City of Piedmont
COUNCIL AGENDA REPORT

DATE: December 2, 2024

TO: Mayor and Councilmembers

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Consideration of First Amendment to the Electricity Services Agreement Between East Bay Community Energy (EBCE) and the City of Piedmont for the Piedmont Community Pool Project

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RECOMMENDATION

1. Approve First Amendment to the Electricity Services Agreement Between Ava Community Energy Authority (formerly known as East Bay Community Energy or EBCE) and the City of Piedmont to notice the updated contact information for Ava and to adjust the term of repayment.

DISCUSSION

The Piedmont Community Pool is designed as an all-electric facility and is currently under construction. Ava Community Energy Authority (Ava), a California Joint Powers Insurance Authority, has partnered with the City of Piedmont to support and demonstrate the benefits associated with electrification of a municipal pool facility. The City of Piedmont and Ava entered an Electricity Service Agreement on November 2, 2023. This agreement finances the principal sum of $750,000 at 0% interest over a term of 15 years with payments scheduled to commence on January 1, 2025.

The proposed amendment will revise the first payment to Ava to the earlier of six months after the issuance of the certificate of occupancy or January 1, 2026.

FISCAL IMPACT

The City's payment of a flat fixed monthly fee of $4,167 per month will begin after the construction project is complete and the facility is in operation.

CITY ATTORNEY REVIEW

The City Attorney has reviewed the staff report and amendment.

ATTACHMENTS

A: First Amendment to the Electricity Service Agreement by and between Ava Community Energy Authority and the City of Piedmont

B. Electricity Service Agreement by and between East Bay Community Energy Authority and the City of Piedmont

First Amendment to Electricity Service Agreement by and Between Ava Community Energy Authority and the City of Piedmont

This First Amendment to the Electricity Service Agreement with the City of Piedmont, a municipal corporation ("First Amendment") is made as of the date of last signature below, by and between the Ava Community Energy Authority, a Joint Powers Agency formed under the laws of the State of California ("Ava") and the City of Piedmont ("Customer"), for the purposes of adjusting the repayment term.

Recitals

A. Ava and Customer entered into that certain Electricity Service Agreement on November 2, 2023 ("Agreement"), wherein Ava agreed to provide upfront financial support for the Customer's completion of a beneficial electrification project at the community pool facility located at 777 Magnolia Ave, Piedmont, CA 94611, with a fixed, flat monthly fee for repayment of the financing of the project.

B. Ava and Customer now desire to amend the Agreement to update the notice contact information for Ava and to adjust the term of repayment.

C. On October 24, 2023, East Bay Community Energy Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

Now therefore, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. All references to East Bay Community Energy ("EBCE") in the Agreement are hereby amended to Ava Community Energy ("Ava").

2. Section 17 of the Agreement ("Notices") is amended in part to update Ava's contact information to:

   Ava Community Energy
   Attn: Legal
   1999 Harrison Street, Suite 2300
   Oakland, CA 94612

3. Exhibit B ("Addendum – Term of Contract and Rates Charged") of the Agreement is replaced in its entirety by Exhibit B, attached hereto.

4. All other terms and conditions in the Agreement not otherwise modified by this First Amendment will remain in full force and effect.

In witness whereof, the Parties have entered this Amendment on the date written above.

Ava Community Energy Authority,
A Joint Powers Authority

_____

Howard Chang
Chief Executive Officer

Date: _____

Approved as to form:

_____

Ava Legal Director

City of Piedmont
A Municipal Corporation

_____

Name:
Title:

Date: _____

Attest:

Anna Brown, City Clerk

Approved as to form:

Michelle Marchetta Kenyon City Attorney
Deepa Sharma, Assistant City Attorney

Exhibit B

Addendum – Term of Contract and Rates Charged

This Addendum ("Addendum") supplements the Electricity Service Agreement referred to above (the "Agreement"). Capitalized terms not otherwise defined in this Addendum shall have their meanings set forth elsewhere in the Agreement, including its Appendices. The terms of this Addendum may be amended upon execution of a new addendum, substantially in the form of this Exhibit B, reflecting such adjusted terms.

Financed Amount:	$750,000
Interest Rate:	0%
Distribution of Funds:	January 1, 2024
Term of Repayment:	180 months beginning on the earlier of (1) the first day of the full calendar month six (6) months following the issuance of the Certificate of Occupancy related to the Project or (2) by January 31, 2026. Customer shall promptly notify Ava in writing upon receipt of the Certificate of Occupancy for the purposes of confirming the exact day repayment will begin.
Location and Delivery Point of Project:	777 Magnolia Ave, Piedmont, CA 94611
Service Address Bill for Repayment Fee	777 Magnolia Ave, Piedmont, CA 94611
Fixed Monthly Fee:	Flat, fixed monthly fee of $4,167.00 based on billing cycle
Prepayment Options:	The Customer has the option to prepay part or all of the financing amount at any time. If a partial prepayment is made the Fixed Monthly Fee will be adjusted to reflect the remaining balance divided by the remaining months in the term.
Service Termination Payment:	100% of the amount remaining payable on this Agreement as of the date of such termination.

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ELECTRICITY SERVICE AGREEMENT
BY AND BETWEEN
EAST BAY COMMUNITY ENERGY AUTHORITY
AND
CITY OF PIEDMONT

PREAMBLE

This Electricity Service Agreement ("Agreement") is by and between City of Piedmont, a municipal corporation, with its principal place of business located at 120 Vista Ave, Piedmont, CA 94611 ("Customer"), and East Bay Community Energy Authority, a California joint powers authority, with its primary business address at 1999 Harrison Street, Suite 800, Oakland, California 94607 ("EBCE"). EBCE and Customer may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

A. EBCE is authorized to offer financing and nonstandard energy service billing to municipal customers for beneficial electrification projects on municipal buildings;

B. Customer has forty-seven energy service accounts with EBCE on one or more standard business rates;

C. Customer is currently constructing a beneficial electrification project at the community pool facility located at ____777 Magnolia Ave., Piedmont, CA 94611_____ (the "Project") and therefore is eligible for and wishes to receive a fixed, flat monthly fee in addition to their standard electricity rate to repay financing for the Project;

D. EBCE desires to support the Project; and

E. EBCE is willing to provide up front financial support for Customer's completion of the Project in connection with a fixed, flat monthly fee for repayment of the financing of the Project, subject to Customer complying with the terms of this Agreement.

AGREEMENT

1. INCORPORATION OF PREAMBLE, RECITALS AND EXHIBITS

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

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2. DEFINITIONS

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

3. TERM OF AGREEMENT

This Agreement is effective immediately and remains in effect through December 31, 2039 unless Customer prepays or the Agreement is earlier terminated according to its terms (the "Term").

4. SCOPE OF AGREEMENT

This Agreement governs the addition of a fixed, flat monthly fee, at one Delivery Point associated with 777 Magnolia Ave, Piedmont, CA 94611, as set forth in Exhibit B, which constitutes repayment of financing extended for the Project and is in addition to the electricity rate otherwise applicable to all Accounts. Except as otherwise expressly provided in this Agreement and its Exhibits, EBCE shall continue to provide electricity service to all Accounts in accordance with EBCE's Standard EBCE Rate Schedule incorporated by this reference herein as though set forth in full.

5. SPECIAL FEE STRUCTURE

The special fee is defined in Exhibit A and set forth in Exhibit B.

6. NO BYPASS OR SUBSTITUTION

Customer shall, with respect to all Accounts, take all electricity service requirements from EBCE. Except during emergency or outage situations, or for reasonable and necessary periodic testing of emergency generating equipment, Customer agrees not to purchase or have any portion of its electricity requirement in City of Piedmont procured by any person, firm or entity other than EBCE during the Term of this Agreement. In the event that Customer elects to consider locating self-generation or storage projects on its premises, Customer agrees to work with EBCE to identify partnering opportunities for such projects. Customer shall not re-sell the electricity sold to it by EBCE to any other entity, except that Customer may provide electricity to a sublessee so long as Customer does not markup such electricity so as to charge a profit and so long as such provision is in compliance with all applicable laws.

7. TERMINATION OF OPERATIONS

In the event that Customer, during the term of this Agreement, elects to terminate the Agreement altogether, Customer understands and agrees that EBCE will suffer damages resulting from terminating prior to repayment of financed amount. Customer agrees that the damages to be faced by EBCE in the event of such termination will be difficult or inconvenient to determine, and that the Service Termination Payment in Exhibit B is a fair and reasonable approximation of such damages, is in the nature of liquidated damages and is not in the nature of a penalty.

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8. RIGHT OF ACCESS

In addition to and consistent with the rights of access allowed to EBCE pursuant to any applicable laws, regulations, or rules, and subject to EBCE signing a reasonable non-disclosure agreement, Customer hereby grants to EBCE, and its employees, agents and authorized representatives, reasonable accompanied access to energy-related infrastructure supporting the operations of the municipal pool/facility..

9. CREDIT

Upon any request from time to time by EBCE, Customer shall promptly provide to EBCE such financial statements and other information as EBCE may reasonably require to adequately assess Customer's creditworthiness.

10. UNCONTROLLABLE FORCE

Neither Party shall be considered to be in Default in performance of any of its obligations under this Agreement when a failure of performance is due to an Uncontrollable Force. Uncontrollable Force may include, to the extent consistent with the foregoing, Act of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic (including, without limitation, novel coronavirus and/or COVID-19), public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to take reasonable efforts to remove or remedy within a reasonable time, or due to mere fluctuations in market prices. Uncontrollable Force shall not relieve Customer from any payment obligations associated with the Minimum Electricity Volume Threshold provided in Exhibit B, or from EBCE's remedies in connection therewith, except to the extent expressly provided in Exhibit B. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

11. LIMITATION OF LIABILITY

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST

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PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

12. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

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

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

14. AMENDMENTS

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

15. INTEGRATED DOCUMENT/TOTALITY OF AGREEMENT

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

16. NO THIRD-PARTY BENEFICIARY

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

17. NOTICES

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

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

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And to Customer addressed as follows:

City of Piedmont
Attn: City Administrator
120 Vista Ave.
Piedmont, CA 94611

18. CAPTIONS

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

19. STATUTES AND LAW GOVERNING AGREEMENT; VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the state of California without regard to principles of conflicts of law. Any judicial proceedings arising under or in relation to this Agreement shall be brought in the Superior Court for the County of Alameda. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. This Section 22 shall survive the expiration or termination of this Agreement for any reason.

20. NON-WAIVER

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

21. RIGHTS AND REMEDIES

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

22. ALTERNATIVE DISPUTE RESOLUTION

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

A. Any controversies between Customer and EBCE regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

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B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Superior Court of Alameda County appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation, which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23. OTHER AGREEMENTS

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

24. CONSTRUCTION OF THIS AGREEMENT

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

25. NO PARTNERSHIP

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

26. ENFORCEABILITY

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

27. BANKRUPTCY CODE AKNOWLEDGEMENTS

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

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further agree that all electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code.

28. MOBILE SIERRA

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

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

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

[Signature page to follow]

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EAST BAY COMMUNITY ENERGY AUTHORITY ("EBCE")

DocuSigned by:

9DE6BA3222CE44E...

Signature

11/2/2023

Date

Nick Chaset

Name

CEO

Title

Approved as to Form

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"CUSTOMER"

City of Piedmont

Company Name

120 Vista Avenue, Piedmont, CA 94611

Company Address

Rosanna Bayon Moore

Authorized Signatory

10.05.23

Date

Rosanna Bayon Moore

Name of Authorized Signatory

City Administrator

Title

Rosanna Bayon Moore

Contact Name

rbayonmoore@piedmont.ca.gov

Contact Email Address

510-420-3040

Contact Telephone Number

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ELECTRIC SERVICE AND FEE AGREEMENT
BY AND BETWEEN
EAST BAY COMMUNITY ENERGY AUTHORITY
AND
CITY OF PIEDMONT

EXHIBIT A

DEFINITIONS

Accounts means all currently existing or subsequently established Customer electric service accounts, including all facilities and equipment that consume electricity in Alameda County, California, whether owned or leased by Customer. Accounts that are terminated by Customer for non-use are excluded from this definition.

Affiliate means any entity that is directly or indirectly owned or controlled by Customer or its ultimate corporate parent company.

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

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

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

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

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

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Price shall have the meaning set forth in Exhibit B.

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

Term has the meaning set forth in Exhibit B.

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

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ELECTRIC SERVICE AGREEMENT
BY AND BETWEEN
EAST BAY COMMUNITY ENERGY AUTHORITY
AND
CITY OF PIEDMONT

EXHIBIT B

ADDENDUM - TERM OF CONTRACT AND RATES CHARGED

This Addendum ("Addendum") supplements the Electricity Service Agreement referred to above (the "Agreement"). Capitalized terms not otherwise defined in this Addendum shall have their meanings set forth elsewhere in the Agreement, including its Appendices. The terms of this Addendum may be amended upon execution of a new addendum, substantially in the form of this Exhibit B, reflecting such adjusted terms.

Financed Amount:	$750,000
Interest Rate:	0%
Distribution of Funds:	January 1, 2024
Term of Repayment:	January 2025 through December 2039 (180 months)
Location and Delivery Point of Project:	777 Magnolia Ave, Piedmont, CA 94611
Service Address Bill for Repayment Fee	777 Magnolia Ave, Piedmont, CA 94611
Fixed Monthly Fee:	Flat, fixed monthly fee of $4,167.00 based on billing cycle
Prepayment Options:	The Customer has the option to prepay part or all of the financing amount at any time. If a partial prepayment is made the Fixed Monthly Fee will be adjusted to reflect the remaining balance divided by the remaining months in the term.
Service Termination Payment:	100% of the amount remaining payable on this Agreement as of the date of such termination

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EAST BAY COMMUNITY ENERGY AUTHORITY ("EBCE")

Signature DocuSigned by: 9DF6BA3222CE44F... 11/22/2023

Date

Name Nick Chaset

Approved as to Form

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CITY OF
PIEDMONT:

By: _____
City Administrator

Attest:

_____
Sheri Hartz, Interim City Clerk

APPROVED AS TO FORM:

_____
Michelle Marchetta Kenyon, City Attorney
Deepa Sharma, Assistant City Attorney

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"CUSTOMER"

City of Piedmont

Company Name

120 Vista Avenue, Piedmont, CA 94610

Company Address

Rosanna Bayon Moore 10.05.23

Authorized Signatory Date

Rosanna Bayon Moore

Name of Authorized Signatory Title

Rosanna Bayon Moore

Contact Name

rbayonmoore@piedmont.ca.gov

Contact Email Address

510-420-3040

Contact Telephone Number