customer for General and Administration and for Contract Services. These costs cover some cost categories that are likely to increase with each new customer, such as PG&E billing fees of \$0.44 - \$1.05 per account,⁵⁶ but more substantial costs that are not likely to grow on a one-to-one basis with the added customer base, such as costs for power solicitations and contract negotiations, for representation at the California Public Utilities Commission and in Sacramento, and for account auditing, legal counsel, office space, and communication and information technology equipment. Using reasonably conservative estimates of 20% of these costs and 100% of the staff compensation costs increasing on a one-to-one basis for each new customer yields an incremental cost of \$24 per new customer. MCE's estimate of \$26 per customer therefore appears to be reasonable.

MCE's analysis excludes one-time costs associated with the Benicia expansion, which are estimated at less than \$350,000.⁵⁷ Had these costs been included, the analysis results would not have materially changed.

Based on these assumptions, MCE calculated revenue of \$16.6 million from Benicia customers and a cost of \$12.8 million to serve these customers, providing a net surplus to MCE of \$3.8 million. MCE concludes that this surplus will allow MCE rates to be 3% lower than they would be without Benicia customers. This conclusion is reasonable given MCE's current revenue base. It should be noted, however, that, to MRW's knowledge, while for the purpose of the analysis MCE assumes that this revenue surplus would be used to reduce MCE's overall rates, MCE is not obligated to use this revenue surplus to reduce rates and has not committed to doing so.⁵⁸ MCE could instead use the funds to expand services, increase MCE staff salaries, or for other uses. As a result, while MRW finds this analysis to be reasonable, MRW does not feel it is appropriate to rely on these savings in estimating bill impacts from joining MCE.

4.3 Organizational Soundness (Long-Term Viability)

In considering the organizational soundness and long term viability, MRW examined how the JPA was structured (do members have an appropriate voice in governance?), MCE's operational management, MCE's finances to date (including debt), and MCE's projected revenues and costs.

⁵⁵ Marin Clean Energy. Financial Statements: Years Ended March 31, 2014 and 2013 with Report of Independent Auditors, page 7.

⁵⁶ PG&E Electric Schedule E-CCA, October 2014, Sheet 6.

⁵⁷ These are predominately MCE costs. The PG&E-related fees are \$8,000 for a single mass enrollment with a 20% opt-out rate, plus \$4,000 for each additional enrollment. PG&E Electric Schedule E-CCA, October 2014, Sheet 2.

⁵⁸ MCE's Applicant Analysis appears to take care to avoid making such a commitment. For example, the report states, "The surplus is assumed to offset a share of MCE's fixed costs and can be used to reduce overall MCE rates" (p. 5). It does not state that the surplus will (or would) be used to reduce overall MCE rates.

4.3.1 The Marin Clean Energy Joint Powers Agreement

The MCE JPA stipulates that MCE be governed by a Board of Directors. Each member town, city or county to the JPA appoints one director to the Board. Thus, Board Members of the original MCE members have no more inherent power than those of members added later, such as Benicia. The Operating Rules and Regulations specify the reasons for which an individual Director can be removed, but only for cause. The member that appoints a director has the right to remove him/her at any time, and has the responsibility to fill any vacancy within 90 days. Thus if Benicia joins MCE, it will need to determine how it will select a MCE director and make that selection in a timely manner. The appointing city is also responsible for compensating a director for their work. A majority of the directors appointed to the MCE Board are required to be present for a vote to take place. The Board has the authority to conduct all of the business and activities of MCE in accordance with the rules of the organization. The Board also elects a chair and vice-chair from amongst themselves.

When voting on matters relating to the CCA Agreement, each member's voting share is determined as follows:

- Each director has a pro rata voting share equivalent to $[1/\text{total number of directors}] \times 50\%$
- A director has an Annual Energy Use voting share equal to $[\text{the appointing party's Annual Energy Use} / \text{Total Annual Energy Use}] \times 50\%$
 - For the first 5 years following the Effective Date of the formation of MCE, a party's Annual Energy Use is the total kilowatt-hours (kWh) used within the respective party's jurisdiction.
 - After the 5th anniversary of the Effective Date, a party's Annual Energy use is the total kWh used by accounts within a Party's respective jurisdiction that are served by MCE.
 - The Total Annual Energy Use is the sum of all party's Annual Energy Use

Adding Benicia's 2013 Annual Energy Use of 272,731,094 kWh to MCE's existing 2,368,744,329 kWh Total Annual Energy Use would result in approximately a 5.2% Annual Energy Use voting share and approximately a 3.1% pro rata voting share, for a total voting share of roughly 8.3%.

To reach an affirmative decision, all directors voting in the affirmative have a total voting share exceeding 50% of the total voting share, unless a higher threshold is specified. If a vote requires a higher threshold, than at least two directors must vote in the negative to disapprove the matter.

When voting on general administrative matters and programs not involving the CCA, each director has one vote, unless otherwise specified. When voting on programs not involving the CCA that require financial contributions, the program shall be approved only by a majority vote of the full membership of the Board. Parties who vote against the program have the right to opt-out of the program. The Board will provide written notice to all members 45 days prior to considering the program that require financial contributions in a board meeting.

4.3.2 Marin Clean Energy Management Structure

The MCE Board's primary duties are to establish program policies, set rates, and provide policy direction to the Executive Officer. The MCE Executive Officer has the general responsibility for program operations.

The current Executive Officer is Dawn Weisz. Ms. Weisz has been the Executive Officer since MCE was formed and in fact was involved in the establishment of MEA, going back to as early as 2004. Answering to the Executive Officer are Directors of six departments: Public Affairs, Electric Supply, Energy Efficiency, Legal and Regularly, and Internal Operations.

Through its prior reviews of MEA and MCE and through its experience in California electricity regulation and market analysis, MRW has found that the key personnel at MCE to be more than competent. First, Ms. Weisz, as Executive Officer, not only successfully ushered MCE into existence but also led the organization as it expanded beyond its initial membership. MRW has also found Ms. Elizabeth Kelly, the Legal Director, to be a knowledgeable and proactive advocate for MCE at the CPUC. Mr. John Dalessi, a consultant to MCE, successfully negotiated the initial contracts with SENA and continues to administer MCE's competitive solicitations for power supply and renewable energy. The fact that since 2012 MCE has had lower costs than PG&E is at least partially attributable to Mr. Dalessi.

4.3.3 Current Financial Position of Marin Clean Energy

MRW reviewed the last 3 years of MCE's audited financial statements along with MCE's 21014 Revised CCA Implementation Plan⁵⁹ and Addendum No. 1 to that plan.⁶⁰ Per the audited financial statements, MCE's net position (total assets minus total liabilities) has improved each of the past three years. The change in net position is summarized in the table below:

Table 3. MCE Net Position

Fiscal Year	Net Position (\$)
2011	318,838
2012	3,917,925
2013	7,912,874
2014	9,558,036

Furthermore, MCE has expanded service each year, which has resulted in an increase in cash and receivables, as well as trade liabilities. In July 2013, MCE expanded into the City of Richmond, and grew its customer base from 90,000 to 125,000. This resulted in higher accounts receivables, but has also led to more spending on energy procurement. Net accounts receivables and accrued revenues increased from 2013 to 2014, as did accounts payables, accrued cost of electricity and user taxes/energy surcharges from other governments.

⁵⁹ To account for the addition of Napa County, dated July 18, 2014.

⁶⁰ To account for the addition of the City of San Pablo, dated September 16, 2014.

MCE incurred no new debt in Fiscal Year 2014⁶¹ and continued paying down its existing debt. The total notes payable to banks decreased from \$3,083,746 to \$2,024,308.

One issue identified in the financial statements is that the operating margins have been decreasing as the company expands. The past three years of operating revenues, expenses, income and margins are summarized in the table below.

Table 4. MCE Operating Income (Fiscal Year)

	2014	2013	2012
Operating Revenues (\$)	85,561,759	52,579,310	22,918,843
Operating Expenses (\$)	83,731,036	48,429,076	19,210,349
Operating Income (\$)	1,830,723	4,150,234	3,708,494
Operating Margin	2.14%	7.89%	16.18%

It should be noted that actual revenues in the table above are for the 12 months ending on March 31st of the year indicated, and projections as provided in the Updated MCE Implementation Plan are for calendar years. Therefore, while MCE only increased its Net Position by \$1.83 million between April 1, 2013 and March 31, 2014, MCE's latest projection indicates that they expect to increase its net position by \$5.27 million during the 2014 calendar year.⁶²

There are two reasons why MCE's operating margin dropped in FY 2014 and why it is reasonable to expect MCE's financial performance to improve over the rest of the 2014 calendar year. Both are related to the City of Richmond joining MCE in August 2013. First, there is a one to two month lag between when MCE receives payments from customers after when it has pays its procurement amounts. The expansion of service to Richmond required MCE to use additional working capital to account for this lag. Second, adding Richmond to MCE increased commercial sales by 50%. Commercial sales are subject to seasonal rates, with higher rates from May through October and lower rates from November through April. However, procurement costs are not seasonal. Therefore, MCE must procure electricity to supply Richmond at "full cost" for 5 winter months (November through March) while charging commercial customers lower winter rates. Had Richmond been a customer for an entire 12 months, this factor would have balanced out.

4.3.4 Projections

The MCE financial projections in its Updated Implementation Plan Addendum reflect costs and loads through 2019 or 2021 (depending upon the table) and include only the additional load associated with Napa County and the City of San Pablo. The loads associated with these two new members are not on the same scale as the City of Richmond. The MCE's total energy requirements grew by 93% between the 2012 and 2013 calendar years, from 603 GWh to 1,166 GWh, most of which is attributable to Richmond joining MCE.

From 2013 to 2021 MCE projects the total energy requirements to grow by 47% total, increasing

⁶¹ April 2013 through March 2014.

⁶² September 14, 2014 Implementation Plan Addendum, p. 10.

to 1,714 GWh (See Table 5, below).⁶³ This increase occurs in the first two years when service begins for Napa and San Pablo. In 2016 and beyond, no increase in retail sales is projected, and in fact due to distributed generation and energy efficiency, MCE projects net decreases in total load requirement. This is not unreasonable, as retail demand has been relatively flat in California over the past decade, and MCE intends to aggressively pursue both solar distributed generation and energy efficiency.

Table 5

Marin Clean Energy Energy Requirements (GWh) 2010 to 2019										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
MCE Energy Requirements (GWh)										
Retail Demand	91	185	570	1,110	1,294	1,592	1,658	1,658	1,658	1,658
Distributed Generation	0	-1	-1	-5	-12	-16	-22	-24	-26	-26
Energy Efficiency	0	0	0	-6	-6	-4	-8	-11	-15	-15
Losses and UFE	5	11	34	66	77	94	98	97	97	97
Total Load Requirement	96	196	603	1,166	1,353	1,666	1,726	1,721	1,714	1,714

Table 6, below, shows MCE's historic (2013) and projected (2014-2021) annual revenues and costs.⁶⁴ Consistent with its load projections, revenues and costs both grow markedly from expansion from 2013 through 2016. After 2016, MCE is projecting no changes to revenues (indicating no change in rates or perhaps a very slight increase to account for slightly lower net loads resulting from energy efficiency and solar installations). Administrative and General costs, which constitute less than 10% of MCE's overall cost of operations, are projected to increase with expansion (although not at the same rate as the cost of energy), and then grow at 1.7% (approximately inflation).

In 2017 MCE projects a 0.4% decrease in the cost of energy and a more significant decrease, 5.75% (\$ 7 million), in 2018. The only explanation for the significant drop in 2018 is the end of the SENA procurement contract. Thus, MCE is implicitly assuming that it will be able to replace the SENA power at prices that are on average approximately 5% less than that provided by SENA. While this drop is not explained in its current Integrated Resource Plan (See Section 3.1), MRW understands that an updated Integrated Resource Plan will soon be available (i.e., November 2014) which may explain the drop. Even if MCE can replace the SENA power at the same price (and not a discount) and the cost of energy to MCE remains flat at the 2017 level, net surpluses would still persist.

⁶³ Per September 14, 2014 Implementation Plan Addendum, p. 7.

⁶⁴ September 14, 2014 Implementation Plan Addendum, p. 10.

Table 6

**Marin Clean Energy
Summary of CCA Program Phase-In
(January 2013 through December 2021)**

CATEGORY	2013	2014	2015	2016	2017	2018	2019	2020	2021
I. REVENUES FROM OPERATIONS (\$)									
ELECTRIC SALES REVENUE	79,097,747	100,075,912	128,617,779	134,185,719	134,185,719	134,185,719	134,185,719	134,185,719	134,185,719
LESS UNCOLLECTIBLE ACCOUNTS	(395,489)	(500,380)	(643,089)	(670,929)	(670,929)	(670,929)	(670,929)	(670,929)	(670,929)
TOTAL REVENUES	78,702,259	99,575,532	127,974,690	133,514,790	133,514,790	133,514,790	133,514,790	133,514,790	133,514,790
II. COST OF OPERATIONS (\$)									
(A) ADMINISTRATIVE AND GENERAL (A&G)									
STAFFING	1,386,303	1,825,000	1,993,875	2,053,691	2,115,302	2,178,761	2,244,124	2,311,448	2,380,791
CONTRACT SERVICES	4,457,964	4,611,420	5,020,551	5,161,916	5,205,681	5,250,760	5,297,190	5,345,014	5,394,272
IOU FEES (INCLUDING BILLING)	584,729	660,114	790,328	815,506	839,971	865,170	891,125	917,859	945,394
OTHER A&G	302,806	373,125	398,084	409,388	421,030	433,022	445,374	458,096	471,200
SUBTOTAL A&G	6,731,802	7,469,659	8,202,838	8,440,500	8,581,984	8,727,713	8,877,813	9,032,416	9,191,658
(B) COST OF ENERGY	69,284,393	85,644,745	114,772,479	120,618,621	120,116,426	113,197,511	115,189,890	117,238,282	119,307,184
(C) DEBT SERVICE	1,195,162	1,195,162	1,151,494	671,149	447,432	-	-	-	-
TOTAL COST OF OPERATION	77,211,357	94,309,566	124,126,812	129,730,270	129,145,842	121,925,224	124,067,703	126,270,698	128,498,842
CCA PROGRAM SURPLUS/(DEFICIT)	1,490,902	5,265,966	3,847,878	3,784,520	4,368,948	11,589,566	9,447,087	7,244,092	5,015,948

MRW is also skeptical that the cost of energy to MCE would experience no net increase from 2016 to 2021 (albeit with some year-to-year decreases and increases). Nonetheless, in considering these projections, one must keep in mind the following:

1. MCE has rate setting authority. Thus, if in a particular year the cost of energy increases, the Board may either change rates so as to collect those costs or fall back onto its reserves.
2. MCE's rates must be **comparable** to PG&E's **in the long term**. If the cost of energy to MCE increases markedly due to say an increase in gas prices, then PG&E would also experience a similar increase in its cost of energy. This would allow MCE to increase its rates without necessarily harming its price position relative to PG&E.
3. Similarly, as seen in its early years (2010 and 2011), MCE need not beat PG&E's prices at all times. A short period where MCE's prices are marginally above PG&E (i.e., a few percent) would not likely result in a detrimental loss of load from customers migrating back to PG&E service.

The incremental load from Benicia joining MCE would increase both the revenues and cost of energy proportionally. Assuming that MCE could serve the Benicia load at the same average cost as it serves its already established load (a condition for Benicia's membership in MCE), then the positive operating surplus should be maintained.

4.3.5 MCE Debt

MCE's debt comes from 3 major sources. Prior to the 2010-11 fiscal year, MCE received \$540,000 in interest free loans from Marin County and \$750,000 from three individuals at a

5.75% interest rate. This was to be paid back by August 1, 2011, which it was. In April 2010 MCE received a \$1.45 million from the River City Bank, with interest computed at the greater of 2% plus the Base Commercial Loan Rate (3.25% at date of agreement) or 5% per year. In January 2011 MCE took out a new \$2.3 million loan from River City Bank, at a 5.25% interest rate. This loan also retired the previous loan from the bank. In July 2012 MCE received another \$3 million loan from River City Bank, repayable by October 2017 at a 4.5% interest rate. MCE currently owes \$3.093 million of principal, and \$3.326 million total.

4.3.6 Conclusions Concerning Long-Term Viability

MRW finds the governance structure of the MCE JPA to be reasonable. All member entities are represented on the Board, with key voting provisions reflecting both the number of members and the size of each member. The current management is experienced and competent.

The finances of MCE are, to date, sound. Quickly after startup, MCE was able to acquire a line of credit so as to consolidate its private startup debt. It has consistently increased its net position and operating reserves. While its cost of power beyond 2017 may be optimistic, given the positive operating margins shown in its projections as well as the Board's ratemaking authority, MRW sees no red flags in its financial projections.

5. Conclusions

MRW has identified various benefits and risks associated with the City's participation in MCE. The most significant benefit is local control over ratemaking, power procurement and energy efficiency/solar policies. The most significant risk is whether MCE will ultimately be able to provide long-term power supplies at costs that are less than PG&E generation rates. Thus, even though MRW believes that MCE will be able to offer competitive rates, if the City's customers are highly price sensitive, then this risk may be of concern. On the other hand, if the City's residents and businesses are more concerned about local control and the level of renewable resources used to generate their electric supply, then such an assessment is less important.

MRW found the MCE Member Analysis to be accurate but limited as it was based on a snapshot of current MCE and PG&E rates and did not attempt to project either into the future.

With respect to solar issues, Sage Renewables found:

- The City can expect between \$40,000 to \$80,000 in annual excess net energy metered (NEM) bill credit payments from MCE for the solar NEM accounts;
- While MCE's policy of paying for excess NEM bill credits will remain in place for at least the short term, it is at higher risk of change over time than other MCE rate policies; and
- The greatest short term risk to the value of solar PV generated energy is PG&E's proposal to limit its solar-friendly A-6 rate to only small commercial customers. This risk exists whether the City remains a PG&E customer or elects to transition solar PV accounts to MCE. (MCE is expected to mirror changes to PG&E's A-6 tariff with changes to its COM-6 tariff).

It is beyond the scope of this assessment to quantitatively assign either potential costs or probability of occurrence to the risks identified here. In addition, this assessment does not identify or attempt to quantify all potential benefits associated with participation in MCE. Benicia's policymakers will need to weigh and balance the potential risks and benefits of participation in MCE given the risk and policy preferences of Benicia's citizens and businesses.

Appendix 1: MRW and Sage Qualifications

MRW & Associates

Established in Oakland, California in 1986, MRW early on built a solid reputation for delivering local insights on power and fuel markets in the western United States as well as intervening successfully in legislative and regulatory proceedings on clients' behalf. Today, MRW continues to deliver high-quality market insights, analysis, and client support on a national and international level. The company has undertaken engagements in more than twenty different states, including nearly every state in the western U.S. The company maintains a strong focus on California markets and regulatory structures. The location of the company office in Oakland, California, facilitates our active participation in proceedings at the CPUC, the California Energy Commission, and the CAISO.

MRW's client base includes major financial institutions, private power developers, consumer advocates, power marketers, municipalities, Fortune 500 industrial companies, commercial end-users, natural gas pipelines and storage service providers, regulatory agencies, and other strategic players in the energy sector. MRW's team of professionals include specialists in renewable energy, power market modeling, financial analysis, regulatory processes, utility rate design, legislative analysis, commodity procurement, energy use analysis, contract negotiations, transmission planning and pricing, and strategic planning.

On related CCA matters, in the spring of 2005, Navigant Consulting, pursuant to a California Energy Commission grant, issued a series of CCA feasibility studies for the County of Marin and the cities of Berkeley, Oakland and Emeryville. A similar report was issued for the Kings River Conservation District a few months later. The basic reports were nearly identical, differing only in how the customer and load characteristics of each jurisdiction affected the various data tables. MRW, along with JBS Energy, provided an independent third-party review of these studies on behalf of the studies' recipients. The reviews focused on the reasonableness of the analytical approach and assumptions used by the reports' authors, identifying areas that were either unreasonable or would need updating if a particular jurisdiction were to investigate CCA formation in greater detail. The review also identified key risks that would have to be addressed, including such factors as regulatory risk (i.e., impact of changes to PG&E rate design) and environmental compliance costs. As a result of these third-party assessments, Navigant ultimately made significant changes to the preliminary feasibility studies.

In late 2008, MRW conducted an independent review of the reports and documents associated with Marin County's Community Choice Aggregation efforts. This review focused on the "Marin CCA Business Plan" (April 2008), PG&E's comments on the Plan, and responses to Marcus' and PG&E's comments. MRW's review concentrated on two main areas: the factors that were most important making a CCA financially viable and the major risk factors that would affect potential participants in the CCA. These included:

- the reasonableness of the power procurement strategy proposed in the Plan;
- the reasonableness of the procured power costs forecast in the Plan;
- hedging and risk management activities proposed in the Plan;
- underlying natural gas and wholesale power price projections;

- the consistency of rate and procurement costs with those underlying gas price projections;
- the reasonableness of the Plan's estimates of the non-bypassable charges including the CCA Cost Responsibility Surcharge (CRS);
- the depth and appropriateness of any sensitivity analysis; and
- the forecasts of utility rates (and rate designs) against which the CCA's rates would compete, including the consistency of assumptions underlying the utility rate projection and the CCA rate projection.

In late 2009, the County and City/Town Managers again retained MRW to review the draft service agreements that MEA was proposing to enter into with Shell Energy North America. This review concentrated on identifying the risks to MEA, the Cities, Towns, and the County that were not sufficiently addressed in the MEA-Shell agreement, and provided suggested changes and amendments to the agreements to mitigate those risks. Many of MRW's suggestions were subsequently incorporated in the final contract. The primary authors of this assessment are Mark Fulmer, William Monsen, and Laura Norin.

In late 2010, the office of Richmond's City Manager retained MRW to conduct an independent third-party analysis of the risks associated for Richmond to join the MEA. The Scope of MRW's analysis included:

- Determining potential risks to City residents and businesses if Richmond joins the MEA, in particular, the rate risk to the community
- Determining potential risks to the City itself if it chooses to join the MEA
- Commenting upon the Dalessi Management Consulting load and resource requirement analysis
- Provide qualitative comments on any materials MEA provides to Richmond

MRW presented its at a Richmond City Council meeting and where Mr. Fulmer and Mr. Monsen responded to questions from City staff and Council members.

Mark Fulmer is a Principal at MRW & Associates, LLC, with over twenty years of experience in the energy industry. Much of this work has been in the regulatory arena, advising customers, trade groups, municipalities, utilities and state public utility commissions on resource planning, energy efficiency and rate matters. He has submitted testimony before FERC and utility commissions in Arizona, California, Hawaii, New Mexico, Pennsylvania, Rhode Island and Washington, as well as supporting testimony in ten other states and Canadian provinces.

With respect to CCA matters, Mr. Fulmer was the lead author of a CCA feasibility assessment in Southern California Edison's service area and contributed to the peer reviews of the CCA feasibility studies for Marin, Berkeley, Oakland, Emeryville and the Kings River Conservation District. He also served as an expert witness before the California PUC on behalf of the City and County of San Francisco on CCA matters, including the rules under which CCA would operate and the fees that PG&E would be allowed to charge CCAs for the various services the utility would have to provide. In 2009, Mr. Fulmer was one of three witnesses sponsored jointly by the Marin Energy Authority, the City and County of San Francisco, and the Direct Access parties in the CPUC proceeding addressing the correct calculation of the Cost Responsibility Surcharge for departing load (CCA and DA) customers.

Mr. Fulmer holds a Master's Degree in Engineering from Princeton University, where he

conducted graduate research at the Center for Energy and Environmental Studies, and a Bachelors' Degree in Engineering from the University of California, Irvine.

William A. Monsen, a Principal with MRW & Associates, LLC, has been providing technical and economic analysis for the energy industry for more than 30 years. He is an expert in utility resource planning, retail power procurement, power market evaluations, due diligence for power generation projects, and independent power issues. He has helped municipalities and other end-users understand present and future consumption needs and reduce energy costs through competitive commodity procurement and efficiency improvements.

With respect to CCA matters, Mr. Monsen was the Principal in Charge for detailed peer reviews of the CCA feasibility studies for Richmond, Marin, Berkeley, Oakland, Emeryville and the Kings River Conservation District. He also led MRW's work in reviewing Marin Energy Authority's business plan and draft service agreements that MEA was proposing to enter into with Shell Energy North America. He also provided professional review on behalf of the City and County of San Francisco of the proposed contracts between the city and a potential (but eventually rejected) supplier for their proposed CCA and was a co-author of the Southern California CCA feasibility study MRW conducted in 2008.

Mr. Monsen holds a Master's degree in Mechanical Engineering from the Solar Energy Laboratory at the University of Wisconsin-Madison and a Bachelor's degree in Engineering Physics from the University of California at Berkeley.

Sage Renewables

Sage Renewables is an independent renewable energy consulting and project development firm that provides expert, customized professional consulting services across the public and private sectors. Sage recently completed a comprehensive evaluation of City of Benicia's solar PV systems under contract to the California Energy Commission (CEC) through the Energy Partnership Program. The evaluation included site analysis to verify that all PV systems were built to contract, were performing as designed and that workmanship is appropriate. Sage also worked with the City to evaluate and model existing and expected financial performance of the PV systems, and to identify an appropriate Operations and Maintenance (O&M) contractor to provide necessary ongoing system support. Sage also performed PG&E tariff modeling to confirm that the Pool and Pump Station 2 accounts were configured with the correct PG&E tariff. Through this work, Sage gained an intimate knowledge of the City's solar PV systems and formed a strong working relationship with City staff.

Sage has developed custom modeling tools to evaluate financing, renewable resources, and project sizing and design, and we own industry standard equipment and software for assessing resources in the field.

Sage's key personnel are our three founding Principals. Each Principal has extensive experience working with public agencies from small rural special districts, to large, multi-campus CA K-12 public school districts, to city and county governments. We work as a team to provide expert energy efficiency services, site evaluations, production, financial and environmental analyses, and renewable energy project development and asset management services.

Tom Williard is Principal and CEO of Sage Renewable Energy Consulting and has worked in the renewable energy industry since 2001. Prior to founding Sage, Tom was a Principal at energy consulting firms Sustainergy Systems and System Design. In 2005, Tom co-founded Solmetric, Inc., where he was Director of Research and Development for the initial SunEye product. Tom has expertise in modeling tool development, renewable energy finance, hardware and software engineering and growing engineering organizations and early stage companies. Previously, Tom spent twenty years in the electronics industry as a management consultant, senior technologist, and senior hardware and software engineer for a number of imaging and communications companies, most recently as Director of Software Engineering at Ascend Communications, establishing and managing engineering centers around the world. Tom takes an active role in his community, having served on several boards and foundations in Marin County, CA, and as an elected Trustee of a CA public school district for seven years.

Brent Johnson, PE, LEED AP, is Principal and co-founder of Sage Renewable Energy Consulting. Brent has 15 years of experience as a Civil-Environmental Engineer, with five years in the renewable energy sector. During his time at Sage, he has developed custom financial and energy modeling tools and managed all aspects of renewable generation projects including feasibility studies, system design, project bids and construction, commissioning, and environmental credits management. Brent has worked on over 100MW of renewable projects encompassing a number of technologies such as solar PV, solar thermal, wind, fuel cells, and hydropower. His previous experience, both in the US and overseas, has included design of large municipal facilities, computer modeling, construction management, operational support, and CEQA permitting. Through this experience, he has overseen all aspects of project development, from concept to commissioned facilities, including serving as a construction manager on a complex, \$170M multi-year linear project.

Brent holds an M.S. in Civil-Environmental Engineering from UC Berkeley, is a registered Professional Engineer (PE) in California and has his LEED certification from the US Green

Building Council. He currently services as a director for his local water and fire district.

David Williard, LEED, Principal and co-founder of Sage Renewable Energy Consulting, David has nine years of experience in the energy and green building industries. David's work has included commercial and residential energy auditing, energy code compliance, green materials specification, renewable energy system design and implementation, greenhouse gas emissions inventory and monitoring, greenhouse gas emissions reduction plans, environmental site assessment, renewable resource assessment, and renewable energy project management. Additionally, David has participated in extensive field projects with an emphasis on environmental assessment and GIS mapping utilizing GPS systems. He has experience coordinating with city and county government agencies and other organizations through his work. In February 2005, David founded Sustainergy Systems Consulting & Design, which became Sage Renewables in August 2009.

David holds a B.S. in Civil Energy Management and Design from Sonoma State University and has his LEED certification from the US Green Building Council.

Appendix 2: Sage Renewables Assessment of the Risks to the City's Net Energy Metered Solar Accounts

Task 3 Executive Summary

Project Overview

Sage Renewables, as subcontractor to MRW & Associates, evaluated the impact of changing electrical energy service providers from PG&E to MCE for the ten City electricity accounts that have solar PV systems currently installed. City of Benicia's contract with MRW, Task 3, listed the follow evaluations to be performed:

- Anticipated changes in annual electrical energy costs and credits;
- MCE's evaluation indicating that approximately \$60,000/year may be paid to the City under MCE's Net Energy Metering (NEM) program;
- Ability of MCE to maintain its net metering credit payout program;
- Impacts to net-metering solar rates particularly as they relate to AB327.

To perform this evaluation Sage reviewed City of Benicia's PG&E historical electricity usage source data for PV system sites and MCE's Rate Comparison spreadsheet for accuracy and completeness. Sage performed tariff analysis modeling on four separate PV system electrical accounts to confirm MCE modeling and determine the impact of switching to MCE on overall electricity cost including the purchase of residual energy. This modeling was based on tariff information from MCE¹ and PG&E², in addition to historical electricity usage information for the sites.

Sage also evaluated AB-327, the CPUC Proposed Decision R.12-11-005 concerning NEM grandfathering, and PG&E's 2014 General Rate Case II that is currently being litigated at the CPUC. Sage spoke with representatives of MCE, City of Benicia, PG&E and Crossborder Energy (lead consultants for SEIA in the PG&E 2014 General Rate Case Phase II litigation) in the course of researching these issues.

High Level Findings

1. City of Benicia can expect between \$40,000 to \$80,000 in annual excess NEM bill credit payments from MCE for the solar PV NEM accounts given current usage patterns and tariff rates. PG&E does not pay for annual excess bill credits.
2. MCE's policy of paying for excess NEM bill credits will remain in place for at least the short term, but is at higher risk of change over time than other MCE rate policies.
3. The greatest short term risk to the value of solar PV generated energy is PG&E's proposal to cap the A-6 tariff to 75kW peak demand proposed in their 2014 General Rate Case (GRC) Phase II. This risk exists whether the City remains a PG&E customer or elects to transition solar PV accounts to MCE. MCE is expected to mirror changes to PG&E 2014 General Rate Case (GRC) Phase II tariff.
4. City of Benicia should be able to change energy providers from PG&E to MCE and vice versa without jeopardizing the 20-year NEM 1.0 transition (grandfathering) period of existing systems.

Findings are discussed in detail in the next section.

¹ MCE tariff information: <http://www.mcecleanenergy.org/wp-content/uploads/MCE%20Commercial%20Rates.pdf>

² PG&E tariff information: http://www.pge.com/tariffs/tm2/pdf/ELEC_SCHS_A-6.pdf

Task 3 Findings

1. Anticipated changes in annual electrical energy costs and credits to solar PV accounts with MCE:

MCE's tariffs closely mirror PG&E tariffs in structure and pricing. This is done to allow for ease of billing, to comply with CPUC requirements and to allow easy comparison of MCE vs. PG&E electricity rates. MCE endeavors to provide energy with higher renewable content below the cost of similar tariffs from PG&E. Because the tariffs are very close, anticipated annual electrical energy costs between MCE and PG&E will be similar.

MCE diverges significantly from PG&E in offering to monetize excess NEM bill credits at the end of each 12-month true up period, and by providing a \$0.01/kWh premium for excess solar PV energy exported to the grid³. PG&E does not monetize excess NEM bill credits or pay a premium for exported energy; any excess bill credits are lost at the end of the true up period. Excess bill credits from City of Benicia's solar PV NEM accounts are the primary source of energy cost savings from MCE vs. PG&E. PG&E's slightly higher A-6 generation rates can provide greater value for solar PV produced energy if the PV systems are nearly offsetting the annual electrical bill with no annual excess bill credits. The analysis performed on 2013-2014 usage data showed that three of the ten City PV accounts did not have excess bill credits at the end of the year. Two of those accounts would save money vs. MCE, but one of the accounts, the Pool, would cost more vs. MCE due to the lower annual offset. The relatively higher cost of PG&E energy at the Pool offset savings at the other two sites.

2. MCE's evaluation indicating that approximately \$60,000/year may be paid to the City under MCE's Net Energy Metering (NEM) program:

MCE's modeling is correct for the PG&E data that was available to MCE. Sage recovered missing PG&E data for the analysis period and confirmed MCE's modeling using proprietary tariff modeling tools. Sage also ran the models with two years (~2013 and 2014) of PG&E data for Pump Station 3 to find the impact of significantly less usage at that site in 2014. Note that changes in usage for Pump Station 3 were largely associated with ongoing drought conditions. We anticipate that Pump Station 3 usage would be similar to 2013 in years with normal or above precipitation. Calculated NEM excess bill credit payments are as follows:

- MCE annual NEM bill credit payment (2013 usage data): \$59,743
- Sage annual NEM bill credit payment (2013 usage data): \$58,574
- Sage annual NEM bill credit payment (2014 usage, Pump Station 3): \$81,665

See Appendix A, B and C for detailed modeling results.

3. Ability of MCE to maintain its net metering credit payout program:

The main risk to MCE's policy of NEM excess bill credit monetization is potential cost to other MCE ratepayers. MCE has a stated goal of providing energy costs at less than PG&E's rates with greater renewable content. If MCE is no longer able to meet that goal due to changes in

³ See Premium Benefits section: <http://www.mcecleanenergy.org/business-solar/>

legislation, energy procurement and/or management costs, the NEM excess bill credit monetization policy could be at risk. A related risk is that as MCE's NEM customer base grows, monetization of excess bill credits may at some time become a significant cost, causing changes to the policy. Given that the \$0.01 per kWh of excess generation policy is not found in MCE's NEM tariff and that their NEM bill credit cash out is a significant departure from PG&E policy, there is a higher risk of change compared to other MCE pricing policies.

According to MCE staff, there are no plans to modify MCE's monetization of excess bill credits policy. Given that MCE is reasonably solid financially, and that their current policy explicitly limits the size of PV systems that can be installed relative to past load, there is little short term risk of this policy changing.

4. Recent and anticipated legislation affecting NEM and solar tariffs:

a. AB-327 (2013/Perea)

AB-327⁴, signed into law in October, 2013, directed the CPUC to create a new NEM tariff/policy (NEM 2.0) that replaces the current NEM 1.0 tariff/policy and removes the limitation on NEM aggregate size of NEM accounts. NEM 2.0 policy is to be finalized by the CPUC by December 31, 2015 and implemented on January 1, 2017 at the latest. The CPUC has not issued any proposed rulings or guidance concerning NEM 2.0, but they have issued a Preliminary Ruling that addresses grandfathering of existing NEM 1.0 customers, discussed in Finding 4.b.

b. CPUC Proposed Decision R.12-11-005

CPUC Proposed Decision R.12-11-005⁵ states that existing NEM 1.0 customers will be allowed to maintain NEM 1.0 tariff policy for 20 years following interconnection and permission to operate (PTO) the energy generating system. This grandfathering policy is referred to as the NEM transition period. How this policy would be affected by transition from PG&E to MCE is discussed below in Finding 5.

c. PG&E 2014 General Rate Case Phase II

In PG&E's 2014 GRC Phase II⁶, PG&E proposed capping the solar-friendly A-6 tariff to maximum customer demand of 75kW. This change would lower the current A-6 demand cap from 499kW and would result in many small and medium scale PG&E commercial NEM customers with solar PV systems becoming ineligible for the A-6 tariff, forcing those accounts to move to A-10 or E-19 tariffs. The result would be significant loss of value from the energy generated by the solar PV systems affected as the A-10 and E-19 tariffs both would add demand charges and offer lower time of use energy charges compared to the A-6 tariff. This change would impact approximately seven of the ten solar PV installations owned by City of Benicia. Note that this risk exists whether the City remains a PG&E customer or elects to transition solar PV accounts to MCE.

⁴ AB-327 (2013-Perea, chaptered):

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB327

⁵ CPUC Proposed Decision 12-11-005, NEM grandfathering:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K245/89245777.PDF>

⁶ https://www.pge.com/regulation/GRC2014-Ph-II/Testimony/PGE/2013/GRC2014-Ph-II_Test_PGE_20130816_284307.pdf

The issue of A-6 tariff demand cap is currently being litigated at the CPUC. Hearings are being held in October, 2014 and briefs should be available in November, 2014. A Proposed Decision on the issue is anticipated in early-mid Q1 2015, with a Final Decision late Q1 2015.

At this time it is unclear how this will be resolved, but there is significant risk that the value of solar PV generated energy for accounts using PG&E's A-6 tariff will be diminished somewhat.

Sage spoke with Justin Kudo, Manager of Account Services at MCE, about this scenario to determine MCE's response to future changes in PG&E's A-6 tariff. MCE, while supportive of the solar-friendly A-6 tariff, would likely follow PG&E's lead by matching significant changes to A-6 such as capping eligibility at 75kW peak demand with changes to their COM-6 tariff.

5. Impacts to net-metering solar rates particularly as they relate to AB327:

An important consideration is whether changing City of Benicia's solar PV accounts from PG&E to MCE or vice versa during the NEM transition (grandfathered) period will affect eligibility for grandfathering of NEM 1.0 accounts. Changing energy providers will not affect NEM 1.0 grandfathering for two reasons:

- a. City of Benicia's solar PV accounts would remain PG&E accounts. If City of Benicia selects MCE to provide electricity, the accounts remain PG&E accounts. PG&E continues to manage and bill the accounts, but the energy (called generation) portion of the electrical bill will be routed to MCE.
- b. CPUC Proposed Decision 12-11-005, Section 5.3.2, Transferability of Transitional Treatment – Conclusion, states⁷:

“...systems that qualify to remain on their pre-existing NEM tariff for the transition period will remain eligible for the complete transition period if transferred to a new owner, operator, or utility account at the original location.”

Task 3 Appendices

Appendix A: MCE Annual NEM Excess Bill Credit Payment Estimates

Appendix B: Sage Annual MCE Excess Bill Credit Payment Estimates

Appendix C: Sage Annual MCE Excess Bill Credit Payment Estimates, 2014 Pump Station 3

⁷ See Section 5.3: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K245/89245777.PDF>

Appendix A:

Detailed MCE Annual NEM Excess Bill Credit Payment Estimates

Rate Comparison Summary

MCE Approx. Annual Solar Refund to Benicia : \$59,742.81

Summary		
Location	Annual Total	Total Credit
City Hall	-\$915.88	\$915.88
Community Center	-\$5,824.95	\$5,824.95
Community Park	-\$3,572.78	\$3,572.78
Corporation Yard	-\$6,827.35	\$6,827.35
Fire Station	-\$155.92	\$155.92
Pump Station 1	\$979.77	\$0.00
Pump Station 2	\$8,802.48	\$0.00
Pump Station 3	-\$17,572.85	\$17,572.85
Swimming Pool	\$12,851.72	\$0.00
Water Treatment Plant	-\$25,073.12	\$25,073.12

Appendix B:

Sage Annual MCE Excess Bill Credit Payment Estimates

Rate Comparison Summary

SAGE Annual MCE Bill Credit Payment : \$58,573.64

Summary		
Location	Annual Total	Total Credit
City Hall	-\$915.88	\$915.88
Community Center	-\$5,824.95	\$5,824.95
Community Park	-\$4,885.09	\$4,885.09
Corporation Yard	-\$6,827.35	\$6,827.35
Fire Station	-\$155.92	\$155.92
Pump Station 1	\$879.77	\$0.00
Pump Station 2	\$8,802.48	\$0.00
Pump Station 3	-\$17,572.85	\$17,572.85
Swimming Pool	\$12,851.72	\$0.00
Water Treatment Plant	-\$22,611.62	\$22,611.62

Appendix C:

Sage Annual MCE Excess Bill Credit Payment Estimates, 2014 Pump Station 3

Rate Comparison Summary

SAGE Annual MCE Bill Credit Payment : \$81,665.17

Summary		
Location	Annual Total	Total Credit
City Hall	-\$915.88	\$915.88
Community Center	-\$5,824.95	\$5,824.95
Community Park	-\$4,885.09	\$4,885.09
Corporation Yard	-\$6,827.35	\$6,827.35
Fire Station	-\$155.92	\$155.92
Pump Station 1	\$879.77	\$0.00
Pump Station 2	\$8,802.48	\$0.00
Pump Station 3	-\$40,664.38	\$40,664.38
Swimming Pool	\$12,851.72	\$0.00
Water Treatment Plant	-\$22,611.62	\$22,611.62

Power Mix Comparison

Marin Clean Energy and Pacific Gas and Electric

2013 Electric Power Generation Mix*

Specific Purchases	Percent of Total Retail Sales (kWh)		
	PG&E	MCE Light Green	MCE Deep Green
Renewable	22%	51%	100%
• Biomass & Biowaste	4%	6%	0%
• Geothermal	5%	0%	0%
• Eligible hydroelectric	2%	12%	0%
• Solar electric	5%	<1%	0%
• Wind	6%	33%	100%
Coal	0%	0%	0%
Large hydroelectric	10%	10%	0%
Natural Gas	28%	0%	0%
Nuclear	22%	0%	0%
Other	0%	0%	0%
Unspecified Sources of Power	18%	39%	0%
TOTAL	100%	100%	100%

*2013 data is from the "Annual Report to the California Energy Commission: Power Source Disclosure Program". PG&E data is subject to an independent audit and verification that will not be completed until October 1, 2014.

2012 Total CO₂ Emissions from Electricity Sales per Megawatt-Hour**

PG&E	MCE Light Green	MCE Deep Green
445 pounds	380 pounds	0 pounds

**The CO₂ emission rates reflect the emissions associated with PG&E's and MCE's respective energy supplies in 2012. For the purposes of this chart, renewable energy, hydroelectric and nuclear resources have been considered GHG free.

Electricity Rate Comparison

Marin Clean Energy and Pacific Gas and Electric

2014 Residential Electric Rate Comparison, E-1 and RES-1

	PG&E	MCE Light Green 50% Renewable Energy	MCE Deep Green 100% Renewable Energy
Generation Rate (\$/kWh)	\$0.09202	\$0.07900	\$0.08900
PG&E Delivery Rate (\$/kWh)	\$0.11485	\$0.11485	\$0.11485
PG&E PCIA/FF (\$/kWh)	N/A	\$0.01164	\$0.01164
Total Electricity Cost (\$/kWh)	\$0.20687	\$0.20549	\$0.21549
Average Monthly Bill (\$)	\$105.06	\$104.36	\$109.44

Monthly usage: 508 kWh
Rates are current as of May 1, 2014

This compares electricity costs for a typical residential customer in the MCE/PG&E service area with an average monthly usage of 508 kilowatt-hours [kWh]. This is based on the recent 12-month billing history for all customers on E-1/RES-1 rate schedules for PG&E's and MCE's published rates as of May 1, 2014.

2014 Commercial Electric Rate Comparison, A-1 and COM-1

	PG&E	MCE Light Green 50% Renewable Energy	MCE Deep Green 100% Renewable Energy
Generation Rate (\$/kWh)	\$0.09654	\$0.07905	\$0.08905
PG&E Delivery Rate (\$/kWh)	\$0.10806	\$0.10806	\$0.10806
PG&E PCIA/FF (\$/kWh)	N/A	\$0.01031	\$0.01031
Total Electricity Cost (\$/kWh)	\$0.20460	\$0.19742	\$0.20742
Average Monthly Bill (\$)	\$241.93	\$233.44	\$245.27

Monthly usage: 1,182 kWh

Rates are current as of May 1, 2014

This compares electricity costs for a typical small commercial customer in the MCE/PG&E service area with an average monthly usage of 1,182 kilowatt-hours (kWh). This is based on the recent 12-month billing history for all customers on A-1/COM-1 rate schedules for PG&E's and MCE's published rates as of May 1, 2014.

This rate comparison does not include PG&E's current General Rate Case request for funding. For more information please visit grc2014facts.com.

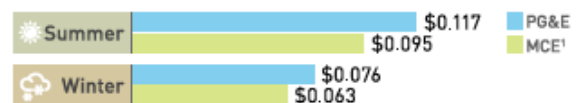
Generation Rate is the cost of creating electricity to power your business. The generation rate varies based on your energy provider.

PG&E Delivery Rate is a charge assessed by PG&E to deliver electricity to your business. The PG&E delivery rate depends on your electricity usage, but is charged equally to both MCE and PG&E customers.

PG&E PCIA/FF represents the Power Charge Indifference Adjustment (PCIA) and the Franchise Fee surcharge (FF). The PCIA is a charge to cover PG&E's generation costs acquired prior to a customer's switch to a third-party electric generation provider. PG&E acts as a collection agent for the Franchise Fee surcharge, which is levied by cities and counties for all customers.

Electric Generation Rates

Price (\$) per kWh



PCIA/FF fees are not included in generation rates.
Chart is for illustrative purposes only and is not to scale.

¹MCE Deep Green customers pay an additional \$.01/kWh.

Agenda Item No. 7
Attachment 6

Net Energy Metering Program Comparison

The following table compares the Net Energy Metering programs of MCE and PG&E.

MCE NEM Program	PG&E NEM PROGRAM
All generation credited as Deep Green (retail rate + \$0.01/kWh)	All generation and usage credited at standard rates
Monthly settlement of generation charges; PG&E delivery charges still settled annually	Annual settlement of all charges
Perpetual rollover of excess credits	Excess credits are lost at annual true-up
Annual cash out for credit balances over \$100 at full retail rate	Compensation based on net kWh of generation at below wholesale rate
Program rules set by MCE Board at public meetings; public workshops are utilized to gather input and refine program elements	Program rules set in standard regulatory process based on input from IOUs and CPUC

Marin Energy Authority
- Joint Powers Agreement -

Effective December 19, 2008

As amended by Amendment No. 1 dated December 3, 2009
As further amended by Amendment No. 2 dated March 4, 2010
As further amended by Amendment No. 3 dated May 6, 2010
As further amended by Amendment No. 4 dated December 1, 2011
As further amended by Amendment No. 5 dated July 5, 2012
As further amended by Amendment No. 6 dated September 5, 2013
As further amended by Amendment No. 7 dated December 5, 2013
As further amended by Amendment No. 8 dated September 4, 2014

Among The Following Parties:

City of Belvedere
Town of Corte Madera
Town of Fairfax
City of Larkspur
City of Mill Valley
City of Novato
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of Sausalito
Town of Tiburon
County of Marin
County of Napa

MARIN ENERGY AUTHORITY JOINT POWERS AGREEMENT

This **Joint Powers Agreement** (“Agreement”), effective as of December 19, 2008, is made and entered into pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the parties set forth in Exhibit B (“Parties”). The term “Parties” shall also include an incorporated municipality or county added to this Agreement in accordance with Section 3.1.

RECITALS

1. The Parties are either incorporated municipalities or counties sharing various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and their inhabitants.
2. In 2006, the State Legislature adopted AB 32, the Global Warming Solutions Act, which mandates a reduction in greenhouse gas emissions in 2020 to 1990 levels. The California Air Resources Board is promulgating regulations to implement AB 32 which will require local government to develop programs to reduce greenhouse emissions.
3. The purposes for the Initial Participants (as such term is defined in Section 2.2 below) entering into this Agreement include addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and price stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production.
4. The Parties desire to establish a separate public agency, known as the Marin Energy Authority (“Authority”), under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) in order to collectively study, promote, develop, conduct, operate, and manage energy programs.
5. The Initial Participants have each adopted an ordinance electing to implement through the Authority Community Choice Aggregation, an electric service enterprise agency available to cities and counties pursuant to California Public Utilities Code Section 366.2 (“CCA Program”). The first priority of the Authority will be the consideration of those actions necessary to implement the CCA Program. Regardless of whether or not Program Agreement 1 is approved and the CCA Program becomes operational, the parties intend for the Authority to continue to study, promote, develop, conduct, operate and manage other energy programs.

AGREEMENT

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

ARTICLE 1 CONTRACT DOCUMENTS

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

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

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

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

ARTICLE 2 FORMATION OF MARIN ENERGY AUTHORITY

2.1 Effective Date and Term. This Agreement shall become effective and Marin Energy Authority shall exist as a separate public agency on the date this Agreement is executed by at least two Initial Participants after the adoption of the ordinances required by Public Utilities Code Section 366.2(c)(10). The Authority shall provide notice to the Parties of the Effective Date. The Authority shall continue to exist, and this Agreement shall be effective, until this Agreement is terminated in accordance with Section 7.4, subject to the rights of the Parties to withdraw from the Authority.

2.2 Initial Participants. During the first 180 days after the Effective Date, all other Initial Participants may become a Party by executing this Agreement and delivering an executed copy of this Agreement and a copy of the adopted ordinance required by Public Utilities Code Section 366.2(c)(10) to the Authority. Additional conditions, described in Section 3.1, may apply (i) to either an incorporated municipality or county desiring to become a Party and is not an Initial Participant and (ii) to Initial Participants that have not executed and delivered this Agreement within the time period described above.

- 2.3 Formation.** There is formed as of the Effective Date a public agency named the Marin Energy Authority. Pursuant to Sections 6506 and 6507 of the Act, the Authority is a public agency separate from the Parties. The debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Parties unless the governing board of a Party agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Party who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Parties agree to assume the debt, liability or obligation of the Authority. Notwithstanding Section 8.4 of this Agreement, this Section 2.3 may not be amended unless such amendment is approved by the governing board of each Party.
- 2.4 Purpose.** The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program, as further described in Section 5.1. The Parties intend that subsequent agreements shall define the terms and conditions associated with the actual implementation of the CCA Program and any other energy programs approved by the Authority.
- 2.5 Powers.** The Authority shall have all powers common to the Parties and such additional powers accorded to it by law. The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following:
- 2.5.1** make and enter into contracts;
 - 2.5.2** employ agents and employees, including but not limited to an Executive Director;
 - 2.5.3** acquire, contract, manage, maintain, and operate any buildings, works or improvements;
 - 2.5.4** acquire by eminent domain, or otherwise, except as limited under Section 6508 of the Act, and to hold or dispose of any property;
 - 2.5.5** lease any property;
 - 2.5.6** sue and be sued in its own name;
 - 2.5.7** incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Section 53850 et seq. and authority under the Act;
 - 2.5.8** issue revenue bonds and other forms of indebtedness;
 - 2.5.9** apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state or local public agency;

- 2.5.10 submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
 - 2.5.11 adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority (“Operating Rules and Regulations”); and
 - 2.5.12 make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program and other energy programs, including the acquisition of electric power supply and the provision of retail and regulatory support services.
- 2.6 **Limitation on Powers.** As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Marin.
- 2.7 **Compliance with Local Zoning and Building Laws.** Notwithstanding any other provisions of this Agreement or state law, any facilities, buildings or structures located, constructed or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed.

ARTICLE 3 AUTHORITY PARTICIPATION

- 3.1 **Addition of Parties.** Subject to Section 2.2, relating to certain rights of Initial Participants, other incorporated municipalities and counties may become Parties upon (a) the adoption of a resolution by the governing body of such incorporated municipality or such county requesting that the incorporated municipality or county, as the case may be, become a member of the Authority, (b) the adoption, by an affirmative vote of the Board satisfying the requirements described in Section 4.9.1, of a resolution authorizing membership of the additional incorporated municipality or county, specifying the membership payment, if any, to be made by the additional incorporated municipality or county to reflect its pro rata share of organizational, planning and other pre-existing expenditures, and describing additional conditions, if any, associated with membership, (c) the adoption of an ordinance required by Public Utilities Code Section 366.2(c)(10) and execution of this Agreement and other necessary program agreements by the incorporated municipality or county, (d) payment of the membership payment, if any, and (e) satisfaction of any conditions established by the Board. Notwithstanding the foregoing, in the event the Authority decides to not implement a CCA Program, the requirement that an additional party adopt the ordinance required by Public Utilities Code Section 366.2(c)(10) shall not apply. Under such circumstance, the Board resolution authorizing membership of an additional incorporated municipality or county shall be adopted in accordance with the voting requirements of Section 4.10.

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

ARTICLE 4

GOVERNANCE AND INTERNAL ORGANIZATION

- 4.1 **Board of Directors.** The governing body of the Authority shall be a Board of Directors ("Board") consisting of one director for each Party appointed in accordance with Section 4.2.
- 4.2 **Appointment and Removal of Directors.** The Directors shall be appointed and may be removed as follows:
- 4.2.1 The governing body of each Party shall appoint and designate in writing one regular Director who shall be authorized to act for and on behalf of the Party on matters within the powers of the Authority. The governing body of each Party also shall appoint and designate in writing one alternate Director who may vote on matters when the regular Director is absent from a Board meeting. The person appointed and designated as the Director or the alternate Director shall be a member of the governing body of the Party.
- 4.2.2 The Operating Rules and Regulations, to be developed and approved by the Board in accordance with Section 2.5.11, shall specify the reasons for and process associated with the removal of an individual Director for cause. Notwithstanding the foregoing, no Party shall be deprived of its right to seat a Director on the Board and any such Party for which its Director and/or alternate Director has been removed may appoint a replacement.
- 4.3 **Terms of Office.** Each Director shall serve at the pleasure of the governing body of the Party that the Director represents, and may be removed as Director by such governing body at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed to fill the position of the previous Director in accordance with the provisions of Section 4.2 within 90 days of the date that such position becomes vacant.
- 4.4 **Quorum.** A majority of the Directors shall constitute a quorum, except that less than a quorum may adjourn from time to time in accordance with law.

- 4.5 Powers and Function of the Board.** The Board shall conduct or authorize to be conducted all business and activities of the Authority, consistent with this Agreement, the Authority Documents, the Operating Rules and Regulations, and applicable law.
- 4.6 Executive Committee.** The Board may establish an executive committee consisting of a smaller number of Directors. The Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations placed on the Board's authority to delegate certain essential functions, as described in the Operating Rules and Regulations. The Board may not delegate to the Executive Committee or any other committee its authority under Section 2.5.11 to adopt and amend the Operating Rules and Regulations.
- 4.7 Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement.
- 4.8 Director Compensation.** Compensation for work performed by Directors on behalf of the Authority shall be borne by the Party that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.
- 4.9 Board Voting Related to the CCA Program.**
- 4.9.1.** To be effective, on all matters specifically related to the CCA Program, a vote of the Board shall consist of the following: (1) a majority of all Directors shall vote in the affirmative or such higher voting percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage vote") and (2) the corresponding voting shares (as described in Section 4.9.2 and Exhibit D) of all such Directors voting in the affirmative shall exceed 50%, or such other higher voting shares percentage expressly set forth in Sections 7.2 and 8.4 (the "percentage voting shares"), provided that, in instances in which such other higher voting share percentage would result in any one Director having a voting share that equals or exceeds that which is necessary to disapprove the matter being voted on by the Board, at least one other Director shall be required to vote in the negative in order to disapprove such matter.
- 4.9.2.** Unless otherwise stated herein, voting shares of the Directors shall be determined by combining the following: (1) an equal voting share for each Director determined in accordance with the formula detailed in Section 4.9.2.1, below; and (2) an additional voting share determined in accordance with the formula detailed in Section 4.9.2.2, below.
- 4.9.2.1 Pro Rata Voting Share.** Each Director shall have an equal voting share as determined by the following formula: (1/total number of

Directors) multiplied by 50, and

4.9.2.2 Annual Energy Use Voting Share. Each Director shall have an additional voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 50, where (a) “Annual Energy Use” means, (i) with respect to the first 5 years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWhs”), within the Party’s respective jurisdiction and (ii) with respect to the period after the fifth anniversary of the Effective Date, the annual electricity usage, expressed in kWhs, of accounts within a Party’s respective jurisdiction that are served by the Authority and (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year

4.9.2.3 The voting shares are set forth in Exhibit D. Exhibit D may be updated to reflect revised annual energy use amounts and any changes in the parties to the Agreement without amending the Agreement provided that the Board is provided a copy of the updated Exhibit D.

4.10 Board Voting on General Administrative Matters and Programs Not Involving CCA. Except as otherwise provided by this Agreement or the Operating Rules and Regulations, each member shall have one vote on general administrative matters, including but not limited to the adoption and amendment of the Operating Rules and Regulations, and energy programs not involving CCA. Action on these items shall be determined by a majority vote of the quorum present and voting on the item or such higher voting percentage expressly set forth in Sections 7.2 and 8.4.

4.11 Board Voting on CCA Programs Not Involving CCA That Require Financial Contributions. The approval of any program or other activity not involving CCA that requires financial contributions by individual Parties shall be approved only by a majority vote of the full membership of the Board subject to the right of any Party who votes against the program or activity to opt-out of such program or activity pursuant to this section. The Board shall provide at least 45 days prior written notice to each Party before it considers the program or activity for adoption at a Board meeting. Such notice shall be provided to the governing body and the chief administrative officer, city manager or town manager of each Party. The Board also shall provide written notice of such program or activity adoption to the above-described officials of each Party within 5 days after the Board adopts the program or activity. Any Party voting against the approval of a program or other activity of the Authority requiring financial contributions by individual Parties may elect to opt-out of participation in such program or activity by

providing written notice of this election to the Board within 30 days after the program or activity is approved by the Board. Upon timely exercising its opt-out election, a Party shall not have any financial obligation or any liability whatsoever for the conduct or operation of such program or activity.

4.12 Meetings and Special Meetings of the Board. The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law. All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (California Government Code Section 54950 et seq.).

4.13 Selection of Board Officers.

4.13.1 Chair and Vice Chair. The Directors shall select, from among themselves, a Chair, who shall be the presiding officer of all Board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The term of office of the Chair and Vice Chair shall continue for one year, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The office of either the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board or (b) the Party that he or she represents withdraws from the Authority pursuant to the provisions of this Agreement.

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

4.13.3 Treasurer and Auditor. The Board shall appoint a qualified person to act as the Treasurer and a qualified person to act as the Auditor, neither of whom needs to be a member of the Board. If the Board so designates, and in accordance with the provisions of applicable law, a qualified person may hold both the office of Treasurer and the office of Auditor of the Authority. Unless otherwise exempted from such requirement, the Authority shall cause an independent audit to be made by a certified public accountant, or public accountant, in compliance with Section 6505 of the Act. The Treasurer shall act as the depository of the Authority and have custody of all the money of the Authority, from whatever source, and as such, shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The Board may require the Treasurer and/or Auditor to

file with the Authority an official bond in an amount to be fixed by the Board, and if so requested the Authority shall pay the cost of premiums associated with the bond. The Treasurer shall report directly to the Board and shall comply with the requirements of treasurers of incorporated municipalities. The Board may transfer the responsibilities of Treasurer to any person or entity as the law may provide at the time. The duties and obligations of the Treasurer are further specified in Article 6.

- 4.14 Administrative Services Provider.** The Board may appoint one or more administrative services providers to serve as the Authority's agent for planning, implementing, operating and administering the CCA Program, and any other program approved by the Board, in accordance with the provisions of a written agreement between the Authority and the appointed administrative services provider or providers that will be known as an Administrative Services Agreement. The Administrative Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the CCA Program and other approved programs. The Administrative Services Agreement shall set forth the term of the Agreement and the circumstances under which the Administrative Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the CCA Program or any other program.

ARTICLE 5

IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

5.1 Preliminary Implementation of the CCA Program.

- 5.1.1 Enabling Ordinance.** Except as otherwise provided by Section 3.1, prior to the execution of this Agreement, each Party shall adopt an ordinance in accordance with Public Utilities Code Section 366.2(c)(10) for the purpose of specifying that the Party intends to implement a CCA Program by and through its participation in the Authority.
- 5.1.2 Implementation Plan.** The Authority shall cause to be prepared an Implementation Plan meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations as soon after the Effective Date as reasonably practicable. The Implementation Plan shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 4.9.

5.1.3 Effect of Vote On Required Implementation Action. In the event that two or more Parties vote to approve Program Agreement 1 or any earlier action required for the implementation of the CCA Program (“Required Implementation Action”), but such vote is insufficient to approve the Required Implementation Action under Section 4.9, the following will occur:

5.1.3.1 The Parties voting against the Required Implementation Action shall no longer be a Party to this Agreement and this Agreement shall be terminated, without further notice, with respect to each of the Parties voting against the Required Implementation Action at the time this vote is final. The Board may take a provisional vote on a Required Implementation Action in order to initially determine the position of the Parties on the Required Implementation Action. A vote, specifically stated in the record of the Board meeting to be a provisional vote, shall not be considered a final vote with the consequences stated above. A Party who is terminated from this Agreement pursuant to this section shall be considered the same as a Party that voluntarily withdrew from the Agreement under Section 7.1.1.1.

5.1.3.2 After the termination of any Parties pursuant to Section 5.1.3.1, the remaining Parties to this Agreement shall be only the Parties who voted in favor of the Required Implementation Action.

5.1.4 Termination of CCA Program. Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.

5.2 Authority Documents. The Parties acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution, including but not necessarily limited to the Operating Rules and Regulations, the annual budget, and specified plans and policies defined as the Authority Documents by this Agreement. The Parties agree to abide by and comply with the terms and conditions of all such Authority Documents that may be adopted by the Board, subject to the Parties’ right to withdraw from the Authority as described in Article 7.

ARTICLE 6 FINANCIAL PROVISIONS

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

6.2 Depository.

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

6.2.2 All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Parties at all reasonable times. The Board shall contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.

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

6.3 Budget and Recovery Costs.

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

6.3.2 County Funding of Initial Costs. The County of Marin shall fund the Initial Costs of the Authority in implementing the CCA Program in an amount not to exceed \$500,000 unless a larger amount of funding is approved by the Board of Supervisors of the County. This funding shall be paid by the County at the times and in the amounts required by the Authority. In the event that the CCA Program becomes operational, these Initial Costs paid by the County of Marin shall be included in the customer charges for electric services as provided by Section 6.3.4 to the extent permitted by law, and the County of Marin shall be reimbursed from the

payment of such charges by customers of the Authority. The Authority may establish a reasonable time period over which such costs are recovered. In the event that the CCA Program does not become operational, the County of Marin shall not be entitled to any reimbursement of the Initial Costs it has paid from the Authority or any Party.

6.3.3 CCA Program Costs. The Parties desire that, to the extent reasonably practicable, all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric services under the CCA Program, including the establishment and maintenance of various reserve and performance funds, shall be recovered through charges to CCA customers receiving such electric services.

6.3.4 General Costs. Costs that are not directly or indirectly attributable to the provision of electric services under the CCA Program, as determined by the Board, shall be defined as general costs. General costs shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

6.3.5 Other Energy Program Costs. Costs that are directly or indirectly attributable to energy programs approved by the Authority other than the CCA Program shall be shared among the Parties on such basis as the Board shall determine pursuant to an Authority Document.

ARTICLE 7 WITHDRAWAL AND TERMINATION

7.1 Withdrawal.

7.1.1 General.

7.1.1.1 Prior to the Authority's execution of Program Agreement 1, any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so, which notice shall be given to the Authority and each Party. To permit consideration by the governing body of each Party, the Authority shall provide a copy of the proposed Program Agreement 1 to each Party at least 90 days prior to the consideration of such agreement by the Board.

7.1.1.2 Subsequent to the Authority's execution of Program Agreement 1, a Party may withdraw its membership in the Authority, effective as of the beginning of the Authority's fiscal year, by giving no less than 6

months advance written notice of its election to do so, which notice shall be given to the Authority and each Party, and upon such other conditions as may be prescribed in Program Agreement 1.

7.1.2 Amendment. Notwithstanding Section 7.1.1, a Party may withdraw its membership in the Authority following an amendment to this Agreement in the manner provided by Section 8.4.

7.1.3 Continuing Liability; Further Assurances. A Party that withdraws its membership in the Authority may be subject to certain continuing liabilities, as described in Section 7.3. The withdrawing Party and the Authority shall execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in the Authority. The Operating Rules and Regulations shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party.

7.2 Involuntary Termination of a Party. This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or the Authority Documents upon an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%, excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or the Authority Documents that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in the Authority terminated may be subject to certain continuing liabilities, as described in Section 7.3. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.

7.3 Continuing Liability; Refund. Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in the Authority through the date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities arising after the date of the Party's withdrawal or involuntary termination. In addition, such

Party also shall be responsible for any costs or obligations associated with the Party's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of the Party. The Authority may withhold funds otherwise owing to the Party or may require the Party to deposit sufficient funds with the Authority, as reasonably determined by the Authority, to cover the Party's liability for the costs described above. Any amount of the Party's funds held on deposit with the Authority above that which is required to pay any liabilities or obligations shall be returned to the Party.

- 7.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in the Authority, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 7.1.
- 7.5 **Disposition of Property upon Termination of Authority.** Upon termination of this Agreement as to all Parties, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Parties in proportion to the contributions made by each.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 **Dispute Resolution.** The Parties and the Authority shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should such efforts to settle a dispute, after reasonable efforts, fail, the dispute shall be settled by binding arbitration in accordance with policies and procedures established by the Board.
- 8.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. The Authority shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses

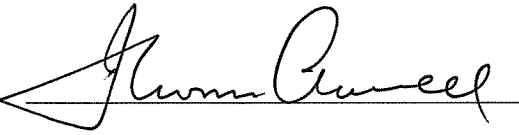
available under the law, to the Parties, the Authority, or its Directors, officers, or employees.

- 8.3 Indemnification of Parties.** The Authority shall acquire such insurance coverage as is necessary to protect the interests of the Authority, the Parties and the public. The Authority shall defend, indemnify and hold harmless the Parties and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.
- 8.4 Amendment of this Agreement.** This Agreement may be amended by an affirmative vote of the Board in which the minimum percentage vote and percentage voting shares, as described in Section 4.9.1, shall be no less than 67%. The Authority shall provide written notice to all Parties of amendments to this Agreement, including the effective date of such amendments. A Party shall be deemed to have withdrawn its membership in the Authority effective immediately upon the vote of the Board approving an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in the Authority should the amendment be approved by the Board. As described in Section 7.3, a Party that withdraws its membership in the Authority in accordance with the above-described procedure may be subject to continuing liabilities incurred prior to the Party's withdrawal. In the event that the Authority decides to not implement the CCA Program, the minimum percentage vote of 67% shall be conducted in accordance with Section 4.10 rather than Section 4.9.1.
- 8.5 Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this Section 8.5 shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This Section 8.5 does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party's contributions to the Authority, or the disposition of proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the Parties under this Agreement.
- 8.6 Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Parties, that the remainder of the Agreement shall not be affected thereby. Such clauses, sentences, paragraphs or provision shall be deemed reformed so as to be lawful, valid and enforced to the maximum extent possible.

- 8.7 Further Assurances.** Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, to effectuate the purposes and intent of this Agreement.
- 8.8 Execution by Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.
- 8.9 Parties to be Served Notice.** Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (a) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt and (b) by mail shall be conclusively deemed given 48 hours after the deposit thereof (excluding Saturdays, Sundays and holidays) if the sender receives the return receipt. All notices shall be addressed to the office of the clerk or secretary of the Authority or Party, as the case may be, or such other person designated in writing by the Authority or Party. Notices given to one Party shall be copied to all other Parties. Notices given to the Authority shall be copied to all Parties.

ARTICLE 9
SIGNATURE

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

By: 

Name: Thomas Cromwell

Title: Mayor

Date: December 8, 2008

Party: City of Belvedere

**ARTICLE 9
SIGNATURE**

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

By: 

Name: Alexandra Cock

Title: Mayor

Date: December 6, 2011

Party: Town of Corte Madera

ATTEST


Christine Green, Town Clerk

**ARTICLE 9
SIGNATURE**

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

By: David Weinsoff

Name: David Weinsoff

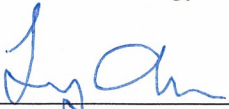
Title: Mayor

Date: 2.12.09

Party: Town of Fairfax

ARTICLE 9
SIGNATURE

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

By: 

Name: Larry Chu

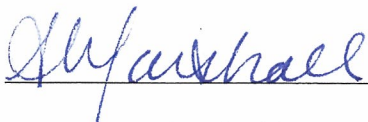
Title: Mayor, Larkspur

Date: November 16, 2011

Party: CITY OF LARKSPUR

**ARTICLE 9
SIGNATURE**

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

By: 

Name: Shawn E. Marshall

Title: Mayor

Date: December 2, 2008

Party: City of Mill Valley

ARTICLE 9
SIGNATURE

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

By: Madeline R. Kellner

Name: Madeline R. Kellner

Title: Mayor

Date: October 7, 2011

Party: City of Novato

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing the Marin Energy Authority

By: Deane McLaughlin
Name: Deane McLaughlin
Title: Mayor
Date: 7/5/12
Party: City of Richmond

ARTICLE 9
SIGNATURE

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

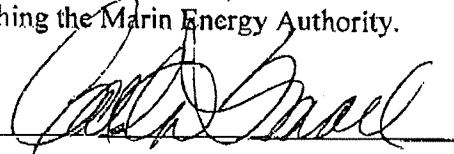
By: _____

Name: _____

Title: _____

Date: _____

Party: _____



Carla Small

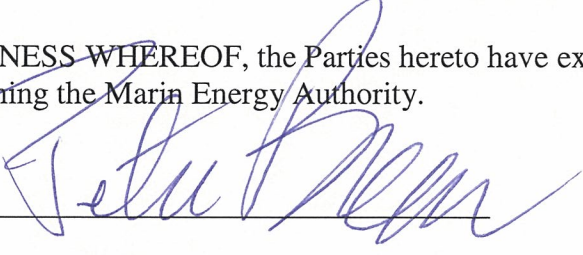
Mayor

11/16/11

Town of Ross

**ARTICLE 9
SIGNATURE**

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

By: _____

Name: Peter Breen

Title: Mayor

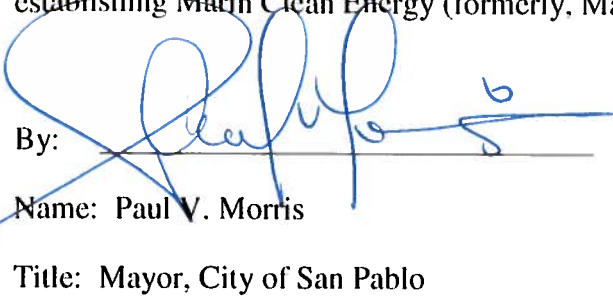
Date: January 9, 2009

Party: Town of San Anselmo

ARTICLE 9

SIGNATURE

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

Name: Paul V. Morris

Title: Mayor, City of San Pablo

Date: SEPT. 16, 2014

Party: City of San Pablo

ARTICLE 9
SIGNATURE

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

By: Cyr N. Miller

Name: Cyr N. Miller

Title: Vice Mayor

Date: DECEMBER 1, 2008

Party: CITY OF SAN RAFAEL

**ARTICLE 9
SIGNATURE**

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

By: Amy Belser

Name: Amy Belser

Title: Mayor

Date: November 18, 2008

Party: City of Sausalito

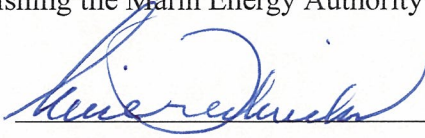
Attest:

Debbie Cardenas
Deputy City Clerk

**ARTICLE 9
SIGNATURE**

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

By: _____



Name: ALICE FREDERICKS

Title: MAYOR

Date: _____

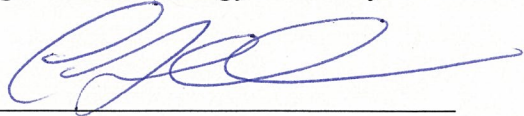
2/10/09

Party: TOWN OF TIBURON

**ARTICLE 9
SIGNATURE**

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

By: _____



Name: _____

CHARLES F. McGRATH

Title: _____

PRESIDENT, Bd of SUPERVISORS

Date: _____

November 18 2008

Party: _____

COUNTY OF MARIN

ARTICLE 9

Marin Clean Energy JPA Agreement

SIGNATURE

Amendment No. 8

IN WITNESS WHEREOF, the parties hereto have executed this Joint Powers Agreement establishing Marin Clean Energy (formerly, Marin Energy Authority)

By: 

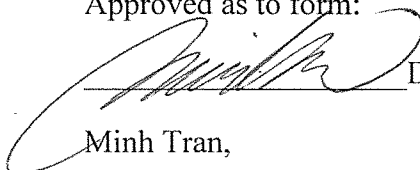
Name: Mark Luce,

Title: Chairman, Napa County Board of Supervisors

Date: 7/22/14

Party: Napa County

Approved as to form:

 Date 7/21/14

Minh Tran,

County Counsel

Exhibit A

To the Joint Powers Agreement Marin Energy Authority

-Definitions-

“AB 117” means Assembly Bill 117 (Stat. 2002, ch. 838, codified at Public Utilities Code Section 366.2), which created CCA.

“Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*)

“Administrative Services Agreement” means an agreement or agreements entered into after the Effective Date by the Authority with an entity that will perform tasks necessary for planning, implementing, operating and administering the CCA Program or any other energy programs adopted by the Authority.

“Agreement” means this Joint Powers Agreement.

“Annual Energy Use” has the meaning given in Section 4.9.2.2.

“Authority” means the Marin Energy Authority.

“Authority Document(s)” means document(s) duly adopted by the Board by resolution or motion implementing the powers, functions and activities of the Authority, including but not limited to the Operating Rules and Regulations, the annual budget, and plans and policies.

“Board” means the Board of Directors of the Authority.

“CCA” or “Community Choice Aggregation” means an electric service option available to cities and counties pursuant to Public Utilities Code Section 366.2.

“CCA Program” means the Authority’s program relating to CCA that is principally described in Sections 2.4 and 5.1.

“Director” means a member of the Board of Directors representing a Party.

“Effective Date” means the date on which this Agreement shall become effective and the Marin Energy Authority shall exist as a separate public agency, as further described in Section 2.1.

“Implementation Plan” means the plan generally described in Section 5.1.2 of this Agreement that is required under Public Utilities Code Section 366.2 to be filed with the California Public Utilities Commission for the purpose of describing a proposed CCA Program.

“Initial Costs” means all costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of an Executive Director and any administrative staff, any required accounting, administrative, technical and legal services in support of the Authority’s initial activities or in support of the negotiation, preparation and approval of one or more Administrative Services Provider Agreements and Program Agreement 1. Administrative and operational costs incurred after the approval of Program Agreement 1 shall not be considered Initial Costs.

“Initial Participants” means, for the purpose of this Agreement, the signatories to this JPA as of May 5, 2010 including City of Belvedere, Town of Fairfax, City of Mill Valley, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon and County of Marin.

“Operating Rules and Regulations” means the rules, regulations, policies, bylaws and procedures governing the operation of the Authority.

“Parties” means, collectively, the signatories to this Agreement that have satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

“Party” means, singularly, a signatory to this Agreement that has satisfied the conditions in Sections 2.2 or 3.2 such that it is considered a member of the Authority.

“Program Agreement 1” means the agreement that the Authority will enter into with an energy service provider that will provide the electricity to be distributed to customers participating in the CCA Program.

“Total Annual Energy” has the meaning given in Section 4.9.2.2.

Exhibit B

To the Joint Powers Agreement Marin Energy Authority

-List of the Parties-

City of Belvedere
Town of Corte Madera
Town of Fairfax
City of Larkspur
City of Mill Valley
City of Novato
City of Richmond
Town of Ross
Town of San Anselmo
City of San Pablo
City of San Rafael
City of Sausalito
Town of Tiburon
County of Marin
County of Napa

Exhibit C
To the
Joint Powers Agreement
Marin Clean Energy
- Annual Energy Use -

This Exhibit C is effective as of September 5, 2014.

Party	kWh (2012/2013*)
City of Belvedere	9,973,170
Town of Corte Madera	62,093,107
Town of Fairfax	24,700,647
City of Larkspur	63,174,199
City of Mill Valley	69,176,164
City of Novato	286,565,119
City of Richmond	581,012,267
Town of Ross	13,529,793
Town of San Anselmo	46,642,417
City of San Pablo	97,383,170
City of San Rafael	347,362,327
City of Sausalito	48,099,763
Town of Tiburon	40,913,144
County of Marin	330,023,521
County of Napa	348,095,521
Authority Total Energy Use	2,368,744,329

*Data Provided by PG&E

Exhibit D
To the
Joint Powers Agreement
Marin Clean Energy
- Voting Shares -

This Exhibit D is effective as of September 5, 2014.

Party	kWh (2012/2013*)	Section 4.9.2.1	Section 4.9.2.2	Voting Share
City of Belvedere	9,973,170	3.33%	0.21%	3.54%
Town of Corte Madera	62,093,107	3.33%	1.31%	4.64%
Town of Fairfax	24,700,647	3.33%	0.52%	3.85%
City of Larkspur	63,174,199	3.33%	1.33%	4.67%
City of Mill Valley	69,176,164	3.33%	1.46%	4.79%
City of Novato	286,565,119	3.33%	6.05%	9.38%
City of Richmond	581,012,267	3.33%	12.26%	15.60%
Town of Ross	13,529,793	3.33%	0.29%	3.62%
Town of San Anselmo	46,642,417	3.33%	0.98%	4.32%
City of San Pablo	97,383,170	3.33%	2.06%	5.39%
City of San Rafael	347,362,327	3.33%	7.33%	10.67%
City of Sausalito	48,099,763	3.33%	1.02%	4.35%
Town of Tiburon	40,913,144	3.33%	0.86%	4.20%
County of Marin	330,023,521	3.33%	6.97%	10.30%
County of Napa	348,095,521	3.33%	7.35%	10.68%
	2,368,744,329	50.00%	50.00%	100.00%

*Data Provided by PG&E

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May 16, 2014

RECEIVED

MAY 20 2014

City of El Cerrito
City Clerk

By: Email and U.S. Mail

Mayor Janet Abelson and Council Members
City of El Cerrito City Council
10890 San Pablo Ave.
El Cerrito, CA 94530

Re: Environmental Compliance Requirements Regarding a City
Action to Join a Community Choice Aggregation Program

Dear Mayor Abelson and Council Members:

We write on behalf of the International Brotherhood of Electrical Workers Local 1245, to advise the City of its obligation to comply with the California Environmental Quality Act¹ before taking any action to join a Community Choice Aggregation (CAA) program. The core purpose of joining a CCA program is to change the source of electricity generation for El Cerrito customers. Specifically, by joining a CCA program, the City would cause customers to stop purchasing electricity from Pacific Gas & Electric Company, and begin purchasing electricity from a different electricity marketer, such as Shell Energy North America.

Given the core purpose of joining a CCA program, it is not at all surprising that this action could result in changes to the environment. These changes would include increased operation and related increases in air pollutant emissions from certain existing electric generation plants that use fossil fuels. These changes could result in significant localized impacts to air quality and public health. As explained in this letter, based on current information it is unlikely that joining a CCA program would lead to increased construction or operation of renewable energy plants. However, if this were to happen, these activities could also result in adverse environmental impacts.

¹ Pub. Resources Code, §§ 21000 et seq.

May 16, 2014

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Changing the sources of electricity generation that supply a given geographic area requires environmental review. The California Public Utilities Commission has previously found this same type of action to cause potentially significant impacts on the environment. The City is required to consider the environmental impacts of joining a CCA program pursuant to CEQA before it can approve such action. We object to the City taking action to join a CCA without first preparing, considering and certifying an Environmental Impact Report.

We understand that it would be natural to assume that a governmental action intended to *increase* the use of renewable energy should *reduce* environmental impacts. But, as we explain in this letter, such action will change the operation of electric generation plants that currently supply El Cerrito customers and the operation of power plants burning fossil fuels used to supply these same customers under a new program. As a result, while air pollutant emissions may go down in some places, they are likely to go *up* in other places. The resultant increases in air pollutant emissions may result in significant localized impacts to air quality and public health. CEQA requires the City to analyze those impacts in an EIR and adopt feasible mitigation measures or alternatives to reduce those impacts to a less than significant level.

Our analysis was prepared with the assistance of technical expert David Marcus. Mr. Marcus's analyses and curriculum vitae are attached to this letter.²

I. CHANGING THE SOURCES OF ELECTRICITY GENERATION THAT SUPPLY CUSTOMERS IS A "PROJECT"

CEQA's primary purpose is to require public agency decision makers to document and consider the environmental implications of their actions.³ CEQA applies to "all governmental agencies at all levels" in California, including local agencies, regional agencies, and state agencies, boards and commissions.⁴ With limited exceptions, CEQA requires that "*discretionary projects proposed to be*

² See **Attachment 1**, Letters from David Marcus to Elizabeth Klebaner.

³ See Pub. Resources Code, § 21000, 21001; see also *Friends of Mammoth v. Board of Supervisors* (1972) 13 Cal. 3d 68, 73-75.

⁴ Pub. Resources Code, §§ 2100 subd. (g), 21001 subds. (f), (g); Cal. Code. Regs., tit.14 §§ 15002, subd. (b), 15020, 1536, 15368, 15379, 15383 (CEQA Guidelines).

carried out or approved by public agencies” are subject to environmental review *before* they are approved.⁵ The Act defines “project” as:

An activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . [including] [a]n activity directly undertaken by any public agency.⁶

Governmental actions that may change the physical environment, and are therefore subject to CEQA, include preliminary planning decisions, zoning changes and financing assistance.⁷ Governmental actions which authorize a change in the source of electricity generation that serves a geographic area cause obvious changes in the physical environment by altering the generation patterns of existing power plants. Such actions have been understood to be subject to CEQA review for more than two decades. In at least two instances, it was determined that this exact type of action may result in potentially significant impacts to the environment.

In 1988, the California Public Utilities Commission prepared an EIR to evaluate the impacts on air quality in the Los Angeles Air Basin from a proposed merger of Southern California Edison Company and San Diego Gas & Electric Company.⁸ The Commission determined that reasonably foreseeable changes in patterns of generation from existing power plants could result in potentially significant localized air quality impacts.⁹ Approximately one decade later, the Bonneville Power Administration (BPA) determined that its action to enter into a long-term contract for peaking capacity required preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act.¹⁰ The EIS

⁵ See Pub. Resources Code, § 21080 subd. (a), emphasis added.

⁶ Pub. Resources Code, § 21065.

⁷ See, e.g., *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116; *Bozung v. Local Agency Formation Commission of Ventura County* (1975) 13 Cal.3d 263; *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2010) 179 Cal.App.4th 113; *City of Carmel-By-the-Sea v. Board of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229; See, generally, California Public Utilities Commission Docket A.88-10-055.

⁸ See California Public Utilities Commission Docket A.88-10-055, available at <http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:57:32116475656525::NO>.

⁹ See *ibid.*

¹⁰ 42 U.S.C. §§ 4321 et seq.

evaluated the environmental impacts caused by changes in operation of *existing* thermal resources.¹¹

The BPA EIS provides a good example of what such an analysis could look like. The EIS considered the contract provisions that could result in reasonably foreseeable changes in the types of resources that would be used to satisfy contractual obligations.¹² The EIS then evaluated the environmental impacts that could result from these changes, including new impacts to air quality from the changed operation of existing conventional power plants and new impacts to water and biological resources from the changed operation of existing hydroelectric plants.¹³

Just as in the cases of an agency's proposed approval of a merger of electrical utilities, or an agency's decision to commit to a long-term contract to provide peaking capacity from existing resources, joining a CCA program will, by design, change the source of generation that supplies El Cerrito customers. As fully documented by David Marcus in his written analyses, and summarized, below, joining a CCA program would cause a change in the operation of existing power plants that burn fossil fuels.

David Marcus's analyses consider two presently available CCA program alternatives; the Marin Clean Energy CCA program (MCE) and the Sonoma Clean Power CCA program (SCP). Mr. Marcus's analyses demonstrate that the City's action to join either program would cause certain existing plants burning fossil fuels to increase operations. David Marcus also demonstrated in his analyses that neither program is likely to result in the increased construction or operation of renewable energy plants.

The City's action to approve joining a CCA program may cause direct, or reasonably foreseeable indirect, physical changes in the environment. The changed operation of existing fossil fuel generation, and the construction and increased operation of renewable energy plants will result in various environmental impacts. These include, but are not limited to, increased emissions of air pollutants and toxic

¹¹ U.S. Department of Energy, PacifiCorp Capacity Power Sale Contract, Final EIS, at p. 25 of 202 of .pdf, available at <http://energy.gov/nepa/downloads/eis-0171-final-environmental-impact-statement>.

¹² See, e. g., *id.*, at p. 28 of 202 of .pdf and attached as **Attachment 2**.

¹³ See *ibid.*

air contaminants. The City is required to comply with CEQA before it approves joining a CCA program.

A. Joining MCE or SCP Will Cause Existing Electricity Generating Plants Burning Fossil Fuel to Increase Operations to Meet the City's Demand for Electricity.

Substantial evidence shows that joining either MCE or SCP will cause certain existing electricity generating plants burning fossil fuel to increase operations. As demonstrated by David Marcus, the City's action to join either CCA program will transfer customers from the City's current electricity supplier to a prospective electricity supplier.¹⁴ In the case of MCE, that supplier is Shell Energy North America. As a result, either MCE's or SCP's electricity demand will increase in order to serve their new customers.¹⁵ That additional electricity supply has to come from somewhere.

David Marcus demonstrated in his comments that with both MCE and SCP, the new electricity demand will be met by the increased operation of existing electricity generating plants burning *fossil fuel*.¹⁶ David Marcus also demonstrated that the increase in the operation of certain existing plants burning fossil fuels could be substantial. In 2012, up to 83 percent of MCE's electricity sales, or 429 gigawatt hours (Gwh), came from the increased operation of existing fossil fuel generation.¹⁷ David Marcus has shown that SCP, which has just started to supply power to customers, would source more than 90 percent of its electricity from fossil fuel generation.¹⁸

Indeed, joining MCE or SCP would cause increased operation of existing plants burning fossil fuels even if each program succeeds in causing new renewable generation to be built. This is because both MCE and SCP will use fossil fuel generation for the majority of their power supply. As demonstrated by David

¹⁴ Letter from David Marcus to Elizabeth Klebaner regarding the potential environmental impacts of the Sonoma County Power Program, at pp. 1-2 (Marcus SCP Letter); Letter from David Marcus to Elizabeth Klebaner regarding the potential environmental impacts of the Marin Clean Energy Authority Program, at pp. 1-2 (Marcus MCE Letter).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Marcus MCE Letter, at p. 2.

¹⁸ Marcus SCP Letter, at pp. 2-3.

Marcus, in 2012, 83 percent of MCE's power supply came from conventional, fossil fuel generation.¹⁹ According to MCE's November 2013 Integrated Resource Plan Annual Update, in 2014 more than 75 percent of MCE's electricity is expected to come from conventional generation.^{20,21} That amount is expected to increase to 78 percent in 2015.^{22,23} David Marcus has also shown that in years 2014 through 2016, 95 percent *or more* of the power proposed to be supplied by SCP would come from conventional, fossil fuel generation.²⁴

As a result, joining MCE or SCP would, contrary to the City's goals, increase operation of certain fossil fuel-burning plants and cause new significant adverse localized air quality and public health impacts from those plants.

B. Joining MCE or SCP is Unlikely to Cause Increased Operation or Construction of Renewable Energy Plants, But If It Did, There Would Be Environmental Impacts.

David Marcus has also shown that joining MCE or SCP is unlikely to increase the operation or construction of renewable energy plants. In particular, David Marcus has shown that the majority of the energy purchases made under either program will go to the fossil fuel plant industry.²⁵ In particular, MCE plans to acquire at least 540 Gwh of new conventional resources per year.²⁶ This amount dwarfs planned renewable energy purchases, which are estimated at just 89 Gwh per year.²⁷ Similarly, in years 2014 through 2016, SCP plans to purchase 157 or

¹⁹ Marcus MCE Letter, at p. 2.

²⁰ See MCE, Integrated Resource Plan Annual Update, Nov. 2013, at Appendix A, *Load and Resource Tables*, available at http://marincleanenergy.org/sites/default/files/key-documents/Integrated_Resource_Plan_2013_Update.pdf.

²¹ "Total Energy Requirement" for 2014 is 1,328 Gwh; "Conventional Energy Requirements (including energy w/ unbundled RECs)" for 2014 is 1,034 Gwh. $1034/1328 = 0.778$.

²² See MCE, Integrated Resource Plan Annual Update, Nov. 2013, at Appendix A, *Load and Resource Tables*, available at http://marincleanenergy.org/sites/default/files/key-documents/Integrated_Resource_Plan_2013_Update.pdf.

²³ Total Energy Requirement" for 2015 is 1,309 Gwh; "Conventional Energy Requirements (including energy w/ unbundled RECs)" for 2015 is 1,023 Gwh. $1023/1309 = 0.781$.

²⁴ Marcus SCP Letter, at p. 3.

²⁵ See Marcus MCE Letter, at p. 3; see Marcus SCP Letter, at pp. 3-4.

²⁶ Marcus MCE Letter, at pp. 2-3.

²⁷ *Ibid.*

more Gwh from fossil fuel.²⁸ SCP plans to purchase only 22 Gwh per year from renewable plants over the same time period.²⁹

David Marcus has also shown that the miniscule amount of renewable generation purchases that would be made under either program would have occurred anyway.³⁰ In other words, those renewable plants will find a buyer with or without MCE and SCP. However, even if MCE and SCP succeed in adding new renewable generation to the grid, the construction or increased operation of renewable energy plants would result in distinct impacts to the environment. We discuss these, and other environmental impacts of a City action to join a CCA program in the following sections.

II. JOINING A CCA PROGRAM WILL CAUSE CHANGES TO THE PHYSICAL ENVIRONMENT

As described above, the City's decision to join either MCE or SCP involves changing the operation of existing conventional generation, causing increased operation of certain fossil fuel-burning plants. These activities will result in increased localized emissions of criteria air pollutants, toxic air contaminants, and greenhouse gases. While it is unlikely that the City's decision to join a new electricity service will cause the increased consumption or construction of renewable generation, these activities would also result in changes to the physical environment.

The full spectrum of potential environmental impacts caused by the City choosing to join MCE, SCP or any other CCA program is not reviewed here. This analysis should be conducted in an EIR, and the EIR should be provided for review to decision makers and the public *before* the City considers joining a CCA program.³¹ However, even with limited available information, it is clear that changing the pattern of generation from existing plants burning fossil fuel would cause impacts on the physical environment.

²⁸ Marcus SCP Letter, at pp. 3-4.

²⁹ *Ibid.*

³⁰ See Marcus SCP Letter, at pp. 2-3; Marcus MCE Letter, at pp. 2-3.

³¹ See discussion *infra*, Section III, regarding the need for an EIR.

A. Increased Operation of Electricity Generating Plants Burning Fossil Fuel Causes Increased Emissions of Criteria Air Pollutants.

Fossil fuel generation, such as natural gas facilities, emit criteria air pollutants when generating electricity, and increased power production activities generally result in increased criteria pollutant emissions.³² Criteria air pollutants include: particulate matter, sulfur dioxide, carbon monoxide, lead, ozone, and volatile organic compounds (VOCs) and oxides of nitrogen (NOx) which are ozone precursor pollutants.³³ Increased criteria pollutant emissions from an existing fossil fuel plant may result in localized and regional impacts, depending on the rate of emissions, ambient air quality and the plant's proximity to residential populations and sensitive receptors, such as schools.

Criteria air pollutants cause smog and are a public health concern. Short-term exposure to ozone can irritate the eyes and cause constriction of the airways and can aggravate existing respiratory diseases such as asthma, bronchitis, and emphysema.³⁴ Carbon monoxide can reduce the oxygen-carrying capacity of the blood, and short-term exposure can cause angina in persons suffering from heart disease.³⁵ Particulate matter regulated under state and federal law includes dust-sized particles and fine particulates that are 2.5 microns or less in diameter. Exposure to these particulates is linked with increases in asthma attacks, and acute and chronic health effects.³⁶ Sulfur dioxide and oxides of nitrogen are products of fuel combustion. These pollutants can affect regional visibility and short-term exposure to these pollutants is associated with increased risk of acute and chronic respiratory diseases.³⁷

³² See, e. g., Application for Certification for the Cogentrix Quail Brush Generation Project, August 2011, at p. 4.7-8 ("worst-case" criteria pollutant emissions assumed when generators are operated at 100 percent load), excerpts attached as **Attachment 3**.

³³ U.S. Environmental Protection Agency, *Six Common Air Pollutants*, available at <http://www.epa.gov/air/urbanair/>.

³⁴ U.S. Environmental Protection Agency, *Health Effects of Ozone in the General Population*, available at <http://www.epa.gov/apti/ozonehealth/population.html>, attached as **Attachment 4**.

³⁵ U.S. Environmental Protection Agency, *Carbon Monoxide: Health*, available at <http://www.epa.gov/airquality/carbonmonoxide/health.html>, attached as **Attachment 5**.

³⁶ U.S. Environmental Protection Agency, *Particulate Matter: Health*, available at <http://www.epa.gov/pm/health.html>, attached as **Attachment 6**.

³⁷ U.S. Environmental Protection Agency, *Sulfur Dioxide: Health*, available at <http://www.epa.gov/airquality/sulfurdioxide/health.html>, attached as **Attachment 7**; U.S.

Given the wide array of pollutants with known, documented adverse effects on public health, increased emissions of these pollutants caused by increased operation of electricity generation plants burning fossil fuels is likely to cause significant adverse impacts to air quality and public health.

B. Increased Operation of Electricity Generating Plants Burning Fossil Fuel Causes Increased Emissions of Toxic Air Contaminants.

Electricity generating plants burning fossil fuel, such as natural gas facilities, emit numerous carcinogens and harmful air contaminants when they generate electricity.³⁸ These contaminants include ammonia, VOCs, diesel particulate matter, acrolein and polycyclic aromatic hydrocarbons.³⁹ Increased power production activities generally result in increased emissions of toxic air contaminants.⁴⁰ Increased emissions of toxic air contaminants may impact persons living and working in the vicinity of the fossil fuel plant, depending on the rate of emission of these contaminants, the extent to which nearby communities are already burdened by cancer risks from other emissions sources, and other factors.⁴¹

C. Increased Operation of Electricity Generating Plants Burning Fossil Fuel Causes Increased Emissions of Greenhouse Gases.

Increased operation of fossil fuel generation results in increased emissions of greenhouse gases. Incremental emissions of greenhouse gases contribute cumulatively to global climate change.⁴² However, communities impacted by

Environmental Protection Agency, *Nitrogen Dioxide: Health*, available at <http://www.epa.gov/oaqps001/nitrogenoxides/health.html>, attached as **Attachment 8**.

³⁸ See, e. g., Application for Certification for the Cogentrix Quail Brush Generation Project, August 2011, at pp. 4.8-5 -10 ("worst-case" criteria pollutant emissions assumed when generators are operated at 100 percent load), excerpts attached as **Attachment 8**.

³⁹ *Ibid.*

⁴⁰ See, e. g., Application for Certification for the Cogentrix Quail Brush Generation Project, August 2011, at p. 4.7-8 ("worst-case" criteria pollutant emissions assumed when generators are operated at 100 percent load) and *id.* at Appendix F-4 (assumes 100 percent operations to evaluate public health impacts from toxic air contaminants), excerpts attached as **Attachment 8**.

⁴¹ See *ibid.*

⁴² See, e. g., California Energy Commission, Final Staff Assessment for the Pio Pico Energy Center, May 2012, at p. 105, excerpts attached as **Attachment 9**.

greenhouse gas emitting facilities may also consider greenhouse gas emissions a local problem, due to environmental justice concerns.⁴³

D. The Construction and Operation of Renewable Energy Plants Also Results in Changes to the Physical Environment.

As discussed above, it is unlikely that joining MCE or SCP will cause the construction or increased operation of renewable energy plants. Increased reliance on renewable generation avoids greenhouse gas emissions and is beneficial for society in a number of other important respects. However, the construction and operation of renewable generation is not benign. Such plants, like all industrial development, result in adverse environmental impacts and may result in potentially significant impacts to the environment. We review some of these impacts below.

1. Constructing new renewable energy plants causes short-term emissions of criteria air pollutants.

Constructing a new power plant causes short-term air quality impacts from dust generated by earth disturbance and off-road vehicles. Construction activities also cause emissions of diesel particulates and ozone precursors from off-road vehicles, delivery trucks, and from workers commuting to and from the project site. For example, the City of Adelanto recently concluded that a 27 megawatt (MW) photovoltaic facility located in San Bernardino County would require mitigation measures to reduce construction emissions of particulate matter to a less than significant level.⁴⁴

2. Constructing new renewable energy plants may cause conversion of California farmland resources.

The development of new renewable plants often results in conversion of agricultural lands to industrial use. For example, an 18 MW photovoltaic facility proposed in the Central Valley would have converted 160 acres of Farmland of

⁴³ See Draft Environmental Impact Report for the Chevron Refinery Modernization Project, March 2014, at pp. 4.8-39-41, excerpts attached as **Attachment 10**.

⁴⁴ See City of Adelanto Initial Study Environmental Checklist for LDP 13-05 and CUP 13-04, at p. 7, excerpts attached as **Attachment 11**.

Statewide Importance to industrial use.⁴⁵ In western Fresno County alone, hundreds of acres of farmland have been removed from agricultural leases in order to construct new solar facilities.⁴⁶

3. Constructing and operating new renewable energy plants may impact biological resources.

Constructing and operating renewable energy plants impacts special status species. In the Central Valley, solar energy development has eliminated hundreds of acres of habitat for the endangered San Joaquin kit fox, the State-listed threatened Swainson's hawks, and other protected species.⁴⁷ Renewable development in the Mojave Desert has resulted in direct take and elimination of habitat for the endangered Desert tortoise and many other special status species.⁴⁸ Geothermal resource development in the Eastern Sierra impacts mule deer migration and may impact species that depend on thermal resources, such as the federally-listed endangered Owens tui chub.⁴⁹

4. Constructing new renewable energy plants may expose workers and nearby communities to serious health risks.

Constructing renewable plants can pose serious health risks to workers and nearby communities. *C. immitis* is a soil fungus, native to the San Joaquin Valley and other parts of California, which causes Coccidioidomycosis, commonly known as "Valley Fever."⁵⁰ Valley Fever is typically transmitted by inhaling airborne spores

⁴⁵ See County of Fresno, Initial Study and Environmental Checklist for the Gestamp Asetym Solar Project, at p. 18, excerpts attached as **Attachment 12**.

⁴⁶ See Kurtis Alexander, The Fresno Bee, *PG&E solar projects concern Fresno County leaders; PG&E undoes contracts to use ag lands for alt energy.*, attached as **Attachment 13**.

⁴⁷ See San Bernardino County Initial Study Environmental Checklist Form for the Marathon Solar Project, excerpts attached as **Attachment 14**; San Bernardino County Initial Study Environmental Checklist Form for the Agincourt Solar LLC Project, excerpts attached as **Attachment 14**; County of Fresno Evaluation of Environmental Impacts for the Gestamp Asetym Solar Project, excerpts attached as **Attachment 14**.

⁴⁸ See California Energy Commission, Final Staff Assessment-Part A for the Blyth Solar Power Project, Sept. 2013, excerpts attached as **Attachment 15**.

⁴⁹ See County of Mono, Mammoth Pacific I Replacement Project, Final Environmental Impact Report, September 2012, excerpts attached as **Attachment 16**.

⁵⁰ Duane R Hospenthal, MD, PhD et al., Coccidioidomycosis, Dec. 8, 2011, attached as **Attachment 17**.

of *C. immitis*, which grow in soil during the wet season. These particles can be disturbed in project site soils during earthmoving activities.

In most cases, the primary infection is in the lungs.⁵¹ In 35-40% of cases, infection leads to mild influenza 1 to 4 weeks after exposure, although some persons develop severe pneumonia.⁵² If left untreated, in 1% of cases Valley Fever can spread beyond the lungs and can be fatal.⁵³

Last year, the Los Angeles Times reported an outbreak of Valley Fever at two large solar-power construction sites in San Luis Obispo County where 28 workers developed the disease.⁵⁴ The Times reported that the threat of acquiring the respiratory illness extends to residents living near the power plant construction sites.⁵⁵

5. Operating new renewable energy plants may increase consumption of limited water resources.

Imperial County is a major producer of geothermal power.⁵⁶ The U.S. Department of Agriculture also recently designated Imperial County a natural disaster area due to drought.⁵⁷ The Imperial Irrigation District (IID) has put in place interim water supply management policies to allocate limited water supplies between competing uses.⁵⁸ IID estimates that up to 50,000 acre feet per year (AFY) of water could be requested by non-agricultural projects over the next two decades.⁵⁹

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ Julie Cart, Los Angeles Times, *28 solar workers sickened by valley fever in San Luis Obispo County*, May 1, 2013, attached as **Attachment 18**.

⁵⁵ *Ibid.*

⁵⁶ California Energy Commission, *Geothermal Energy in California*, available at <http://www.energy.ca.gov/geothermal/background.html>.

⁵⁷ USDA, *USDA Designates Imperial County in California as a Primary Natural Disaster Area With Assistance to Producers in Arizona*, http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=edn&newstype=ednewsrel&type=detail&item=ed_20140410_rel_0055.html.

⁵⁸ See Imperial Irrigation District, *IID Interim Water Supply Policy for Non-Agricultural Projects*, available at <http://www.iid.com/Modules/ShowDocument.aspx?documentid=5395>, attached as **Attachment 19**.

⁵⁹ *Ibid.*

According to IID, a 49.9 MW dual flash geothermal plant under development in Imperial Valley utilizes approximately 750 AFY of water.⁶⁰ However, several binary geothermal facilities that consume as much as 6,600 AFY of water to generate the same amount of electricity have been proposed in the County.⁶¹ One of these plants has already been constructed.⁶² Geothermal power production can be water intensive, taxing limited water resources and potentially diverting water away from ecological and competing industrial uses.

III. AN EIR IS REQUIRED TO EVALUATE THE ENVIRONMENTAL IMPACTS OF A CITY ACTION TO JOIN A COMMUNITY CHOICE AGGREGATION PROGRAM

CEQA's purpose and goals must be met by preparing an EIR, except in certain limited circumstances.⁶³ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency *must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment*.⁶⁴ The fair argument standard creates a "low threshold" favoring environmental review through an EIR.⁶⁵ An agency's decision *not* to require an EIR can be upheld only when there is no credible evidence to the contrary.⁶⁶

⁶⁰ See IID, Imperial Integrated Regional Water Management Plan, Appendix L, IID Power Plant Water Use Evaluation, p. 4, attached as **Attachment 20**.

⁶¹ See *id.* at p. 7.

⁶² See Ormat Technologies, Inc., *Ormat Technologies, Inc. Provides Operational Update on North Brawley Power Plant*, available at www.ormat.com and attached as **Attachment 21**.

⁶³ See Pub. Resources Code, § 21100.

⁶⁴ Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

⁶⁵ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁶⁶ *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ["If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact"].

CEQA defines “substantial evidence” as “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”⁶⁷ The California Natural Resources Agency regulations further define “substantial evidence” as:

Enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.⁶⁸

“If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”⁶⁹

Substantial evidence shows that the City’s action to join a CCA program may result in significant environmental impacts. As described above, joining MCE or SCP would cause increased operations of certain existing electricity generating plants burning fossil fuels. This increased burning of fossil fuels would cause potentially significant environmental impacts. Even a temporary increase in the operation of a fossil fuel generating plant can result in potentially significant impacts to air quality and public health.

The South Coast Air Quality Management District (SCAQMD) determined that any stationary source, such as a power plant, that emits fine particulate matter at a rate of 55 pounds per day (lbs/day) would cause a potentially significant air quality impact.⁷⁰ The hybrid solar thermal and combined cycle natural gas Victorville 2 Hybrid Power Plant is located in San Bernardino County, within SCAQMD jurisdiction. The Victorville 2 plant was designed to include two natural gas-fired combustion turbine-generators rated at 154 MW each.⁷¹ The Victorville 2 plant is much more efficient than the older natural gas plants serving California’s

⁶⁷ Pub. Resources Code, § 21080 subd. (e)(1).

⁶⁸ CEQA Guidelines, § 15384, subd. (a).

⁶⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

⁷⁰ See South Coast Air Quality Management District, Final Methodology to Calculate Particulate Matter (PM) 2.5 and PM 2.5 Significance Thresholds, at p. 8, *available at* http://www.aqmd.gov/ceqa/handbook/PM2_5/PM2_5.html and excerpts attached as **Attachment 22**.

⁷¹ California Energy Commission, Final Staff Assessment for the Victorville 2 Hybrid Power Project, March 2008, at p. 1-2, excerpts attached as **Attachment 23**.

load, so the following example likely underestimates the impacts that would be caused by a City action to join MCE or SCP.

The California Energy Commission staff concluded that when operated at its maximum potential hourly, daily and annual operations of 8,760 hours per year, the Victorville 2 plant would emit fine particulate matter at a rate of 117 tons per year and 864 lbs/day.⁷² Accordingly, just two hours of maximum operation in any one day would cause the plant to emit 72 lbs of fine particulate matter.⁷³ Under SCAQMD's significance thresholds, this rate of emissions would result in a potentially significant impact to air quality under CEQA.

The environmental impacts of the Victorville 2 plant's operations are representative of the plants that will be supplying the City's load after the City joins a CCA program. Existing fossil fuel burning plants,⁷⁴ and those fossil fuel burning plants that are planned,⁷⁵ in California are located in areas where people would be exposed to air pollutants and toxic air contaminants that are emitted from these plants. Many of these facilities are located within a couple of miles of residential neighborhoods.⁷⁶ All but one of these facilities are located in areas that are designated in non-attainment of federal and state air quality standards,⁷⁷ where

⁷² See *id.* at pp. 4.1-8, 4.1-9, Table 4, excerpts attached as **Attachment 23**.

⁷³ 864 lbs/day/ 24 = 36 lbs/hr.

⁷⁴ The 429 MW Russell City Energy Center, located in Hayward California, <http://www.calpine.com/power/plants.asp>; the 600 MW Metcalf Energy Center, located in South San Jose, <http://www.calpine.com/power/plant.asp?plant=183>; the 950 MW Encina Power Station, located in Carlsbad, California, <http://www.nrgenergy.com/about/assets.html>; the 510 MW Otay Mesa Generating Station, located in Eastern San Diego in the community of Otay Mesa, <http://www.calpine.com/power/plant.asp?plant=247>; 11529 MW Dynegy Moss Landing Power Plant, located in Monterey County, http://www.dynegy.com/downloads/Dynegy_Facilities.pdf; and the 95 MW Hanford Combined Cycle Power Plant, located in Hanford, Kings County.

⁷⁵ Victorville 2, located in the City of Victorville, <http://www.energy.ca.gov/sitingcases/victorville2/>; Avenal Energy Power Plant, located in the City of Avenal, <http://www.energy.ca.gov/sitingcases/avenal/>; the Watson Cogeneration Project, located in City of Carson, <http://www.energy.ca.gov/sitingcases/watson/>; Pio Pico Energy Center, located in Otay Mesa, California, <http://www.energy.ca.gov/sitingcases/piopico/>.

⁷⁶ For example, the Metcalf Energy Center is located within one mile of a residential neighborhood. See <https://www.google.com/maps/place/Metcalf+Energy+Center/@37.219871,-121.744587,17z/data=!3m1!4b1!4m2!3m1!1s0x808e2f6866720c67:0x8bc587f3f011e26f>.

The Russell City Energy Center is located in Hayward within two miles of the Mount Eden neighborhood.

⁷⁷ Russell City and Metcalf Energy Center are located within Bay Area Air Quality Management District (BAAQMD) jurisdiction. See <http://www.baaqmd.gov/The-Air-District/Jurisdiction.aspx>. The Bay Area is designated in nonattainment of state and federal ozone and fine particulate matter

a relatively minor increase in emissions results in a potentially significant impact to air quality.⁷⁸

Substantial evidence supports a fair argument that joining MCE or SCP may have a significant effect on the environment. The City's action to join MCE or SCP would cause existing plants burning fossil fuel to increase their operation. Even a temporary increase in the operation of such a plant could result in a significant impact. The Victorville 2 plant, which is more efficient than many natural gas plants serving California's load, would result in significant air quality impacts if operated at maximum capacity for just two hours in one day. This evidence is just one example of a potentially significant environmental impact that City approval of joining MCE, SCP, or another CCA program, could cause. The City is required to prepare an EIR before approving such action.

The EIR should identify the City's goals in joining a CCA program, state how the proposed action may achieve these goals and analyze the environmental impacts that may result from the proposed action.⁷⁹ The EIR is also required to analyze a reasonable range of alternatives to the proposed action, including a no action

standards. See http://hank.baaqmd.gov/pln/air_quality/ambient_air_quality.htm. The Encina Power Station, the Otay Mesa Generating Station and the Pio Pico Power Plant Project are located within the jurisdiction of the San Diego Air Pollution Control District (SDAPCD). The San Diego Air Basin is designated in nonattainment of federal and state ozone standards and state standards for particulate matter. See <http://www.epa.gov/oaqps001/greenbk/ancl.html>; <http://www.arb.ca.gov/pm/pmmeasures/pmch05/sd05.pdf>. The Hanford facility and the Avenal Power Plant Project are located in Kings County, within the jurisdiction of the San Joaquin Valley Air Pollution Control District. See Health & Saf. Code § 40600. Kings County is designated in nonattainment of federal and state ozone and particulate matter standards. See <http://www.epa.gov/oaqps001/greenbk/ancl.html>; <http://www.arb.ca.gov/regact/2013/area13/area13fro.pdf>. The Watson Cogeneration Project and the Victorville 2 Project are located within Los Angeles County and San Bernardino County, respectively, within the jurisdiction of SCAQMD. See <http://www.aqmd.gov/>. Los Angeles County is designated in nonattainment of federal standards for ozone and particulate matter. See <http://www.epa.gov/oaqps001/greenbk/ancl.html>. San Bernardino County is designated in nonattainment and unclassified for state standards for fine particulate matter and in nonattainment of federal standards for ozone. See <http://www.arb.ca.gov/regact/2013/area13/area13fro.pdf>; <http://www.epa.gov/oaqps001/greenbk/ancl.html>.

⁷⁸ See SCAQMD CEQA Air Quality Handbook (1993), at pp. 6-1-6-4 (discussing the relevance of nonattainment status to a significance finding for the purpose of CEQA and setting varying quantitative emissions thresholds for areas with different attainment designations), attached as **Attachment 24**.

⁷⁹ See CEQA Guidelines, §§ 15122-15126.4.

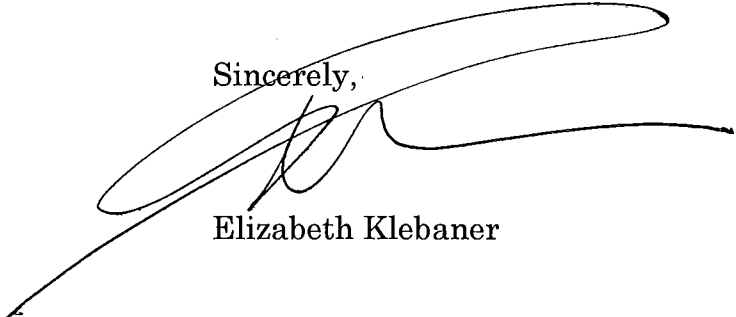
alternative, and to identify the environmentally preferred alternative.⁸⁰ Only in this way can the City document and consider the environmental consequences of its action, as required under state law.

IV. CONCLUSION

Before the City takes any action to join a CCA program, it must comply with CEQA. Joining a CCA program may result in potentially significant impacts on the physical environment, including significant impacts to air quality and public health. An analysis of the available CCA programs – namely, MCE and SCP – shows that joining either program may result in significant impacts to air quality and public health from increased operation of existing fossil fuel generation. Accordingly, CEQA requires the City to prepare an EIR prior to approving El Cerrito's membership in either program.

Thank you for your attention to this matter.

Sincerely,



Elizabeth Klebaner

EK:clv
Attach.

⁸⁰ See CEQA Guidelines, § 15126.6.