City of Emeryville
CALIFORNIA

MEMORANDUM

DATE: November 1, 2016

TO: Mayor and City Council

FROM: Michael A. Guina, City Attorney
Nancy Humphrey, Environmental Programs Supervisor

SUBJECT: **Ordinance Of The City Council Of The City Of Emeryville Authorizing The Implementation Of A Community Choice Aggregation Program Pursuant To California Public Utilities Code Section 366.2**

Resolution of the City Council of the City of Emeryville Accepting the Technical Study for a Community Choice Aggregation (CCA) Program in Alameda County; and Approving the East Bay Community Energy Authority Joint Powers Agreement and Authorizing the City Manager to Execute Said Agreement

RECOMMENDATION

Staff recommends the City Council adopt the attached ordinance authorizing the implementation of a Community Choice Aggregation program pursuant to California Public Utilities Code Section 366.2.

Staff further recommends the City Council adopt the attached resolution:

1. Accepting the Technical Study for a Community Choice Aggregation (CCA) Program in Alameda County; and
2. Approving the East Bay Community Energy Authority Joint Powers Authority Agreement and Authorizing the City Manager to Execute Said Agreement.

BACKGROUND

Authorized by California law in 2002, Community Choice Aggregation, also known as Community Choice Energy (CCE) enables cities and county governments to pool the electricity demand within their jurisdictions in order to procure or generate electrical power supplies on behalf of the residents and businesses in their communities. Primary reasons for pursuing a CCE program include: 1) the ability to achieve Climate Action Plan goals through significant reductions in greenhouse gas emissions, 2) offering customers an energy choice and competitive electrical rates, and 3) local economic development benefits including jobs creation associated with the development of local power and new energy programs in the region.

CCE operates as a partnership with Pacific Gas & Electric Co. (PG&E) wherein the CCE procures and/or generates electricity on behalf of its customers while PG&E continues to deliver power to homes and businesses, handles customer billing, and maintains the grid.

There are currently 5 operational CCEs in California including Marin Clean Energy, Sonoma Clean Power, CleanPowerSF (San Francisco), Lancaster Choice Energy and Peninsula Clean Energy, with several more throughout the state that are currently under development.

DISCUSSION

In June 2014, the Alameda County Board of Supervisors' Transportation and Planning (T&P) Committee directed Community Development Agency (CDA) staff to explore the concept of Community Choice Aggregation (CCA). Phase I examined the feasibility of a CCA program through preparation of a Technical/Feasibility Analysis, and bringing the concept to the public through general outreach and the formation of a CCA Steering/Advisory Committee. That portion of the process has now been concluded.

1. Findings of the Technical/Feasibility Analysis:

Oakland consulting firm, MRW & Associates prepared an analysis entitled "Technical Study for Community Choice Aggregation Program in Alameda County" ("Technical Study," "Report") that described in detail the potential for successful CCA program in Alameda County. Using electrical load data for the most recent two-year period, along with best professional predictions of future market conditions and energy prices, the Analysis projected estimated energy costs to both the CCA Agency and the customer base for a 13-year period 2017 – 2030. The Report:

- Quantifies the electric loads that an Alameda County CCA could serve, including residential and commercial customers in the unincorporated county and all cities except the City of Alameda which has its own utility;
- Estimates the costs to start-up and operate the CCA;
- Considers scenarios with differing assumptions concerning the amount of carbon-free power being supplied to the CCA so as to assess the costs and greenhouse gas (GHG) emissions reductions possible with the CCA;
- Includes varying levels of renewable power and an analysis of in-county renewable generation potential;
- Compares the electric rates that could be offered by the CCA to PG&E's rates;
- Quantitatively explores the rate competitiveness to key input variables, such as the cost of natural gas;

- Explores what programs a CCA might offer with respect to administering customer-side
  energy efficiency programs;
- Calculates the macroeconomic impact and potential employment benefits of CCA formation in the County.

The analysis covered four (4) possible operational scenarios, including:

a. Scenario 1 – Simple Compliance with State of California 33% Renewable Portfolio Standard (RPS) by 2020 and 50% by 2030;
b. Scenario 2 – Accelerated Renewable Investment - 50% Renewable portfolio from the first year onward, plus additional amounts of emissions-free, large hydro power (not considered renewable under California guidelines) to reduce GHG emissions below projected PG&E's GHG estimates;
c. Scenario 3 – Aggressive Renewable Growth - The Renewable portfolio set at 50% in the first year and increased to 80% by the fifth year; large hydro could also make up a portion of the non-renewable component;
d. Scenario 4 – Very Aggressive Local Renewable Investment – Similar to Scenario 2, but with an increased emphasis on in-county renewable development: Assumes that one-half of the CCA's total renewable energy goals would be met by in-county resources by the year 2030.

The Report concludes:

- Feasibility for a CCA in Alameda County is favorable; current and expected market and regulatory conditions suggest that an Alameda County CCA should be able to offer residents and businesses electric rates that are a cent or more per kilowatt-hour (6 – 7 percent) less than that available from PG&E under most scenarios. The sensitivity analyses suggest that these results are relatively robust; only when very high amounts of renewable energy are assumed in the CCA portfolio (such as Scenario 3), combined with other negative factors, do PG&E's rates become consistently more favorable than the CCA's rates.

- An Alameda County CCA could help facilitate the in-County development of greater amounts of renewable generation. The study assumed a relatively conservative amount of local renewable generation for its analysis—about 175 Megawatts (MW) over 10 years– but other studies suggest that the potential is higher. Because the CCA would have a greater interest in developing local solar than PG&E, it is more likely that such development would occur more quickly with a CCA in the County than without it.

- The CCA can also reduce greenhouse gases emitted by the County, but only under certain circumstances. Because PG&E's supply portfolio has significant carbon-free generation (large hydroelectric and nuclear generation), the CCA must contract for significant amounts of carbon-free power (such as large hydroelectric) beyond the required qualifying renewables in order to actually reduce the County's electric carbon footprint. If carbon reductions are a priority for the CCA, a concerted effort to contract with hydroelectric or other carbon-free generators will be needed. If this were to be done with only State-Compliant Renewable Energy, this would correspond to an implementation plan that lies roughly between Scenario 2 and Scenario 3.

- A CCA can also offer positive economic development and employment benefits to the County. Each Scenario analyzed was found to create hundreds of jobs at the local and/or regional levels, with the proportion of local jobs depending on the degree of direct local renewable energy investment, and the total regional jobs dependent mostly on indirect multiplier effects resulting from reduced electric rates and more money available to individual consumers and businesses. In each case, the larger benefit to area jobs shown by the Report comes not from direct investment in local energy, but from reduced electric rates; residents, and more importantly businesses, can spend and reinvest their bill savings, and thus generate greater economic impacts in the local economy.

  The scenario that offers the greatest *electric rate reduction*, and thus the greatest ability to generate indirect total jobs based on economic multiplier effects, is Scenario 1. It invests the least in renewables overall, and keeps those revenues in the hands of the ratepayers. Scenario 2 is close, but with more renewable investment statewide. Scenarios 3 and 4, by contrast, invest more heavily in renewables, but Scenario 3 invests statewide, while Scenario 4 invests locally; the result is result is that Scenario 3 generates the fewest jobs locally (although it maximizes renewable energy and GHG reduction), but Scenario 4 generates the most local jobs by a significant margin. Scenarios 3 and 4, however, *minimize jobs out of the County* and regionally through economic multiplier effects because customer savings are not emphasized in these scenarios.

  The local job creation for each scenario is described in the table below.

Table: Average Annual Jobs created in Alameda County by the CCA – Direct and Total Impacts, 2017 - 2030 (Does not include out-of-County job generation) (Adapted from Technical Study Addendum)

CCA Scenario	Local Capture on RE investments (billion$)	Bill Savings (billion$)	Average Annual DIRECT Jobs	Average Annual TOTAL Jobs
1	$0.42	$1.57	165	1322
2	$0.42	$1.51	166	1286
3	$0.45	$0.52	174	731
4	$1.84	$0.52	579	1617

- The consultant did identify a number of risks to consider, from unfavorable regulatory changes to financial and market risk. The CCA model has successfully operated in various jurisdictions for more than six years, and several new programs have recently launched. Many of the early-phase risks, generally associated with uncertainties of how CCAs would operate in California, (e.g., concerns about financial risk to member jurisdictions) have proven to be mitigable through the work and experience of the existing CCAs. Given the years of operational experience of municipal utilities, CCAs and other load-serving entities, there is no shortage of expertise to help mitigate procurement and market risks. Finally, MRW did conduct multiple sensitivity analyses of the key assumptions that went into the conclusions about the CCA's price competitiveness. MRW modeled, for example, what would happen to CCA electricity rates if renewable energy prices and utility exit fees suddenly rose and if PG&E prices declined. In 17 of the 18 cases examined (excluding the "stress scenario"), the CCA program was able to maintain lower rates than PG&E. (Even in the one case where it was negative—low PG&E rates plus high renewable content, the CCA rate was less than $0.001/kWh more than PG&E.) The model indicated it would take a very unlikely combination of variables (the "stress scenario") for CCA rates to consistently rise higher than PG&E.

- Steering Committee members asked if there is a lower limit to CCA financial viability in terms of customer load. The Technical Study performed an analysis to determine this lower load threshold. The analysis assumed the same fixed costs, including start-up costs, as for the full-participation CCA. It also assumed the same basic criteria: (a) Pay off complete start-up costs over 5 years; (b) 120 days of cash on hand (part of start-up); (c) reserve fund set at 15% of the CCA's annual revenue; and (d) must meet PG&E's rates. The analysis demonstrated that the overall total load of all the possible participants is about 7,000,000 MWh per year (with assumed 85% participation rate per City), and then calculated 450,000 MWh per year as the approximate minimum load for which CCA rates would be no higher than PG&E rates. This estimate is dependent on makeup of the customer profile (residential, commercial, etc.) and some other reasonable assumptions made by the analysts, but could be expected if all other variables are held equal. 450,000 MWh per year is approximately 6.5% of the total possible County load. Under this analysis, this equates to the load of about one medium sized City (such as San Leandro or Pleasanton). The County could theoretically operate a CCA on its own, although the addition of at least one City would provide a solid level of financial comfort. If the CCA were to begin below the minimum size, it would have to either not fully fund the reserve fund, or charge higher rates than PG&E.

- In conclusion, a CCA in Alameda County could successfully start-up at about 6.5 – 7% of the total load, and be comfortably viable with JPA signatories representing about 10-15% of all customer load, or about 1,000,000 MWh per year.

In 2016, the draft and final Report was presented and considered on multiple occasions by the CCA Steering Committee that was formed in 2015 to advise and participate in the County's initiative. The Committee members and members of the public submitted, both in person and in writing, comments and questions to which the consultant responded, both in the body of the Report and in a memorandum prepared to supplement the final document. At its meeting on July 6, 2016, the Steering Committee determined by consensus to accept the Technical Study and to recommend its advancement to the County Board of Supervisors.

The Technical Study, an Addendum to the Technical Study, and Appendices are attached to this letter, along with the Memorandum prepared by MRW & Associates containing direct responses to a number of comment letters received on the Technical Study.

2. Agreement to Participate in a Joint Powers Authority / Agency (JPA):

The attached resolution also authorizes the City Manager to enter into a Joint Powers Agreement with Alameda County and participating Alameda County cities to form the East Bay Community Energy Joint Powers Authority (Exhibit A to the proposed Resolution).

The JPA Agreement would great a new legal entity, the East Bay Community Choice Energy Authority (the "Authority") to implement the CCA program. The Authority's powers would include: entering into contracts to procure, operate, and manage energy programs; employing agents and employees inducing an Executive Director; acquiring and managing buildings, works or improvements; incurring debts and liabilities; issuing bonds; applying for and accepting grants, permits, loans or other assistance or permits or licenses from other regulatory agencies; and entering into any other agreements necessary to plan, implement, operate, or administer a CCA program.

The JPA Agreement is a separate legal entity governed by a Board of Directors and subject to the Brown Act, Political Reform Act and Government Code 1090.

- <u>Board of Directors</u>

The Authority shall be governed by a Board of Directors. Each participating agency would appoint one regular member and one alternate to the Board. The regular member would be a member of the governing body of the agency: i.e., the regular member would be a member of the City Council. The alternate could be a member of Council or of staff.

The Board of Directors' authority will include but not be limited to: issuing bonds or other financing; hiring an Executive Director and General Counsel; appointing and removing officers; adopting an annual budget; initiating claims and litigation, including intervening in claims before the California Public Utilizes Commission or other administrative agencies; adopting rules and regulations; setting rates for power sold by the Authority;

terminating the CCA Program. The Board Officers shall include a Chair and Vice Chair, who shall each serve for a two-year term.

The Board may establish an Executive Committee of its members and may delegate some of its authority to the Executive Committee pursuant to rules and regulations established by the Board. Certain Essential Functions, such as the issuance of bonds or other financing, the hiring or removal of officers, adoption of the annual budget, or initiation of litigation, may not be delegated to the Executive Committee. The Board may also establish advisory commissions or committees to assist in carrying out the Board's functions and duties.

- <u>Community Advisory Committee</u>

The JPA Agreement specifically provides for the creation of a Community Advisory Committee consisting of nine members comprised of community members appointed by the Board for a staggered four-year term, and none of the Board members could serve on the Community Advisory Committee. The purpose of the Community Advisory Committee is to advise the Board of Directors on subjects related to the operation of the CCA Program with the exception of personnel and litigation matters.

The JPA Agreement provides that the Chair of the Community Advisory Committee shall serve as the Ex Officio Board Member, with the Vice Chair of the Community Advisory Committee serving as the alternate Ex Officio Board Member.

- <u>Voting – Percentage Vote and Voting Shares Vote</u>

    - ❖ Percentage Vote

Board votes are comprised of two types of voting: a Percentage Vote and a Voting Shares Vote. A Percentage Vote involves a vote of a majority of all Directors on the entire Board. A supermajority may be required, either by the JPA Agreement (e.g., to amend the JPA Agreement) or by the rules and regulations established by the Board. In the event of a tie, the Board can break the tie and act upon an affirmative Voting Shares vote.

    - ❖ Voting Shares Vote

A Voting Shares Vote is based on voting shares held by each agency represented on the Board. The JPA Agreement provides that in addition to and immediately after an affirmative Percentage Vote, three or more Directors may request a Voting Shares Vote be held. In that event an affirmative vote must exceed 50% of the voting shares cast, unless a higher percentage is established by the rules and regulations established by the Board. When a Voting Shares Vote is held, action by the Board requires both an affirmative Percentage Vote as well as an affirmative Voting Shares Vote. In the event that any one Director has 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.

The voting share of each agency is determined by the following formula:

(Annual Energy Use/Total Annual Energy) multiplied by 100, where:

a. *"Annual Energy Use" means:*
    i. *In the first two years after the Effective Date, the annual electricity usage within the agency's jurisdiction; and*
    ii. *After the first two years of the Effective date, the annual electricity usage of accounts served by the Authority within the agency's jurisdiction*

b. *"Total Annual Energy" means the sum of all parties' Annual Energy Use*

Thus the greater the amount of Annual Energy used by an agency, the higher the voting shares of that jurisdiction. The Technical Study shows that in 2014, Emeryville's bundled load (which includes residential, commercial, industrial, and public uses) was approximately 203,591 Megawatt hours. Of the 14 agencies in the Technical Study, Emeryville's bundled load was the third lowest, above Piedmont and Albany[1], although Emeryville load is disproportionally higher than its geographic size and disproportionally higher on the Commercial load.

The initial Voting Shares will be designated in the JPA Agreement based on the Technical Study. Thereafter the Voting Shares will be adjusted annually subject to approval of the Board. Note this two-tier voting structure is similar to other Joint Powers Authorities operating a CCA program in the state.

- <u>Business Plan (Section 5.4)</u>

The JPA Agreement requires the Authority to prepare a Business Plan for the development and procurement of renewable energy sources for the first five years of the Authority's operation. Of note, the current draft calls for the Business Plan to include a description of how the CCA Program will contribute to "fostering local economic benefits, such as job creation." The Business Plan shall include language detailing employment and labor standards. The Business Plan shall be completed by the Authority no later than eight (8) months after the seating of the Authority Board of Directors. Progress on the implementation of the Business Plan shall be subject to annual public review".

[1] Technical Study Figure 2 (p. 25) and Appendix A, "Loads and Forecast"

- Two Clauses Relating to Labor Issues

    - ❖ "The Authority shall remain neutral in the event its employees, and the employees of its subcontractors, if any, wish to unionize." (*Section 5.5*)
    - ❖ "The Authority shall recognize the value of workers in existing jobs that support the energy infrastructure of Alameda County and Northern California. The Authority, as a leader in the shift to a clean energy, commits to ensuring it will take steps to minimize any adverse impacts to these workers to ensure a "just transition" to the new clean energy economy." (*Recital Section 6.g*)

- Withdrawal and Termination

    - ❖ General Right to Withdraw

A participating agency may withdraw from the Authority upon an affirmative vote of the agency's governing body and by giving at least 180 days' advance notice. The withdrawing agency may be subject to certain continuing liabilities, including any damages or losses incurred by the Authority resulting from the agency's withdrawal, such as losses from resale of power contracted by the Authority to serve the withdrawing agency's load. An agency may also be responsible for costs or obligations associated with any agreements entered into prior to the agency's withdrawal.

- ❖ Right to Withdraw Prior to Program Launch

After receiving bids from power supplies, the Authority must provide to participating agencies a report from a utility consultant retained by the Agency which compares the Authority's total estimated electrical rates, the estimated greenhouse gas emissions rate, and the amount of estimated renewable energy to be used with that of PG&E. Within 30 days after receiving the report, an agency may immediately withdraw from the Authority if the report determinates that any one of the following conditions exist:

1. the Authority is unable to provide total electrical rates equal to or lower than the existing utility (i.e., PG&E);
2. the Authority is unable to provide electricity in a manner that a lower greenhouse gas emissions rate than the existing utility; or
3. the Authority will use less renewable energy than the existing utility.

A party who withdraws pursuant to this section shall not incur any liabilities or obligations of the Authority after the date of withdrawal, including liabilities arising from power purchase agreements entered into by the Authority.

- ❖ Continuing Liability After Withdrawal

A party that withdraws from the Authority will be responsible for paying its fair share of costs incurred resulting from the party's withdrawal. Those costs may include costs from the resale of power contracts to serve the party's load.

- Miscellaneous Provisions

The JPA Agreement requires the Authority to acquire insurance which names the Authority, the participating agencies, and their respective boards and councilmembers.

The JPA Agreement may be amended by supermajority of the Board, except that any change to the voting rights and structure, discussed above, requires a unanimous vote of the Board.

3. Phases II and III – Undertaking Activities leading to Formation of a Joint Powers Authority Board and CCA Implementation:

To seat a JPA Board and to be able to bring that Board substantive CCA matters on which to act as quickly as possible, County Staff will undertake a number of activities and retain additional consulting expertise in the areas of energy analytics and procurement, marketing, and data management during the latter half of 2016 and beyond. Following is a comprehensive but not exhaustive list of activities and consulting services that will need to occur:

Category 1: Technical, Energy Procurement and Data Management Services – These services include but are not limited to:

1) Answer energy market and utility-related questions and serve as an expert resource to city staff and elected City officials as they digest the analysis in the Technical Study and contemplate joining the JPA.
2) Finalize desired power supply mix and draft RFP for wholesale energy procurement and CAISO scheduling services
3) Recommend customer phasing schedule based on JPA organizational capacity and program economics
4) Refine operating budget based on final list of JPA members, number of potential accounts, and load requirements
5) Prepare EBCE's Implementation Plan for certification by the CA Public Utilities Commission
6) Assist as needed with program financing and size of credit facility based on customer enrollment schedule and projected operating revenues
7) Support power supply negotiations and development of power contracts
8) Prepare tariff schedule and rate recommendations for two power supply options (e.g. default product at 50% renewable and voluntary product at 100% renewable)
9) Design tariffs for ancillary programs such as net energy metering, community solar and/or local feed in tariff

10) Address PG&E, CA Public Utility Commission and CA Independent System Operator agreements and registrations including: CAISO paperwork and deposit, PG&E service agreement and security deposit, Bond posting, and required regulatory compliance reporting and customer noticing
11) Provide customer data management, billing and customer relationship management services
12) Develop and operate customer call center
13) Develop integrated resource plan and complete related regulatory reporting

Category 2: Community Outreach, Marketing and Customer Notification: Activities under this contract will include but are not limited to:

1) Brand refinements and development of sub-brands and logos for different product offerings
2) Develop County-wide, multi-lingual and multi-cultural advertising campaign to raise public awareness of EBCE and its offerings; this will include both paid and earned, print and digital media
3) Create multi-functional, multi-lingual website that includes a rate calculator and ability to opt-out of the program
4) Develop/update program collateral including FAQs, brochures and presentations
5) Develop short informational video for website, social media and use at community meetings
6) Handle press outreach - schedule editorial board meetings, draft press releases, op-eds and news articles
7) Establish a social media presence on Facebook, Twitter, Next Door, et al
8) Conduct stakeholder outreach and participate in community meetings and events
9) Work with member cities to support their local outreach efforts including local presentations, newsletter articles, event tabling, etc.
10) Meet with key energy/commercial accounts
11) Continue regular e-newsletters and info blasts to expanded list-serve
12) Participate in call center scripting
13) Design content and coordinate mailing of 4 customer enrollment notifications, timed to align with enrollment schedule

In addition to these key functions, County staff will continue to work with its existing consulting team from the Sequoia Foundation in the areas of program design, project management, and JPA formation and financing. Staff will also work with the JPA Board to identify a Chief Executive Officer and appropriate legal support (general counsel, et al) as the Agency moves into formation and initial staffing. It is anticipated that County CDA staff will remain involved through Phases II and III (i.e., through program launch) and, if needed, for a brief transition period until the new Agency is operational and staffed independently. In conjunction with a committee of city attorney representatives, staff and the Office of the County counsel would select an interim JPA legal counsel this fall who will be available to represent the JPA upon formation.

4. Ordinance Authorizing Implementation of a Community Choice Aggregation Program Pursuant to California Public Utilities Code Section 366.2(c)(12).

California Public Utilities Code Section 366.2 et seq. describes the statutory framework for forming CCA Program. Subsection (c)(12) requires the agency seeking to form the CCA Program to adopt said program by ordinance. An ordinance which satisfies the requires of the statute is attached. The ordinance will not be codified in the Emeryville Municipal Code.

ENVIRONMENTAL ANALYSIS

Alameda County, as lead agency for CEQA, has determined that this process is statutorily exempt from analysis under the California Environmental Quality Act (CEQA) for the reason that it is not a project. 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." Forming or joining a CCA presents no foreseeable significant adverse impact to the environment over the existing condition because state regulations such as the Renewable Portfolio Standard (RPS) and Resource Adequacy (RA) requirements apply equally to CCAs as they do to Private Utilities.

- Next Steps

Following this informational report, the following calendar outlines next steps:

- ❖ October 2, 2016: Approval of JPA Agreement by Alameda County Board of Supervisors
- ❖ Fall 2016: Participant Cities approve JPA Agreement and designate Board representatives
- ❖ December 1, 2016: JPA Agreement becomes effective and the Authority comes into existence, provided that a minimum of three cities execute the JPA Agreement and adopt an ordinance to enter into the CCA Program by this date.
- ❖ December 31, 2016: Deadline for all remaining cities to execute JPA Agreement and adopt an ordinance to enter into the CCA Program.
- ❖ January 2017: First meeting of JPA Board
- ❖ Summer 2017: Launch CCA operations
- ❖ Late 2017 – Early 2018: Transition energy procurement from PG&E to CCA

- Next Steps for Emeryville

If Emeryville is to join the CCA Program, staff proposes the following City Council actions:

- November 1, 2016: Adopt first reading of ordinance expressing the City Council's intent to enter into the CCA Program, as required by the state Public Utilities Code. Adopt resolution authorizing execution of the JPA Agreement.

- November 15, 2016: Adopt the second reading of the above Ordinance.

- December 31, 2016: Deadline for Emeryville to submit the ordinance and resolution to the JPA Authority.

FISCAL IMPACT

It is difficult to quantify the fiscal impact from entering into the JPA Agreement at this time. There is no immediate impact from continuing to negotiate the JPA Agreement with the other agencies. The Agreement calls for Alameda County to fund the Initial Costs[2] of the program. In the event the program becomes operational the Initial Costs will be reimbursed to the County through customer charges for electric services.

As noted above, if the City enters into the JPA Agreement, it will have an immediate right to withdraw prior to program launch and will not incur any liabilities from the Authority at that time. However, after program launch, the City may have ongoing liabilities resulting from withdrawal from the Authority as discussed above.

Note that the JPA Agreement is designed such that the liabilities and obligations of the Authority are separate from those of the City. Thus any obligations of the JPA would not be passed onto the City and the City's General Fund is insulated from liabilities of the JPA. As noted above, the JPA Agreement also calls for the Authority to carry insurance which names the City and its Councilmembers as additional insureds.

CONCLUSION

As to the enacting ordinance, staff recommends the City Council:

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[2] Costs incurred by the Authority relating to the establishment and initial operation of the Authority, such as the hiring of the Executive Director and staff and any required accounting, administrative, and legal services in support of the Authority's initial formation activities or in support of the negotiation of power purchase agreements.

1. Take public comment;
2. Reads the ordinance by title only;
3. Adopt the first reading of the ordinance.

Staff then recommends the City Council adopt the attached resolution:

1. Accepting the Technical Study for a Community Choice Aggregation (CCA) Program in Alameda County; and

2. Approving the East Bay Community Energy Authority Joint Powers Authority Agreement and Authorizing the City Manager to Execute Said Agreement.

PREPARED BY: Michael A. Guina, City Attorney

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:

Michael A. Guina, City Attorney

Attachments:

1. Technical Study plus attachments
2. Proposed Ordinance
3. Proposed Resolution
    a. Exhibit A: JPA Agreement