



Board of Directors Meeting

Wednesday, January 16, 2018

6:00 pm

City of Hayward

Council Chambers

777 B Street,

Hayward, CA 94544

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

If you have anything that you wish to be distributed to the Board, please hand it to the clerk who will distribute the information to the Board members and other staff. Please bring at least 25 copies.

1. Welcome & Roll Call

2. Pledge of Allegiance

3. Closed Session

Conference with Legal Counsel - Initiation of Litigation; Significant exposure to litigation pursuant to paragraph (4) of Subdivision (d) of California Government Code Section 54956.9 -- one case.

4. General Counsel Report out of Closed Session

5. Public Comment

This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.

- Note: Agenda includes the addition of Item 19
Adopt a resolution authorizing the Chief Executive Officer to execute a credit agreement in an amount up to \$400 million for a period of three years to be used for EBCE's operations

CONSENT AGENDA

- 6. Approval of Minutes from December 5, 2018**
- 7. Contracts entered into (Informational Item)**
- 8. Approve a Consulting Services Agreement with the Weideman Group for Legislative Advocacy and Advisory Services (Action Item)**
Approve a Consulting Services Agreement with the Weideman Group for a term running January 1, 2019 through December 31, 2019, in an amount not to exceed \$125,000 to provide regulatory and legislative advocacy and advisory services.
- 9. Legal Services Agreement with Hall Energy Law PC**
 - A. Approve a Legal Services Agreement with Hall Energy Law PC for services related to drafting and negotiating Power Purchase Agreements in the amount not to exceed \$175,000 for the term January 10, 2019 through August 31, 2019.
 - B. Direct the General Counsel to terminate the Legal Services Agreement with Troutman Sanders.

REGULAR AGENDA

- 10. CEO REPORT**
 - A. Executive Committee Meeting;
 - B. Marketing and Outreach update;
 - C. Local Development Business Plan Update and
 - D. Update on Opt-out
- 11. Community Advisory Committee Report**
- 12. Regulatory and Legislative Update (Informational item) Accept**
staff regulatory and legislative update.
- 13. Change to Administrative Procurement Policy**
Adopt a Resolution to amend the Administrative Procurement Policy to remove section 5.iv, relating to race and gender conscious preferences.
- 14. Demand Response Pilot Review (Informational Item) Accept**
staff review of the Demand Response Pilot.

- 15. EBCE Office Lease (Action Item)**
 - A. Authorize CEO to enter into negotiations for a sub-lease agreement of the 2nd floor 1212 Broadway in Oakland; and
 - B. Delegate approval of final sub-lease agreement to EBCE Executive Committee

- 16. Audit Report (Informational item)**

Receive report on audited financial statements for Fiscal years ending June 30, 2017 and June 30, 2018.

- 17. Treasurer's report (Informational Item)** Receive report on EBCE Cash position.

- 18. 2018/2019 East Bay Community Energy Mid-Year Budget Review (Informational Item)** Accept East Bay Community Energy's mid-year review of its 2018/2019 Budget

- 19. Adopt a Resolution Authorizing the Chief Executive Officer to Execute a Credit Agreement. (Action Item)**

Adopt a Resolution authorizing the Chief Executive Officer to execute a credit agreement in an amount up to \$400 million for a period of three years to be used for EBCE's operations.

- 20. Board Member and Staff Announcements including requests to place items on future Board Agendas**

- 21. Adjournment - to Date: Wednesday, February 20, 2019**

Location: City of Hayward,
Council Chambers
777 B Street
Hayward, CA 94541



Board of Directors Meeting

Draft Minutes

Wednesday, December 5, 2018

6:00 pm

City of Hayward
Council Chambers
777 B Street,
Hayward, CA 94544

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or Scabrera@ebce.org.

If you have anything that you wish to be distributed to the Board, please hand it to the clerk who will distribute the information to the Board members and other staff. Please bring at least 20 copies.

1. Welcome & Roll Call

2. Pledge of Allegiance

3. Public Comment

This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.

Barbara Stebbins - Spoke regarding the East Bay Clean Power Alliance workshop with 30 different community organizations to review the 12 early action items in the LDBP and program benefits to different communities.

Al Weinrub - Thanked EBCE for the launch party event. Mr. Weinrub also spoke regarding the PCIA decision and potential affects to Community Choice Aggregation (CCA) growth statewide. He also urged the community to take action to prevent the lowdown of CCA programs.

CONSENT AGENDA

4. **Approval of Minutes from November 7, 2018**
5. **Contracts entered into (Informational Item)**
6. **Adopt Resolution authorizing EBCE staff to make non-substantive changes to documents without Board approval (Action Item)**
Adopt a resolution allowing EBCE staff, subject to the approval of the General Counsel, non-substantive editorial authority to format and make minor changes to documents to allow for the technical correction of language without Board approval

The Board discussed:

- Location of current consultants
- Preference for hiring Alameda County based consultants and include language in future RFPs for preference
- Small, Local, Emerging Business preferences
- Requested that minor changes made by staff to previously approved documents be included as an informational item at the next Board Meeting.

R-2018-37

Director Mendall motioned to approve the consent calendar as amended:

- A. **Item 6: Changes made to published documents will be shared on the consent calendar with changes highlighted.**

Director Pilch seconded the motion which carried 9/0; Excused: Directors: Hernandez, Rood and Dutra-Vernaci.

REGULAR AGENDA

7. **CEO REPORT**
 - A. Executive Committee Meeting;
 - B. Marketing and Outreach update; and
 - C. Update on Opt-out

The Board discussed

- Public feedback regarding automatic versus opt-in enrollment
- Opt-out trends and when to expect a slowdown/stop in opt-outs

8. **Community Advisory Committee Report**

Director Eldred requested to provide the 11/28/18 meeting feedback during item 11 to provide CAC feedback when the item is heard.

9. **Presentation of EBCE Audited Financial Statements (Informational Item)**
Presented

10. **Regulatory/Legislative Overview (Informational Item)**

Receive overview of Regulatory/Legislative matters and provide feedback.

Presented

- The Board discussed:
- Future ability to purchase RA and portfolio composition
- Outreach to CPUC to help inform decisions made regarding CCAs

Al Weinrub - Spoke regarding community advocacy efforts in response to the CPUC decision and outlined the illegalities of the decision and requested the Board and public to voice concerns and expectations to incoming elected officials.

11. **Rate Forecast and Change in PCIA (Informational item)**

Receive preliminary information about PG&E rate forecasts based on PG&E's recent rate filings and provide feedback.

Jessica Tovar - Spoke regarding the need to continue with Local Development Business plan programs and concerns with delaying the start of projects. Ms. Tovar also spoke regarding the impact on communities potentially left out of clean energy economies if early action projects are not completed.

The Board Discussed:

- Jurisdiction concerns with the PCIA changes
- Potential discount rate scenarios
- Importance of maintaining current discount
- Potential Ratepayer impact and Opt-outs
- Proposed cuts to the LDBP budget and potential trade-offs
- Involving the member Cities to participate in funding/development of LDBP projects requested to review PCIA impact with the Budget update and net revenue for 2018
- Creating rate stability
- Different product offers

- 12. Amendments to Net Energy Metered (NEM) Policy for Solar Customers (Action Item)**
Approve amendments to the Net Energy Metering (NEM) policy that covers solar customers. Amendments include:
- A. Amend EBCE's Net Energy Metering (NEM) policy with program details and publish a NEM tariff.
 - B. Amend policy to start enrollment of existing PG&E Net Energy Metered (NEM) customers in April 2019 with bi-monthly enrollment batches in April, June, August, October, and December of 2019 based on the date of a customer's PG&E True-Up date.

R-2018-38

Director Mendall motioned to approve amendments to the Net Energy Metered (NEM) Policy for Solar Customers. Director Spedowski seconded the motion which carried 10/0; Excused: Directors Hernandez and Rood

- 13. Board Member and Staff Announcements including requests to place items on future Board Agendas**

Chair Haggerty thanked departing Directors Spedowski and Thomas for their in work helping to create and establish EBCE. The Chair also thanked staff and organizers for the residential launch event held on December 7, 2018.

- 14. Adjourned**



Consent Item 7

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: Contracts Entered into
DATE: January 16, 2019

RECOMMENDATION

Accept the CEO's report on contracts entered into between 12/5/18 to 1/11/19

1. C-2018-158 Legal Services Agreement with Burke, Williams & Sorensen (Principal: Tim Davis; Location: Mountain View) to perform Sexual Harassment Prevention Training for EBCE staff, as well as general labor and employment counseling services, and negotiate a sublease agreement and provide advice regarding real estate matters, compensation under this agreement not to exceed \$15,000.
2. C-2018-139 First Amendment to Legal Services Agreement with Keyes & Fox, (Principal: Tim Lindl; Location: Oakland) to represent EBCE as a member of the joint clients listed in Exhibit F, in PG&E's Application 18-06-001, before the CPUC, compensation under this agreement not to exceed \$14,000.
3. C-2018-157 Task Order 4 with FinalOption Corp to print, address, sort & mail 470,000 full color, double sided post cards, compensation not to exceed \$157,688.49.



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Melissa Brandt, Senior Director of Public Affairs and Deputy General Counsel

SUBJECT: Agreement with the Weideman Group for Legislative Advocacy and Advisory Services

DATE: January 16, 2019

Recommendation

Approve a Consulting Services Agreement with the Weideman Group for a term running January 1, 2019 through December 31, 2019, in an amount not to exceed \$125,000 to provide regulatory and legislative advocacy and advisory services.

Background and Discussion

On January 17, 2018, the Board approved selection of Weideman Group to provide legislative advocacy and advisory services to East Bay Community Energy (EBCE) throughout 2018. Weideman Group has represented EBCE with legislators and their staff in Sacramento, in close coordination with the Public Affairs Department and in accordance with the Board's adopted positions on legislative bills.

Weideman Group has over 30 years of experience representing entities seeking to navigate California's complex policymaking landscape. Mark Weideman, Principal and Founder, will continue to serve as EBCE's chief lobbyist and strategist. Weideman Group professionals have represented both public and private entities in energy and utility matters before the California Legislature, the Governor's Office, the California Energy Commission, the California Public Utilities Commission, the California Environmental Protection Agency, and the California Air Resources Board, among others. Weideman Group also has strong relationships with elected officials, especially the Bay Area delegation.

In 2018, Weideman Group facilitated countless meetings in Sacramento and in-district, and supported EBCE in developing relationships with legislators and their staffs, as well as other key strategic partners. Weideman Group lobbied on behalf of EBCE on key bills such as SB 100 (De León) and SB 237 (Hertzberg), among others, and garnered support from legislators during contentious regulatory battles at the CPUC around the Power Charge Indifference Adjustment (PCIA).

EBCE seeks continued assistance from Weideman Group for legislative advocacy and advisory services in 2019, both to represent EBCE's views on bills in the new legislative cycle as well as to provide legislative advocacy and advice around any bills that EBCE may choose to sponsor.

As EBCE's standard Consulting Services Agreement has significantly changed, staff recommends signing a new agreement with Weideman Group with the updated contract terms, rather than extending the previous agreement.

Fiscal Impact

This contract will result in an additional not to exceed \$125,000 spend in calendar year 2019. Legislative Advocacy and Advisory Services are included in the current fiscal year budget at this level.

Attachments

- A. Consulting Services Agreement with the Weideman Group.

**Consulting Services Agreement for
Government Relations Representation Services By And Between East Bay
Community Energy Authority and Weideman Group, Inc.**

This Consulting Services Agreement (“Agreement”) is made this 1st day of January, 2019, (“Effective Date”) by and between East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (“EBCE”) and Weideman Group, Inc., a California corporation (“Consultant”) for the purpose of providing government relations representation services to EBCE.

Section 1. Recitals

1.1 The Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) with the power to conduct its business and enter into agreements.

1.2 Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties to this Agreement, agree as follows:

Section 2. Term

The term of this Agreement is from the Effective Date of this Agreement through December 31, 2019, unless terminated earlier pursuant to Section 8.

Section 3. Scope of Work/Compliance with Laws and Regulations

3.1 Consultant agrees to perform the scope of work (the “Work”) in Exhibit A in accordance with the compliance schedule in Exhibit B.

3.2 Consultant represents and warrants that it has the skill and expertise to perform the Work. Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work.

3.3 Consultant and its Subconsultants must comply with all federal, state and local laws and regulations in performing the Work under this Agreement.

Section 4. Consultant Staffing

Exhibit C contains a list of Consultant's project manager and all team members. Consultant will not change or substitute the project manager or any team members or add additional team members without EBCE's advanced consent.

Section 5. Subconsultants

5.1 Consultant agrees to use only those Subconsultants listed on Exhibit D. Any changes to Exhibit D to add or remove a Subconsultant must be approved by EBCE in advance, in its sole and absolute discretion.

5.2 Consultant agrees to require all Subconsultants to comply with the terms of this Agreement, including without limitation, maintaining insurance in compliance with the insurance obligations under Section 9, the Confidentiality requirements under Section 11 and indemnifying EBCE under Section 12.

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is \$125,000.

6.2 If the Work under this Agreement is to be performed on a time and materials basis, Consultant must submit invoices to EBCE on a monthly basis complete with the name of the individual that conducted the Work, the time spent, and a brief description of the tasks performed during that time. On all invoices, Consultant must include the total compensation left on the Agreement after deducting the amount of the invoice and must submit invoices to EBCE by the 20th of the month following the month in which Consultant performed the Work.

6.3 If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the project to the satisfaction of EBCE for full payment, unless other arrangements have been made.

6.4 EBCE will not agree to pay any markups on Subconsultant Services or supplies unless such markups are included in Exhibit E, Compensation/Budget and such markups were included in Consultant's bid, if applicable.

6.5 The following are conditions on EBCE's obligation to process any payments under this Agreement:

6.5.1 If the Consultant is a U.S. based person or entity, the Consultant must provide to EBCE a properly completed Internal Revenue Service Form W-9 before EBCE will process payment. If the Consultant is a U.S based person or entity but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant must provide EBCE with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income before EBCE will process payment.

6.5.2 If the Consultant is not a U.S. based person or entity, the Consultant must provide EBCE with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before EBCE will process payment.

6.6 EBCE agrees to pay invoices within forty-five (45) days of receipt. Invoices may be sent to EBCE by U.S. mail or electronic mail to AP@EBCE.org. Invoices will be deemed received on the next business day following the date of transmission via electronic mail or three days after placement in the U.S. mail.

6.7 EBCE, as a Joint Powers Authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of EBCE's constituent members in connection with this Agreement.

Section 7. Records Retention and Ownership of Work Product

7.1 The Consultant must retain all ledgers, books of accounts, invoices, vouchers, cancelled checks, background materials, or other records relating to its performance under this Agreement for a period of three years following termination of this Agreement.

7.2 EBCE owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without restriction or limitation upon their use and immediately when and as created by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement. Work Product(s) includes, but is not limited to, all writings, reports, drawings, plans, data, video, media, photographs, renderings, plans, software, models, documents or other materials developed or discovered under this Agreement. All Work Product(s) will be considered "works made for hire." And all Work Product(s) and any and all intellectual property rights arising from their creation will be and remain the property of EBCE without restriction or limitation upon their use, duplication or dissemination by EBCE. Consultant agrees not to obtain or attempt to obtain copyright protection in its own name for any Work Product.

Section 8. Termination

8.1 EBCE may terminate this Agreement for any reason by giving Consultant written notice. The termination notice may set the date of termination, but if no such date is given, termination is effective seven (7) days following the date of the written notice.

8.2 EBCE may terminate this Agreement immediately upon written notice for any material breach of this Agreement by Consultant or any of its Subconsultants. If EBCE terminates this Agreement for cause and obtains the same services from another

consultant at a greater cost, the Consultant is responsible for such excess costs in addition to any other remedies available to EBCE.

8.3 Upon termination for any reason, EBCE has the option of requiring the Consultant to complete work up to the date of termination or to cease work immediately. EBCE has the further option to require Consultant to provide EBCE any finished or unfinished Work or Work Product prepared by the Consultant up to the date of termination.

8.4 EBCE will pay Consultant the reasonable value of services satisfactorily rendered by the Consultant to EBCE up to the date of written Notice of Termination. If EBCE authorizes Consultant to continue performing the Work through the date of termination, EBCE will pay Consultant the reasonable value of services satisfactorily rendered up through the date of termination, providing such services are in compliance with the Compensation/Budget in Exhibit E.

8.5 Upon termination of this Agreement, and at no cost to EBCE, Consultant, its Subconsultants and anyone working for EBCE under control of Consultant must return all Work Product to EBCE. Consultant may only retain copies of the Work Product by express written permission of EBCE.

Section 9. Insurance

9.1 Consultant must procure, maintain and comply with the insurance requirements in Exhibit F throughout the full Term of this Agreement. Consultant must provide proof of insurance either in the form of a certificate of insurance or, if requested by EBCE, a copy of the insurance policy, prior to performing any work under this Agreement.

9.2 Consultant agrees not to terminate any of the required insurance coverage during the term of this Agreement. Consultant must give EBCE ten (10) days written notice and obtain EBCE's written approval prior to making any modifications in the insurance coverage.

9.3 Consultant must either include Subconsultants under its insurance policies or require each Subconsultant to comply with the insurance obligations in Exhibit F.

Section 10. No Discrimination or Conflict of Interest

10.1 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race or national origin.

10.2 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify EBCE

immediately if it identifies any conflicts of interest Consultant understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

10.3 In accordance with the California Political Reform Act (Cal. Gov't Code section 81000 *et seq.*), Consultant will cause each of the following people performing services under this Agreement to file a Form 700 within 30 days after the person begins performing services under this Agreement and subsequently in conformance with the requirements of the Political Reform Act by filing the original with the EBCE Clerk to the Board of Directors. Each of the identified positions must disclose interests in accordance with the EBCE Resolution-2018-7, Conflict of Interest Code as may be amended from time to time.

Name	Position or Assignment

Section 11. Confidentiality

11.1 Except as authorized by EBCE or as otherwise required by law, Consultant shall not disclose to any third party/ies any draft or final Work Product, discussions or written correspondence between Consultant and its Subconsultants or discussions or written correspondence between Consultant and EBCE staff. In the event Consultant receives a request from any third-party requesting disclosure of any Work Product, discussions, communications or any other information Consultant is prohibited from disclosing, Consultant will immediately notify EBCE and wait for direction from EBCE before disclosing the information.

11.2 For the purposes of this Section 11, "third parties" refers to any person or group other than EBCE staff and Board members. For example, "third parties" include community groups, Board advisory groups, other governmental agencies, other consultants or members of the community.

11.3 This Section 11 will survive the expiration or termination of this Agreement.

Section 12. Indemnity

12.1 Consultant agrees, at its sole cost and expense, to indemnify, defend, with counsel reasonably approved by EBCE, protect and hold harmless EBCE, its officers, directors, employees, agents, attorneys, designated volunteers, successors and assigns, and those EBCE agents serving as independent contractors in the role of EBCE staff (collectively “Indemnitees”) from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, penalties, judgements, liens and losses of whatever nature that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant’s or Subconsultant’s performance or failure to perform the Work under this Agreement, regardless of whether the Consultant or its Subconsultants acted or failed to act intentionally, willfully, recklessly or negligently. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any breach of this Agreement and any infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of any person(s) caused by EBCE’s use of any services, Work Product or other items provided by Consultant or its Subconsultants under this Agreement.

12.2 Consultant’s obligations in Subsection 11.1 do not apply to the extent any claim, loss, damage, injury, expense or liability that results from the sole negligence or willful misconduct of Indemnitees.

12.3 Consultant’s obligation to defend EBCE applies to the maximum extent allowed by law and includes defending Indemnitees as set forth in California Civil Code sections 2778 and 2782.8.

12.4 The Consultant’s obligations under Section 12 applies regardless of the existence or amount of insurance the Consultant carries or has made available to EBCE.

12.5 The Parties agree that this Section 12 survives the expiration or earlier termination of the Agreement.

Section 13. Consultant is an Independent Contractor

13.1 Consultant and its Subconsultant(s) are and at all times will be independent contractors. Consultant has complete control over its operations and employees and is not an agent or employee of the EBCE and must not represent or act as the EBCE’s agent or employee. Consultant agrees, on behalf of itself and its employees and Subconsultants, that it does not have any rights to retirement benefits or other benefits accruing to EBCE employees, and expressly waives any claim it may have to any such rights.

13.2 As an independent contractor, Consultant has complete control over its

Subconsultants, Sub, suppliers, affiliates agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively “Subconsultants”). Subject to the requirements of Section 5 of this Agreement, Consultant is solely responsible for selecting, managing and compensating its Subconsultants, and for ensuring they comply with this Agreement.

Section 14. Miscellaneous Terms and Conditions

14.1 EBCE Authority.

The Chief Executive Officer or his/her designee is authorized to take all actions under this Agreement, including without limitation, amendments that fall within the Chief Executive Officer’s signing authority, termination or modification of terms.

14.2 Waiver.

Waiver by either party of any one or more conditions, Sections, provisions or performance of this Agreement will not be a waiver of any other provision; nor will failure to enforce a provision or Section in one instance waive the right to enforce such provision or Section in the future. In no event will payment by EBCE to Consultant constitute or be construed as a waiver by EBCE of any breach or default of this Agreement, nor will such payment prejudice any of EBCE’s other rights or remedies.

14.3 Governing Law.

Consultant and EBCE agree that this Agreement will be interpreted under the laws of the State of California.

14.4 Venue.

Any litigation resulting from this Agreement will be filed and resolved by a state court in Alameda County, California, or if appropriate, the federal courts in the Northern District of California located in San Francisco.

14.5 Audit Rights.

All records or documents required to be kept pursuant to this Agreement must be made available for audit at no cost to EBCE, at any time during regular business hours, upon written request by EBCE. Copies of such records or documents shall be provided to EBCE at EBCE’s offices unless an alternative location is mutually agreed upon.

14.6 Recitals and Exhibits.

The Recitals in Section 1 above are intentionally made a part of this Agreement. All Exhibits and any other documents incorporated by reference are a part of this Agreement.

14.7 Notices.

Any notices required to be given under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date

on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission, providing that a hard copy is also sent via U.S. mail. All notices must be sent to the addresses below:

EBCE

Attn: Melissa Brandt
C/o WeWork
1111 Broadway, 3rd Floor
Oakland, CA 94607
Email: mbrandt@ebce.org
Phone: 510-570-5110

Consultant

Attn: Mark Weideman
C/o Weideman Group
1215 K Street, Suite 2290
Sacramento, CA 95814
Email: mark@weidemangroup.com
Phone: 916-600-2288

\

14.8 Assignment.

Except to the extent this Agreement authorizes Consultant to use Subconsultants, Consultant will not assign any part of this Agreement without the EBCE's prior written consent. EBCE, at its sole discretion, may void this Agreement if a violation of this provision occurs.

14.9 Integrated Agreement.

The Recitals, this Agreement and the Exhibits attached to this Agreement contain the complete understanding between EBCE and Consultant and supersedes any prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral respecting the Work up through the Effective Date of this Agreement.

14.10 Amendments.

Any and all amendments or modifications to this Agreement must be made in writing and signed by each Party before such amendment will be effective.

14.11 Government Claims Act.

Nothing in this Agreement waives the requirements to comply with the Governmental Claims Act, where applicable.

14.12 Severability.

If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the Work can still be performed, the Parties agree to sever the invalid or unenforceable Section from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.

14.13 Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument and each of which will be deemed an original.

14.14 No Party Deemed Drafter.

This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement on the dates below to be effective upon the Effective Date.

WEIDEMAN GROUP, INC.
A California corporation

EAST BAY COMMUNITY ENERGY
AUTHORITY

A Joint Powers Authority

By 

By _____

Mark Weideman

Scott Haggerty

Title Chief Executive Officer
and Secretary

Title Chair of the Board of Directors

Date 1-10-19

Date _____

APPROVED AS TO FORM:

Leah S. Goldberg, General Counsel

LIST OF EXHIBITS

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: SCHEDULE

EXHIBIT C: CONSULTANT STAFFING

EXHIBIT D: SUBCONSULTANTS

EXHIBIT E: COMPENSATION/BUDGET

EXHIBIT F: INSURANCE REQUIREMENTS

Exhibit A

Scope of Services

Consultant will perform the following services in California:

1. Representation of EBCE before the state legislature, Governor's office, and state regulatory bodies.
2. Advice and counsel to EBCE regarding state legislative and regulatory strategies.
3. Relationship development with state elected and appointed officials.

Additional Services:

Consultant will not provide additional services outside of the services identified in Exhibit A, unless it obtains advance written authorization from the project manager or lead EBCE representative prior to commencement of any additional services.

Exhibit B
Schedule

Work to be performed January – December 2019.

Exhibit C

Consultant Staffing

Mark Weideman, Principal

Tim Valderrama, Managing Director

Vincent Wiraatmadja, Associate

Exhibit D

Subconsultants

Exhibit E**Compensation/Budget**

For the term of this Agreement, Contractor shall be paid \$10,000.00 per month as compensation for its services, without deduction for social security, federal, or state taxes. The total of all monthly fees shall not exceed \$10,000.00; except that, in the event additional services or an enhanced level of services becomes necessary during the term of the Agreement, Contractor shall retain the right to renegotiate the amount of monthly fees.

In addition, EBCE agrees to reimburse Contractor for reasonable and customary expenses actually incurred and properly documented in providing services under this Agreement. Such expenses would only be incurred with the approval of EBCE and include items like photocopying and travel expenses when leaving Sacramento County (e.g., automobile mileage, airfare, rental car, taxi/Uber, hotel and meals).

Exhibit F

Insurance Requirements

A. Minimum Scope and Limits of Insurance. Consultant must procure, and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Consultant is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant must obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Exhibit F.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Exhibit F must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional named insureds.

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to EBCE. Any insurance or self-insurance maintained by EBCE, its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Consultant and Consultant's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against EBCE.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by EBCE. At EBCE's option, Consultant must either reduce or eliminate the deductibles or self-insured retentions with respect to EBCE, or Consultant must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant agrees not to cancel any insurance coverage during the Term. Consultant further agrees not to, reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of EBCE. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to EBCE. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Consultant must, within two business days of notice from the insurer, phone and notify EBCE via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

H. EBCE Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements of this Exhibit F, EBCE may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, EBCE may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant must promptly reimburse EBCE for any premium paid by EBCE or EBCE, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant must furnish EBCE with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Agreement. The endorsements are subject to EBCE's approval. EBCE may request, and Consultant must provide complete, certified copies of all required insurance policies to EBCE. Consultant must maintain current endorsements on file with EBCE. Consultant must provide proof to EBCE that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant must furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify EBCE under Section 12 of this Agreement.

K. Subconsultant Insurance Requirements. Consultant's insurance coverage must include its Subconsultants or Consultant must require each of its Subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all the requirements of this Exhibit F.



Consent Item 9

TO: East Bay Community Energy Board of Directors

FROM: Leah Goldberg, General Counsel

SUBJECT: Legal Services Agreement with Hall Energy Law PC

DATE: January 16, 2016

Recommendation

- A. Approve a Legal Services Agreement with Hall Energy Law PC for services related to drafting and negotiating Power Purchase Agreements in the amount not to exceed \$175,000 for the term January 10, 2019 through August 31, 2019.
- B. Direct the General Counsel to terminate the Legal Services Agreement with Troutman Sanders.

Background and Discussion

In September 2018, the Board approved a Legal Services Agreement with Troutman Sanders to provide legal services in the power procurement area. The total compensation under this Agreement was \$225,000.

Stephen Hall has been the primary counsel to EBCE while at Troutman Sanders. He has been working with EBCE since November 2017. Mr. Hall has represented EBCE in short term power purchase transactions over the past year and is currently working with EBCE on drafting and negotiating long term Power Purchase Agreements in relation to the California Renewables Solicitation. Mr. Hall also assists with EBCE's Risk Oversight Committee.

Stephen Hall left Troutman Sanders on January 10, 2019 and started work at Hall Energy Law PC. EBCE would like to terminate the Legal Services Agreement with Troutman Sanders and to engage Hall Energy Law PC. Troutman Sanders billed roughly

\$50,000 from September 2018 through December 2018. EBCE would like to allocate the remaining \$175,000 to this new contract with Hall Energy Law PC. This would allow for EBCE to continue working with Mr. Hall uninterrupted.

Mr. Hall's rates are not changing under the new contract with Hall Energy Law PC.

Fiscal Impact

There is no fiscal impact as the funds have previously been approved by the Board and would be reallocated to the new agreement with Hall Energy Law PC.

Attachment

Legal Services Agreement with Hall Energy Law PC

**LEGAL SERVICES AGREEMENT BETWEEN
THE EAST BAY COMMUNITY ENERGY AUTHORITY
AND**

THIS AGREEMENT is entered into this 10 day of January, 2019, by and between the East Bay Community Energy Authority, a joint powers authority (“**Authority**” or “**EBCE**”), and Hall Energy Law PC, an Oregon professional corporation (“**Special Counsel**”) (collectively referred to as the “**Parties**”).

RECITALS:

A. Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“**Act**”) with the power to conduct its business and enter into agreements.

B. Special Counsel possesses the skill, experience, ability, background, certification and knowledge to provide the legal services described in this Agreement pursuant to the terms and conditions described herein.

C. Authority and Special Counsel desire to enter into an agreement for legal services for power procurement, upon the terms and conditions herein.

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

1. **TERM**

The term of this Agreement commences on January 10, 2019, and will extend through August 31st, 2019, subject to the Termination provisions in Section 19 of this Agreement.

2. **SERVICES TO BE PERFORMED**

Special Counsel shall perform all services set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO SPECIAL COUNSEL**

EBCE will compensate Special Counsel for services performed pursuant to this Agreement in a total amount not to exceed \$175,000 based on the rates and terms set forth in Exhibit B, which is attached hereto and incorporated herein by this reference.

4. **TIME IS OF THE ESSENCE**

Special Counsel and Authority agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Special Counsel agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of similar specially trained professionals in the San Francisco Bay Area and agrees that all services will be performed by qualified and experienced personnel. Special Counsel represents and warrants that all personnel providing legal services have valid and active licenses to practice law. Special Counsel agrees that should it need to represent Authority in any California state court, personnel representing Authority are active members of the State Bar of California as required.

6. **INDEPENDENT PARTIES**

It is understood and agreed that Special Counsel, in the performance of the work and services agreed to be performed by Special Counsel, is and will continue to be an independent contractor and not an agent or employee of EBCE; and as an independent contractor, Special Counsel will not obtain any rights to retirement benefits or other benefits that accrue to EBCE's employees, and Special Counsel hereby expressly waives any claim it may have to any such rights.

7. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated December 1, 2016, and is a public entity separate from its constituent members. Authority is and will continue to be solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Special Counsel agrees that it will have no rights and cannot make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

Special Counsel agrees that it will not harass or discriminate against a job applicant, an Authority employee, or Special Counsel's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Special Counsel agrees that any and all violations of this provision will constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

Special Counsel will indemnify and hold harmless EBCE against all reasonable costs and expenses of EBCE (including reasonable attorney fees) arising in connection with a third party claim or demand against EBCE relating to Special Counsel's provision of legal services to EBCE, including all damages of EBCE arising from (1) the negligent act or omission, or willful misconduct of Special Counsel's personnel; (2) the violation of any applicable law by Special Counsel's personnel; (3) the violation of any third party's intellectual property rights by Special Counsel's personnel; or (4) any death, bodily injury, or tangible property (not software or data) damage negligently or intentionally caused or incurred by Special Counsel's personnel. Without limiting the generality of the foregoing, Special Counsel retains the right to assert any defenses it may have in any action relating to claims of professional liability or negligent supervision. The acceptance of the Services by Authority will not operate as a waiver of the right of indemnification. The provisions of this Section will survive the completion of the Services or termination of this Agreement.

10. **INSURANCE**

10.1 Special Counsel must procure, maintain and comply with the insurance requirements in Exhibit C throughout the full Term of this Agreement. Special Counsel must provide proof of insurance either in the form of a certificate of insurance or, if requested by EBCE, a copy of the insurance policy, prior to performing any work under this Agreement.

10.2 Special Counsel agrees not to terminate any of the required insurance coverage during the term of this Agreement. Special Counsel must give EBCE ten (10) days written notice and obtain EBCE's written approval prior to making any modifications in the insurance coverage.

10.3 Special Counsel must either include subconsultants under its insurance policies or require each subconsultant to comply with the insurance obligations in Exhibit C.

11. **CONFLICT OF INTEREST**

11.1 Special Counsel warrants that it presently has no interest other than those previously disclosed in conflict waivers, executed copies of which appear in Exhibit D, and will not acquire any interest, direct or indirect, financial or otherwise, that would

conflict in any way with the performance of this Agreement, and that it will not employ any person having such an interest.

11.2 Special Counsel understands that Authority is a public agency subject to compliance with the Political Reform Act and various other conflict of interest laws. Special Counsel agrees to advise Authority immediately if any conflict arises and understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Special Counsel to make certain governmental decisions or serve in a staff capacity, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

11.3 Special Counsel shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. As of the date of entering into this Agreement, Special Counsel's employees assigned to perform services as specified in Exhibit E of this Agreement ("**Special Counsel's Assigned Employees**") shall not be required to complete and file a Form 700 with EBCE's Clerk. In the event that the EBCE subsequently determines to require Special Counsel's Assigned Employees to complete and file a Form 700 with EBCE's Clerk, EBCE will notify Special Counsel in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("**Form 700 Notice**"). Special Counsel agrees that upon notification, Special Counsel will cause Special Counsel's Assigned Employees to complete and file the Form 700 with EBCE's Clerk, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

12. **PROHIBITION AGAINST ASSIGNMENT**

The parties agree that the expertise and experience of Special Counsel are material considerations for this Agreement. Special Counsel agrees not to assign or to transfer any interest in this Agreement nor the performance of any of Special Counsel's obligations in this agreement, without the prior written consent of EBCE, and any attempt by Special Counsel to so assign this Agreement or any rights, duties or obligations arising hereunder will be void and of no effect.

13. **SUBCONTRACTOR APPROVAL**

Unless prior written consent from Authority is obtained, Special Counsel will not use subcontractors. In the event that Authority approves use of subcontractors, any subcontractors will be subject to the requirements of this Agreement, including without limitation, the conflict of interest provisions, the insurance provisions and the indemnity provisions.

14. **INVOICING AND PAYMENT**

14.1 In order to request payment, Special Counsel must submit monthly invoices to the Authority describing the services performed and the applicable summary of the work performed during that period. The invoice must detail the personnel who performed the services, hours worked, and task(s) performed. Special counsel must bill in increments no greater than 1/10 of an hour. Each invoice must include the total budget allocated to the Agreement and the amount of the budget remaining after deducting the amount of the invoice. Invoices may be sent to EBCE by U.S. mail or electronic mail to AP@EBCE.org. Invoices will be deemed received on the next business day following the date of transmission via electronic mail or three days after placement in the U.S. mail.

14.2 Administrative, overhead, secretarial time or overtime, word processing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. However, the rates listed above do not include minor expenses directly related to an Authority matter, including postage, photocopying, printing, faxing, and messenger services, or costs for travel. Travel expenses will only be reimbursed to the extent consistent with Authority's travel policy. All out of pocket reimbursable expenses in excess of \$50 must be authorized in advance by the Authority and receipts must be furnished with monthly invoices. Authority will be responsible only for the actual cost of any reimbursable expenses with no markup.

14.3 In the event of a dispute between Authority and Special Counsel regarding any invoice, the parties agreed to meet and confer and try to resolve the dispute. If unable to resolve the dispute, the Parties agree to comply with the State Bar of California's guidelines and dispute resolution mechanism related to legal fees.

15. **RECORDS**

15.1 Special Counsel must maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to EBCE for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Special Counsel pursuant to this Agreement.

15.2 Special Counsel must maintain all documents and records that demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

15.3 Any records or documents required to be maintained pursuant to this Agreement must be made available for inspection or audit at no cost to EBCE, at any time during regular business hours, upon written request by the EBCE. Copies of such documents must be provided to EBCE for inspection at EBCE's offices when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Special Counsel's address indicated for receipt of notices in this Agreement.

15.4 Where EBCE has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Special Counsel's business, EBCE may, by written request, require that custody of the records be given to EBCE and that the records and documents be maintained in the EBCE General Counsel's office. Access to such records and documents will be granted to any party authorized by Special Counsel, Special Counsel's representatives, or Special Counsel's successor-in-interest.

15.5 EBCE owns all work produce prepared by Special Counsel under this Agreement, including without limitation; all research memoranda, contracts, underlying research, legal opinions, and pleadings.

16. **PARTY REPRESENTATIVES**

The General Counsel, or his/her designee, represents the Authority in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION**

Special Counsel shall maintain in confidence and not disclose to any third-party or use in any manner not required or authorized under this Agreement any and all of Authority's proprietary or confidential information provided to Special Counsel.

18. **NOTICES**

Any notices required to be given under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission, providing that a hard copy is also sent via U.S. mail. All notices must be sent to the addresses below:

EBCE

Attn: Leah Goldberg, General Counsel
1111 Broadway, 3rd Floor
Oakland, CA 94607
Email: lgoldberg@ebce.org
Phone: (510) 838-5266

Special Counsel

Attn: Stephen Hall, Principal
PO Box 10406
Portland, OR 97296

Email: steve@hallenergylaw.com

Phone: (503) 313-0755

19. **TERMINATION**

19.1 EBCE has the right to terminate this Agreement, without cause, by giving not less than seven (7) days' written notice of termination.

19.2 If Special Counsel fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, EBCE may terminate this Agreement immediately upon written notice.

19.3 EBCE's General Counsel is empowered to terminate this Agreement on behalf of EBCE.

19.4 In the event of termination, Special Counsel must deliver to the EBCE's General Counsel, at no cost to EBCE, copies of all reports, documents, and other work performed by Special Counsel under this Agreement within five (5) business days of the date of termination.

20. **COMPLIANCE**

Special Counsel must comply with all applicable federal, state and local laws and regulations.

21. **CONFLICT OF LAW**

This Agreement will be interpreted under and enforced by the laws of the State of California. Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Alameda, State of California, or if appropriate, the Federal District Court sitting in San Francisco.

22. **ADVERTISEMENT**

Special Counsel will not reference or disclose to any third parties that it is working with authority without Authority's express written approval.

23. **WAIVER**

A waiver by Authority of any breach of any term, covenant, or condition contained herein will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or a different character.

24. **INTEGRATED AGREEMENT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant will be held to vary the provisions hereof. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this Agreement, the terms specified in the body of this Agreement will control. Any modification of this Agreement will be effective only by a written document signed by both Authority and Special Counsel.

25. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal authority to do so on behalf of their respective legal entities.

26. **SEVERABILITY**

If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the scope of work can still be performed, the Parties agree to sever the invalid or unenforceable Section(s) from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

28. **NO PARTY DEEMED DRAFTER**

This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

29. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument and each of which will be deemed an original.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the date set forth above.

SPECIAL COUNSEL

By Stephen Hall
Title _____
Date _____

EAST BAY COMMUNITY ENERGY
AUTHORITY

A Joint Powers Authority

By Scott Haggerty
Title Chair of the Board of Directors
Date _____

APPROVED AS TO FORM:

Leah S. Goldberg, General Counsel

Exhibit A

Scope of Services

Special Counsel will represent the Authority with respect to: (A) the Authority's short-term energy procurement with energy suppliers and marketers for (i) EEI Master Agreements to enable transactions with counterparties, (ii) transactions for energy, renewable energy, carbon free energy and resource adequacy products using confirmations under the EEI Master Agreement and WSPP Agreements, and (iii) related documentation required by energy suppliers and marketers; and (B) the Authority's long-term energy procurement including support (i) establishing forms of documentation (including two Power Purchase Agreements ("PPAs") based on the Authority's term sheet), (ii) reviewing RFO Protocol and drafting related documents (e.g., letters of credit and NDAs), and (iii) negotiating contract changes with bidders and finalizing PPA documentation.

Additional Services:

Special Counsel will not provide additional services outside of the services identified in Exhibit A, unless it obtains advance written authorization from Authority's General Counsel prior to commencement of any additional services.

Exhibit B

Compensation

Authority will compensate Special Counsel for legal services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation will be calculated based on the hourly rates set forth below.

- Stephen Hall \$595/hour

Exhibit C

Insurance Requirements

A. Minimum Scope and Limits of Insurance. Special Counsel must procure, and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury, and property damage, and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Special Counsel is a limited liability company, the commercial general liability coverage must be amended so that Special Counsel and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insured.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If Special Counsel does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Special Counsel must obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Exhibit C.

3) Workers' Compensation Insurance consistent with the minimum required by the State of California and Employer's Liability Insurance with a minimum limit of \$500,000. If Special Counsel has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Special Counsel must execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of One Million Five Hundred Thousand Dollars (\$1,500,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Exhibit C must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming EBCE, its officers, employees, agents, and volunteers as additional named insureds

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to EBCE. Any insurance or self-insurance maintained by EBCE, its officers, employees, agents or volunteers, will be in excess of Special Counsel's insurance and will not contribute with it.

E. Special Counsel's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Special Counsel and Special Counsel's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Special Counsel hereby waives all rights of subrogation against EBCE.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by EBCE. At EBCE's option, Special Counsel must either reduce or eliminate the deductibles or self-insured retentions with respect to EBCE, or Special Counsel must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Special Counsel agrees not to cancel any insurance coverage during the Term. Special Counsel further agrees not to, reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of EBCE. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to EBCE. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Special Counsel must, within two business days of notice from the insurer, phone and notify EBCE via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

H. EBCE Remedy for Noncompliance. If Special Counsel does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Special Counsel's policies do not comply with the requirements of this Exhibit C, EBCE may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, EBCE may, but has no duty to, take out the necessary insurance and pay, at Special Counsel's expense, the premium thereon. Special Counsel must promptly reimburse EBCE for any premium paid by EBCE or EBCE, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Special Counsel.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Special Counsel must furnish EBCE with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Agreement. The endorsements are subject to EBCE's approval. EBCE may request, and Special Counsel must provide complete, certified copies of all required insurance policies to EBCE. Special Counsel must maintain current

endorsements on file with EBCE. Special Counsel must provide proof to EBCE that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Special Counsel must furnish such proof at least two weeks prior to the expiration of the coverage.

J. Indemnity Requirements not Limiting. Procurement of insurance by Special Counsel will not be construed as a limitation of Special Counsel's liability or as full performance of Special Counsel's duty to indemnify EBCE under Section 9 of this Agreement.

K. Subconsultant Insurance Requirements. Special Counsel's insurance coverage must include its subconsultants or Special Counsel must require each of its subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all the requirements of this Exhibit C.

Exhibit D

Conflict Waivers

Special Counsel is not aware of any existing or potential conflicts involving the Authority as of the date of this Agreement.

Exhibit E

Special Counsel's Personnel



Staff Report Item 10

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: CEO Report (Informational Item)
DATE: January 16, 2019

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Executive Committee Meeting

On December 21, 2018, the Executive Committee of the East Bay Community Energy Board met. The agenda for the Executive Committee meeting covered general updates on marketing, regulatory and energy procurement.

Marketing and Outreach Update

Attached to this report is a presentation outlining on-going marketing and outreach activities as well as current opt out and opt up figures.

Local Development Business Plan Update

East Bay Community Energy has hired John Peter (J.P.) Ross into the Senior Director of Local Development, Electrification and Energy Innovation position. J.P. Ross joins EBCE after spending the last three years as the Group Manager for Solar at Origin Energy, one of Australia's largest retail electricity providers. Prior to working at Origin, J.P. was the VP of Strategic Relationships at Sungevity in Oakland, California. At Sungevity, J.P. was responsible for a wide range of topics, including business development, solar installations and operations, and equipment sourcing and procurement. Earlier in J.P.'s career, he served as Deputy Director at Vote Solar and as an energy campaigner with Greenpeace. J.P. has a BA/BS from UC Santa Cruz and an M.S. in Energy and Resources from UC Berkeley. J.P. lives in Berkeley, California with his wife and two children.

Update on Opt-Outs

Opt-out report included as an attachment to this report.



Account Services and Marketing Update

PRESENTED BY: ANNIE HENDERSON

DATE: January 16, 2019



ENROLLMENT AND ACCOUNT SERVICES



EBCCE Enrollment

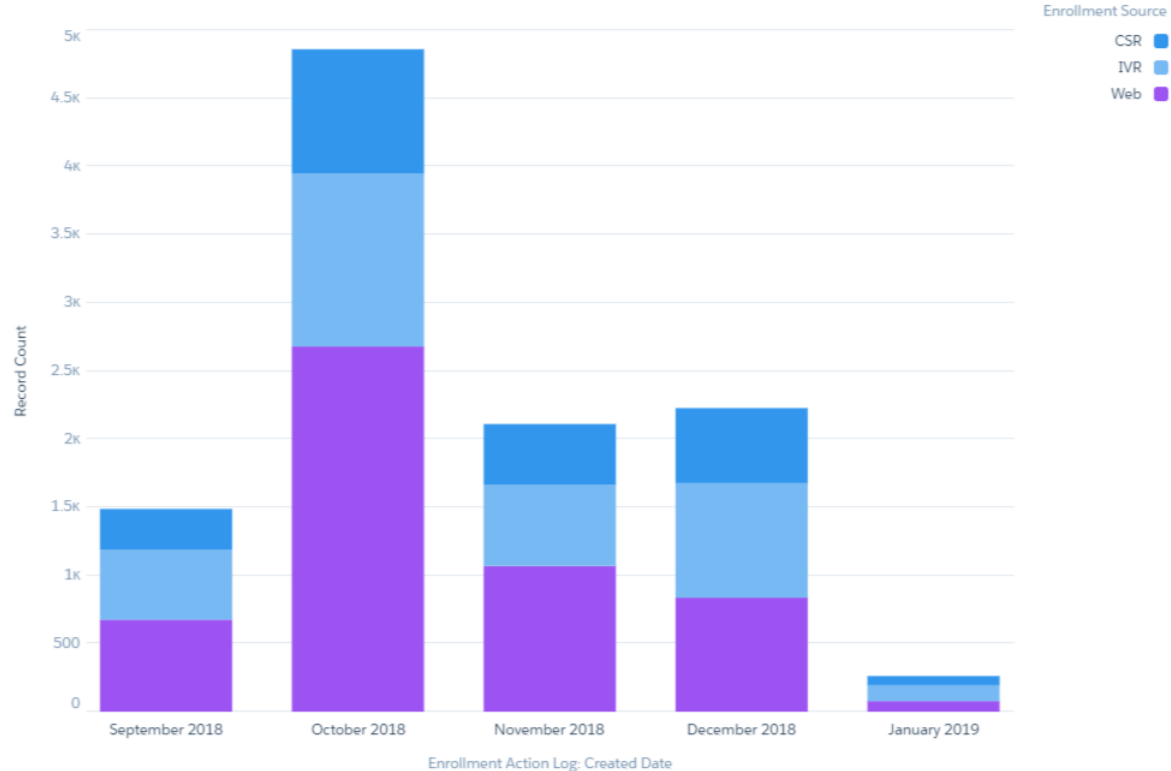
	Eligible Accounts	Opt Out	%	Bright Choice	%	Brilliant 100	%	Renewable 100	%
ALBANY INC	7,312	116	1.59%	31	0.42%	7,082	96.85%	83	1.14%
BERKELEY INC	54,395	486	0.89%	52,988	97.41%	450	0.83%	471	0.87%
DUBLIN INC	25,513	527	2.07%	24,713	96.86%	249	0.98%	24	0.09%
EMERYVILLE INC	8,412	114	1.36%	8,181	97.25%	84	1.00%	33	0.39%
FREMONT INC	84,515	1,526	1.81%	82,284	97.36%	624	0.74%	81	0.10%
HAYWARD INC	56,520	942	1.67%	14,287	25.28%	41,268	73.01%	23	0.04%
LIVERMORE INC	33,839	2,240	6.62%	31,516	93.14%	40	0.12%	43	0.13%
OAKLAND INC	182,978	2,546	1.39%	178,342	97.47%	1,398	0.76%	692	0.38%
PIEDMONT INC	3,688	124	3.36%	119	3.23%	150	4.07%	3,295	89.34%
SAN LEANDRO INC	35,840	927	2.59%	34,569	96.45%	287	0.80%	57	0.16%
UNINC ALAMEDA CO	53,986	1,547	2.87%	52,183	96.66%	210	0.39%	46	0.09%
UNION CITY INC	23,6xx	434	1.84%	23,169	98.06%	16	0.07%		0.03%
Total	570,6xx	11,529	2.02%	502,382	88.04%	51,858	9.09%	4,8xx	0.85%

Data as of January 3, 2018

- Hayward and Albany defaulted residential and commercial accounts onto Brilliant 100.
 - Hayward customers on CARE/FERA programs defaulted onto Bright Choice.
- Piedmont defaulted residential and municipal accounts onto Renewable 100.
 - Customers on CARE/FERA programs defaulted into Brilliant 100.
- All other residential customers defaulted into Bright Choice.
- Municipal accounts for all cities except Livermore and Union City defaulted onto Brilliant 100.

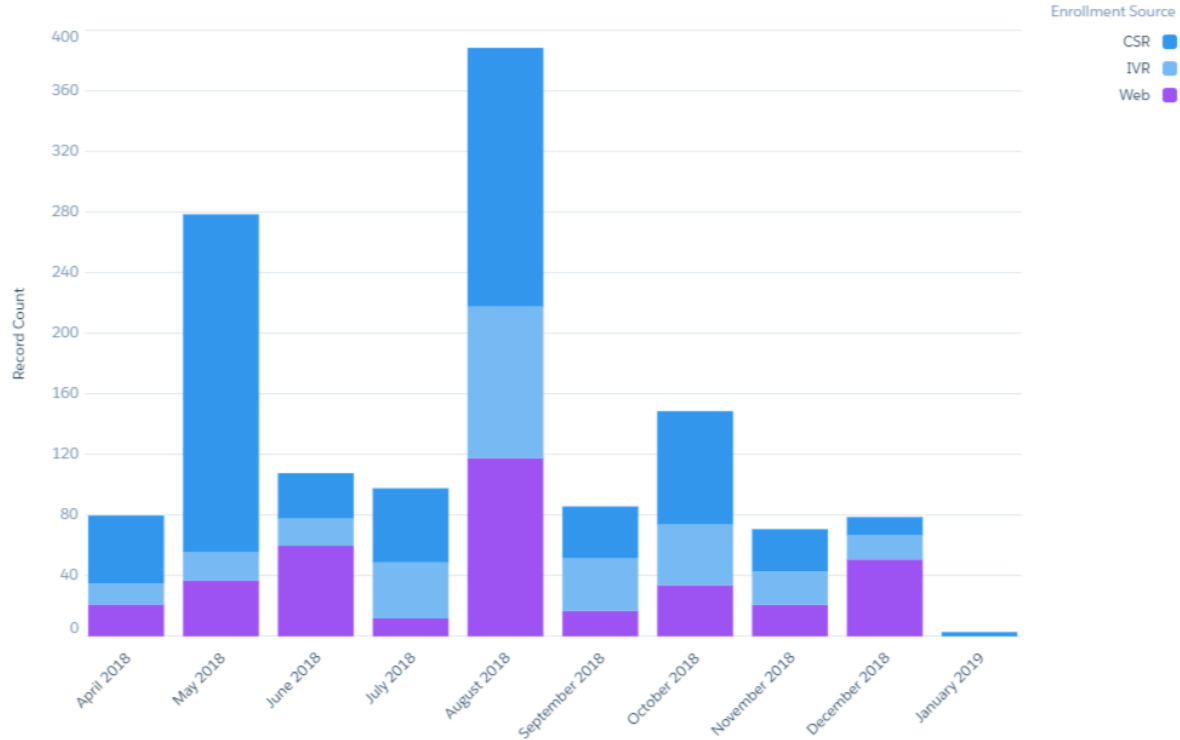
Residential Opt Outs

Monthly Opt Out Summary - EBCE



Commercial Opt Outs

Monthly Opt Out Summary - EBCE



Enrollment Action Log: Created Date

Account Services

- Completed first month of **residential billing**
- Preparing for adjustment to EBCE rates based on new **PG&E 2019 rates** in order to maintain value proposition
- Preparing for **solar customer engagement** – first notice to be mailed in February for April enrollment
- On-going **new customer notifications** mailed bi-weekly

MARKETING AND OUTREACH



Beyond enrollment...

- Majority of **ad campaigns completed**
 - Continuing Facebook digital ads
 - Some ads remain on local buses
- Developing **strategy for on-going marketing** campaign post-enrollment
- Developing **communications plan** in anticipation of changes to PG&E rates and PCIA
 - Will depend on direction from Board on EBCE product power mix and rates
 - Plan will include web content, print materials, and targeted outreach, as necessary
- Sending out **welcome packets** to Renewable 100 customers
- Continue to identify, schedule, and staff public **outreach events**
 - Spanish and Chinese in-language presentations coming up in January and February
 - “Understanding Your Bill” tour under development

Item 11

CAC Chair Report

Item 12

**Regulatory and Legislative
Update
(Presentation)**



Staff Report Item 13

TO: East Bay Community Energy Board of Directors
FROM: Leah Goldberg
SUBJECT: Change to Administrative Procurement Policy
DATE: January 16, 2019

Recommendation

Adopt a Resolution to amend the Administrative Procurement Policy to remove section 5.iv, relating to race and gender conscious preferences.

Background and Discussion

On February 7, 2018, the Board approved a resolution adopting an Administrative Procurement Policy. The policy was amended and restated on July 18, 2018. Both versions of the policy sought to support diversity among EBCE contractors by allowing for bonus points to be awarded during the RFP and RFQ process to contractors who are “women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender owned”.

The current Administrative Procurement Policy states:

“5.i. EBCE seeks to support companies and contractors that reflect its values, and has identified three vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 10% in a bid scoring process...

5.iv. EBCE desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender-owned businesses. Businesses owned and

operated by a person representing one or more of these categories shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.”

Analysis

There are two problems with providing scoring credit for diversity. The first problem is that it is difficult to establish that a vendor/consultant/contractor qualifies. Because employers are not allowed to ask employees about such things as their sexual/gender preferences, few if any bidders have sought to take advantage of the bonus points. More importantly, however, Proposition 209, adopted in California in 1996 prohibits public entities from giving any preferences based on gender or race, unless required to secure Federal funds. Public agencies can of course encourage a wide range of applicants to apply and that is what EBCE will continue to do.

It is in the interest of EBCE to maintain administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible, within a framework of high quality, competitive service offerings, while also complying with the laws and regulations. While we will continue to evaluate the ability, potential criteria, and circumstances upon which EBCE can solicit and encourage diversity in the pool of bidders, the Administrative Procurement Policy should be revised so that no race or gender scoring preference will be given during the RFP or RFQ process. EBCE will continue to publicly notice all its solicitations and will continue to encourage companies with diversity hiring practices to apply.

Fiscal Impact

None.

Attachment

- A. Resolution to make changes to the Amended and Restated Administrative Procurement Policy; and
- B. Amended and Restated Administrative Procurement Policy

RESOLUTION NO. __

A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
AMENDING THE ADMINISTRATIVE PROCUREMENT POLICY

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
DOES HEREBY FIND, RESOLVE AND ORDER AS FOLLOWS:

Section 1. EBCE was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. It is in the interest of East Bay Community Energy Authority (“EBCE”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

Section 3. On February 7, 2018, the Board approved an Administrative Procurement Policy. On July 18, 2018, EBCE adopted an amended and restated Administrative Procurement Policy. Both the original and the amended and restated policies included awarding bonus points to vendor/contractors that were Alameda County based, employed union labor and were owned and operated by women, minorities, disabled veterans, lesbian, gay, bisexual and transgender businesses.

Section 4. Establishing that a vendor/contractor should be awarded the bonus points for diversity has proven difficult and no bidder sought to qualify for the bonus points.

Section 5. The EBCE Administrative Procurement Policy must comply with Federal and State laws and regulations. Proposition 209 in California prohibits race and gender conscious preferences.

Section 6. The Board hereby amends the Administrative Procurement Policy to remove section 5.iv., so that no scoring preference will be given for diversity factors in the RFP or RFQ process. The Board further directs that all EBCE solicitations over \$100,000 be noticed publicly to encourage a diverse and wide range of bidders.

ADOPTED AND APPROVED this _____ day of _____, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Secretary

AMENDED AND RESTATED Administrative Procurement Policy**Policy No. 2018-9****July 18, 2018**Purpose:

It is in the interest of East Bay Community Energy (“EBCE”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

Policy:**1. Public Bidding Requirements:**

- a. EBCE shall issue a Request for Proposals or a Request for Qualifications for the purchase of goods or services in excess of \$100,000 in any given contract year or term. EBCE will run competitive solicitations through the issuance of requests for proposals (“RFPs”) or similar instruments for all non-professional service contracts with a contract value in excess of \$100,000 in any given contract year. These contracts are subject to Board approval before final execution.
- b. For contracts valued between \$50,000 and \$99,999.99, staff shall solicit informal written proposals from at least three providers, if feasible. An informal written proposal consists of a written proposal that includes the provider’s name, address, phone number, professional license number, if applicable, the work to be performed and the amount of the bid. A written proposal may be in an electronic mail format.
- c. For contracts valued between \$10,000 and \$49,999.99, staff shall solicit informal verbal proposals from at least three providers. Staff shall note the three verbal bids by including the providers’ name, address, phone number and amount of the verbal proposal in EBCE’s records.
- d. For contracts valued at less than \$10,000, no formal or informal bids shall be required, but EBCE staff is directed to seek the lowest cost supplies and the highest quality services available.
- e. When procuring goods and services utilizing federal funds (e.g., grant funds), EBCE shall comply with all federal project requirements in securing any goods or services necessary.
- f. The Chief Executive Officer (“CEO”), at his/her discretion, may direct that EBCE solicit competitive solicitations through the RFP process for contracts under \$100,000.
- g. EBCE shall not be required to award a contract to purchase goods or services from the lowest responsible bidder, unless required by California law.

- h. No EBCE employee, official, or director shall split purchases into more than one purchase in order to avoid the competitive solicitation requirements in this policy. Splitting purchases does not allow for a competitive marketplace, increases administrative workflow, and may create ethical issues.
- i. Exceptions to competitive solicitation requirements:
 - i. Sole source purchasing is authorized when the goods or services contemplated are capable of being performed by a sole provider, such as the holder of an exclusive patent or franchise, for purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service. A sole source may be designated when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of EBCE. Under some circumstances, EBCE competitive solicitation requirements may be dispensed with when the goods or services are only available from one source either because the brand or trade name article, goods, or product or proprietary service is the only one which will properly meet the needs of the EBCE or the item or service is unique and available only from a sole source.

Sole source purchasing shall be an exception to the normal solicitation process and requires a detailed explanation. The following factors shall not apply to sole source requests and shall not be included in the sole source justification: personal preference for product or vendor; cost, vendor performance, and local service (this may be considered an award factor in competitive bidding); features that exceed the minimum requirements for the goods or services; explanation for the actual need and basic use for the equipment, unless the information relates to a request for unique factors.
 - ii. No competitive solicitation, formal or informal bids shall be required for goods or services valued at less than \$10,000 in any one contract term or contract year.
 - iii. No competitive solicitation shall be required to rent or lease equipment.
 - iv. Competitive or informal solicitations shall not be required when the contract, the goods or the services will be provided by another governmental agency. EBCE can rely on the competitive solicitation process provided by another governmental agency providing that that agency's procurement is in compliance with California law.
 - v. In the event of an emergency, the CEO may suspend the normal purchasing and procurement requirements for goods and services related to abatement of the impacts or effects of the emergency.
- j. No EBCE employee, officer, or Director shall accept, directly or indirectly, any gift, rebate, money or anything else of value from any person or entity if such gift, rebate, money or anything of value is intended to reward or be an inducement for

conducting business, placing orders with, or otherwise using the employee's position to secure an agreement with EBCE.

2. Procurement of Supplies:

EBCE shall procure supplies in compliance with the Competitive Solicitation Requirements in Section 1, above. While, EBCE shall not be required to award to lowest responsible bidder, EBCE staff shall seek to purchase supplies at the lowest costs. EBCE is encouraged to jointly procure supplies with other governmental agencies to obtain the lowest cost when possible. In the event one or more EBCE employees are designated as purchasing agents, those individuals shall be included in EBCE's conflict of interest code as persons who must file an annual statement of economic interest.

3. Procurement of Professional Services:

EBCE may contract for professional services, including but not limited to consultant, legal, or design services, in its sole discretion. EBCE shall endeavor to secure the highest quality professional services available. While EBCE shall secure such services in compliance with the Competitive Solicitation Requirements in Section 1, above, awarding a contract for services need not be awarded to the lowest responsible bidder.

4. Executive Management Signing Authority:

- a. The CEO is authorized to enter into contracts of \$100,000 or less without prior Board approval with the stipulation that all new contracts must be reported at the next scheduled Board meeting. This contract limit does not include power supply or wholesale energy services and shall remain in place unless and until amended by the EBCE Board of Directors.
- b. Notwithstanding other express authority in this Administrative Procurement Policy, a member of the EBCE executive level staff consisting of the Chief Operating Officer ("COO"), the General Counsel or a Vice President, at the discretion and approval of the CEO, is authorized to sign professional service agreements and vendor contracts up to \$100,000 as an authorized designee of the CEO, subject to Board reporting requirements outlined above.
- c. The COO is authorized to sign professional service agreements or vendor contracts whose object or purpose is related to the activities or functions of the Office of the COO, up to \$25,000 in total compensation, subject to Board reporting requirements outlined in Subsection a, above.
- d. Any staff Senior Director or Vice President is authorized to sign professional service agreements or vendor contracts whose object or purpose is related to the activities or functions of that Senior Director or Vice President up to \$10,000 in total compensation, subject to Board reporting requirements outlined in Subsection a, above.
- e. Any staff level Director is authorized to sign professional service agreements or vendor contracts whose object or purpose is related to the activities or functions

of that Director up to \$5,000 in total compensation, subject to Board reporting requirements outlined in Subsection a, above.

- f. The General Counsel, or his/her designee, is authorized to sign professional service agreements or vendor contracts whose object or purpose is related to the activities or functions of the Office of the General Counsel up to \$50,000 in total compensation, subject to Board reporting requirements outlined in Subsection a, above. All Legal Services Agreements must be issued through the General Counsel's Office.
 - g. Prior to signing any professional services agreement or vendor contract, the individual signing shall ensure 1) that the contract compensation has been budgeted for in the current EBCE budget 2) that adequate funds have been appropriated by the Board 3) that such funds are unexpended and unencumbered sufficient to pay the expense of the contract, and 4) that the Contract or Professional Services Agreement has been approved as to form and content by the General Counsel or his/her designee.
 - h. In addition, the following authorities shall apply, after review and approval of such Agreements by the General Counsel, or his/her designee and except where in conflict with the Joint Powers Agreement, state or federal law:
 - i. Non-Disclosure Agreements - Director level and above;
 - ii. Banking and Treasury Administration - COO level and above.
 - i. Invoices and vendor payments shall be approved by the contract signee, his/her executive level manager or the COO prior to payment.
 - j. Contract amendments including changes in timeframe, scope, and value shall be subject to Board approval and signing authorities outlined in this Section 4.
 - k. EBCE shall report on all new contracts, regardless of scope or contract value, at each Board meeting. Unless subject to the attorney client privilege or some other legal protection, as a public agency, EBCE shall release all public records, including contracts as applicable, as required by the Public Records Act.
5. Bid Evaluation:
- a. Bids and proposals received through a competitive solicitation shall be subject to a set of criteria and a scoring system, reviewed and evaluated by relevant EBCE staff and an evaluation committee selected by the CEO, COO or General Counsel, or at the discretion of the Board, members of a designated Board subcommittee or the Community Advisory Committee. Bids for contracts received through formal or informal solicitation shall be evaluated based on competency to perform the scope of work, best fit, price competitiveness and compliance with subsections i (Special Procurement Preferences), ii (Alameda County Preference), iii (Union Labor Preference), and iv (Other Preferences) below.
 - i. EBCE seeks to support companies and contractors that reflect its values, and has identified three vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive

solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 10% in a bid scoring process.

- ii. EBCE desires to support Alameda County businesses where possible. Businesses with office(s) located in Alameda County and include at least 25% Alameda County residents under their employment shall receive a bonus equal to 5% or 5 points out of a 100-point scoring system in competitive solicitations.
 - iii. EBCE desires to support the use of union labor where possible. EBCE shall make its best effort to work with unionized contractors and subcontractors in the provision of goods and services to EBCE. Businesses who use union labor and/or unionized contractors shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
 - iv. EBCE desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender-owned businesses. Businesses owned and operated by a person representing one or more of these categories shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
- b. EBCE is committed to the highest standards of responsible behavior and integrity in all of its business relationships. EBCE will consider a company's business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.

6. Procurement of Power and Energy Attributes:

EBCE must secure sufficient power resources and energy attributes to serve its customers, comply with State law and meet EBCE's and its member agencies' goals. The Board shall approve the form of all master power purchase agreements. The signing authority in Section 4 shall not apply to power and energy attribute procurement. The following EBCE staff shall be authorized to enter into power purchase agreements and other agreements to secure power and energy attributes providing such agreements are in substantially the same form as the Board-approved master power purchase agreements, and that all transactions and agreements are in strict compliance with EBCE's Risk Management Policy:

- a. The CEO is authorized to enter into agreements in accordance to the approved Risk Management Policy.
- b. The COO is authorized to enter into agreements in accordance to the approved Risk Management Policy provided that transactions shall not be over two years in duration and \$10,000,000 in total compensation.
- c. The Director of Power Resources is authorized to enter into agreements in accordance to the approved Risk Management Policy provided that transactions shall not be over one year in duration and not be over \$2,000,000 in compensation.

- d. With dual signatures, the COO and Director of Power Resources are authorized to enter into agreements with equivalent authority as the CEO in accordance with the approved Risk Management Policy.
7. All Professional Service Agreements, vendor contracts and power procurement agreements must be approved as to the form and content by the General Counsel or his/her designee prior to signature by any authorized individual.



Staff Report Item 14

TO: East Bay Community Energy Board of Directors
FROM: Taj Ait-Laoussine, Vice President of Technology and Analytics
SUBJECT: Demand Response Pilot Review
DATE: January 16, 2019

Recommendation

Accept staff review of the Demand Response Pilot.

Background

On May 16, 2018, the EBCE Board of Directors approved the implementation of a pilot demand response program targeting a subset of commercial and industrial customers. The proposed pilot was designed to mirror PG&E's *Peak Day Pricing (PDP)* program, which is only available to bundled customers. The pilot program was expected to provide several benefits, including:

- **Customer Retention** - By offering customers an option similar to that available to bundled PG&E customers, EBCE could remain competitive with PG&E and offer customers the opportunity to realize the same potential bill benefits with EBCE.
- **Demand Response Benefit** - By continuing to provide customers the demand response signal through event day notification, the program would ensure that EBCE receives more of the demand response benefit than a simple bill protection mechanism with no demand reduction incentive (as offered by other CCAs).
- **Direct Experience in Demand Response Programs** - The pilot was expected to generate valuable experience in implementing a demand response program. This could facilitate the future roll out of other programs that are more specifically tailored to the needs of Alameda County and EBCE.

Following approval from the board, EBCE proceeded with implementing the program over the summer. As proposed, the program was only offered to E19 and E20 customers. Eight service agreements were enrolled. The results of the pilot are presented here.

Implementation Review

Customer Enrollment

Upon approval from the Board, EBCE contacted all eligible customers by a letter describing the program offering. The EBCE website was expanded to include a page describing the program as well as an enrollment form. EBCE also conducted a webinar and proactively contacted customers who had expressed a past interest in the program. With the program start date set to 6/1/2018, there was very little time to actively enroll customers, but in the end, eight service agreements were signed up, and all customers that expressed a concern about the lack of availability of an offering like PG&E's PDP program were given an opportunity to enroll.

Event Notification

EBCE established and tested an infrastructure and the associated processes to generate event notifications for program participants via email and text messages. Participants were invited to join the notification lists and were given an opportunity to opt out of either or both channels.

EBCE also established a process to scan and monitor PG&E systems to identify when a PG&E PDP event was called. In addition, EBCE worked with PG&E staff to receive direct email notification of events whenever possible.

EBCE called eight events during the season, in June and July. EBCE mirrored the PG&E event schedule with the exception of one event, when the PG&E notification did not arrive within the acceptable lead time for EBCE due to a weekend. PG&E did not call any events in August, September or October, and nor did EBCE.

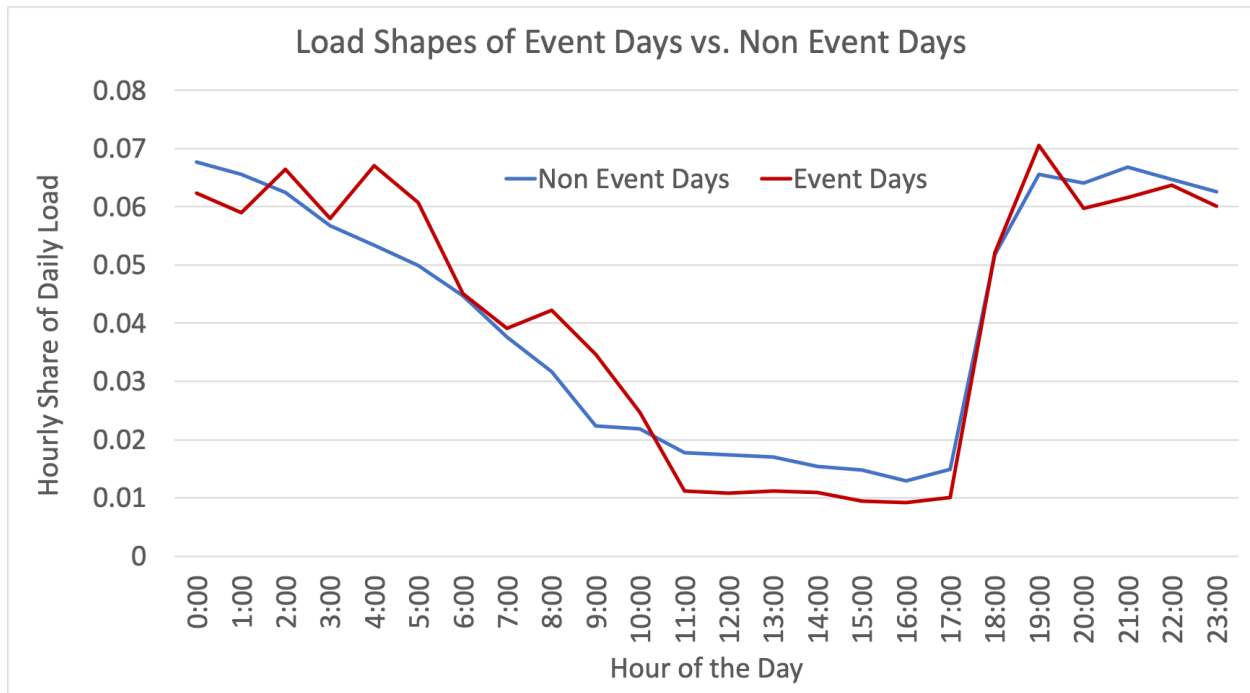
There were no customer issues or complaints associated with event notification.

Load Impact Evaluation

EBCE ensured that it collected interval data for all participating customers and used that data to compare the load of event days to non-event days. While staff cannot present aggregated load data due to the low number of participating customers, it has calculated relative load shapes of event days vs. non-event days.

The data, presented below, shows a distinct reduction in the load during event periods (from 2pm to 6pm) on event days as compared to non-event days, suggesting that participants responded to the event notifications and adjusted their load. Please note that the underlying data is dominated by a few very large customers, hence the unusual nature of the load shape.

While the data here is purely anecdotal given the small number of participants, it seems to indicate an intentional change in operations on event days vs. non-event days. Participants tended to use more ahead of event hours and recover partially after the event ended.



Customer Impact Evaluation

EBCE used the interval data, as well as billing data, to calculate both the credits due to each customer as well as the surcharges to be imposed during event days.

Overall, every customer that participated in the program ended up receiving a net credit; the total credits issued amounted to \$100,817.30. Preliminary guidance in May 2018 indicated that the overall impact of the program would be the issuance of credits on the order \$200K to \$450K.

On the one hand, EBCE ended up issuing a smaller credit amount than expected due to low program enrollment numbers, and a shortened season (EBCE ran the program from June through October, rather than May through October). On the other hand, 2018 was an unusual year in that PG&E (and therefore EBCE) did not call the maximum of 15 events over the season. Therefore, customers incurred less penalties, resulting in larger than expected net credits for all participants. Also, the eight participating customers included some of the largest customers in the EBCE service territory, and therefore garnered larger than average credits.

Customers were contacted in December 2018 and were given an opportunity to receive their credits in the form of a check or a bill adjustment. Most customers chose to receive checks. There was no additional cost to EBCE to calculate and issue credits or checks. Checks and credits will be issued to customers in January 2019.

Summary, Lessons Learned and Next Steps

Overall, EBCE was able to successfully conduct its first demand response program, and benefitted in several ways:

- **Customer Retention:** based on customer feedback, the pilot option was instrumental in ensuring that some customers elected to remain with EBCE. In addition, one top 20 customer not only remained with EBCE, but also decided to opt up to Brilliant 100 as a result of the program offering. Finally, EBCE expects the program to strengthen customer loyalty and trust, since all participants are receiving a credit for their participation (often in the form of a check).
- **Peak Load Reduction:** the data shows that the program resulted in a relative reduction in load during event hours on event days, indicating that participants were responding to the demand response signal. An analysis of market clearing prices shows that several of these event hours had abnormally high prices (due to high demand), so the program also helped reduce EBCE's exposure to procurement risk. Had EBCE gone the route of other CCAs and guaranteed bill protection without a demand response signal, it would not have expected to see a reduction in expected demand during event hours.
- **Experience:** EBCE gained considerable experience in the process and infrastructure requirements associated with planning and executing a demand response program, including valuable lessons learned as documented below. EBCE also issued out a survey to participants to better understand their experience and garner feedback.

Lessons Learned

As EBCE considers the expansion of its demand response offering, it will benefit from having learned the following lessons through the implementation of this pilot program:

- **Data Complexity** - there was significant overhead associated with ensuring the proper compilation of all of the necessary data required to calculate credits and penalties. EBCE will consider using different methodologies for calculating these credits and penalties in future programs to reduce complexity and ensure scalability.
- **PG&E Mirroring** - EBCE decided to run this pilot program by mirroring the PG&E offering, including the selection of event days. In the case of the pilot, this resulted in less event days being called, as well as event days being called that may not have been appropriate for the EBCE service territory. EBCE will consider calling event days based on input from our load procurement positions and load forecasts, rather than relying on PG&E notifications.
- **Customer Response** - while participants as a group responded to notifications - as indicated in the load shape data presented above - not all customers appeared to have responded with the same intensity or consistency. EBCE will consider other notification, communication, incentive and penalty mechanisms to seek greater and more consistent response from participants.

Next Steps

EBCE will take the lessons learned in deploying and implementing this demand response pilot program to formulate the next generation of EBCE demand response offerings, in conjunction with the goals and objectives of the Local Development Business Plan.



Staff Report Item 15

TO: East Bay Community Energy Board of Directors
FROM: Nicolas Chaset, Chief Executive Officer
SUBJECT: **EBCE Office Space Lease**
DATE: January 16, 2019

Recommendation

- A. Authorize CEO to enter into negotiations for a sub-lease agreement of the 2nd floor 1212 Broadway in Oakland; and
- B. Delegate approval of final sub-lease agreement to EBCE Executive Committee

Background

At the November 7, 2019 EBCE Board of Directors meeting, EBCE staff brought a set of proposed criteria forward to inform EBCE’s search for office space that can accommodate EBCE’s current and future needs. Based on feedback from the Board, the following criteria were adopted:

- 1. Walking distance to a BART station (1/4 quarter mile or less)
- 2. Class A or B office space able to accommodate 30 to 40 staff
- 3. Large enough conference room to host Community Advisory Committee, Executive Committee and Sub-Committee meetings
- 4. 2019 lease cost within EBCE’s approved budget

Based on these criteria, EBCE staff have reviewed or toured potential office locations in Berkeley, Oakland, San Leandro, Fremont, Dublin and Castro Valley. Additionally, staff sought out office space in Hayward and Union City but were unable to find suitable space in those two locations.

Below is a table of the top properties that we reviewed in each city from a cost perspective.

Top Lease				
BUILDING	SQUARE FOOTAGE	PRICE/SF/YEAR	EST. MONTHLY RENT	LEASE TERM
Downtown Oakland BART				
1212 Broadway	±8,278 SF	\$3.85 FS	\$31,870	4 years

426 17 th Street	±8,292 SF	\$4.00 FS	\$33,168.00	Over 5 years
1956 Webster Street	±7,244 SF	\$4.25 FS	\$30,787.00	Over 5 years
Downtown Berkeley BART				
2105 Bancroft Way	±7,155 SF	\$4.25 FS	\$30,409	Over 5 years
2100 Shattuck Ave	±9,594 SF	\$4.25 FS	\$40,775	Over 5 years
Fremont BART				
39650 Liberty Street	±7,090 SF	\$2.75 FS	\$19,497.50	Over 5 years
39141 Civic Center Drive	±12,806 SF	\$3.00 FS	\$38,418.00	Over 5 years
2201 Walnut Avenue	±7,609 SF	\$2.90 MG	\$23,968.35	Over 5 years
West Dublin BART				
6210 Stoneridge Mall Road	±17,296 SF	\$3.25 FS	\$56,212.00	Over 5 years
7901 Stoneridge Drive	±8,722 SF	\$3.00 FS	\$26,166.00	Over 5 years
Dublin BART				
4683 Chabot Drive	±9,224 SF	\$2.85 FS	\$26,288.40	Over 5 years
5050 Hopyard Road	±12,377 SF	\$2.95 FS	\$36,512.00	Over 5 years
5075 Hopyard Road	±7,018 SF	\$2.95 FS	\$20,703.10	Over 5 years
5860 Owens Drive	±8,521 SF	\$3.00 FS	\$25,563.00	Over 5 years

Given that EBCE's office needs are likely to evolve significantly as the organizations grows in the coming two-three years, staff believes a shorter-term lease (under five years) makes the most sense at this time. Unfortunately, very few sites adjacent to Bart stations offered sub-leases. As a result, staff has identified 1212 Broadway as representing the best combination of cost, lease term and suitability.

1212 Broadway has sufficient space to support upwards of 45 employees, while also having a large dedicated space ideal for public meetings. 1212 Broadway is also priced at the low of the range of sites while being immediately adjacent to the 12th street BART station.

Based on these findings, Staff recommends that the Board of Directors direct the CEO to enter into lease negotiations with the current tenant of 1212 Broadway and to bring the final lease agreement to the EBCE Executive Committee for final approval.



Staff Report Item 16

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer & Treasurer
SUBJECT: Audit Report (Informational Item)
DATE: January 16, 2019

Recommendation:

Receive report on audited financial statements for Fiscal years ending June 30, 2017 and June 30, 2018.

Summary:

In December 2018, Pisenti & Brinker LLP completed EBCE's first financial audit for Fiscal years ending June 30, 2017 and June 30, 2018. Fiscal year ending June 30, 2017 represents the pre-launch start-up period. Fiscal year ending June 30, 2018 is made up of 11 months of pre-launch start-up period and one month of operations starting June 1, 2018.

EBCE's Balance Sheet net position was \$(1,803,530) as of June 30, 2017 and \$3,084,520 as of June 30, 2018.

For fiscal year ending June 30, 2017, there were no operating revenues and operating expenses of \$(1,803,530). For Fiscal year ending June 30, 2018, EBCE had operating revenues of \$16,142,192 and operating expenses of \$10,821,190 with net income for the period of \$4,888,050.

As of June 30, 2018, EBCE had a cash position of \$4,272,590.

Attachments:

- A. EBCE Audited Financial Statements for Fiscal years ending June 30, 2017 and June 30, 2018



Staff Report Item 17

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer & Treasurer
SUBJECT: Treasurer's Report (Informational Item)
DATE: January 16, 2019

Recommendation:

Receive report on EBCE Cash position.

Treasurer's Report

For quarter end December 31, 2018, EBCE has maintained a positive cash balance on all EBCE bank accounts. Below is a summary of Account balances, cash received, and outstanding loan balances as of 12/31/18.

Account Balances as of 12/31/18

River City Bank:	
*0045 Internal Operations Account	\$213,229.16
*2886 Operating Fund Account	\$45,895,995.58
*3199 Lockbox Account (Includes \$5,000,000 reserve)	\$8,843,138.67
*6189 Operating Reserve Fund Account	\$0.00
*6705 Barclays Collateral Account	\$0.00
*8900 Money Market Account	\$0.00
*9364 ICS Account	\$0.00

Cash Received by month into Lockbox Account

October 2018: \$37,561,560.65
November 2018: \$27,988,493.99
December 2018: \$25,818,973.76
Total: \$91,369,028.40

Outstanding Loan Balances:

Alameda County Preliminary Estimate (Pending soft costs and completed expense reconciliation): \$4,513,670.39

Barclays Credit Facility: \$14,300,000

Collateral/Customer Pre-payments:

\$0 currently held

Other Highlights

- Opened Insured Cash Sweep (ICS) and money market accounts to serve as interest bearing savings accounts.
- Continued dialogue with Alameda County Auditor's office regarding repayment of county loan in February.
- Completed Financial audit for Fiscal years ending June 30, 2017 and June 30, 2018.



Staff Report Item 18

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: 2018/2019 East Bay Community Energy Mid-Year Budget Review
(Informational Item)
DATE: January 16, 2019

Recommendation

Accept East Bay Community Energy's mid-year review of its 2018/2019 Budget.

Background

At EBCE's June 2018 Board of Directors meeting, the Board approved EBCE's 2018/2019 budget and requested that staff prepare a mid-year review of EBCE's budget reflecting six months of actual revenues and expenditures. One of the primary reasons for this review was due to the fact that the 2018/2019 budget - EBCE's first - was based entirely on forecast values without the benefit of actual costs or revenues. The purpose of this agenda item is to review EBCE's income statement and balance sheet for the 2018/2019 fiscal year.

Attached to this agenda item is a presentation that presents the approved 2018/2019 Budget, EBCE's current projected income statement for the 2018/2019 fiscal year and EBCE's current projected balance sheet for the 2018/2019 fiscal year.



Mid-Year Budget and Finance Check-In

PRESENTED BY: Nick Chaset

DATE: January 16, 2019



BUDGET SUMMARY FY 2019

	APPROVED	ACTUAL	
REVENUE AND OTHER SOURCES	BUDGET	OPERATING	DIFFERENCE
	TOTAL	TOTAL	
Electricity Sales	318,091,347	379,610,682	61,519,335
Investment Income	-	-	-
Total Revenue and Other Sources	318,091,347	379,610,682	61,519,335
EXPENDITURES AND OTHER USES			
CURRENT EXPENDITURES			
Cost of energy and Scheduling	236,104,029	297,301,404	61,197,375
Data Management/Billing/Customer Service	4,855,406	4,937,499	82,093
PG&E Service Fees	963,311	1,476,182	512,871
Personnel	5,499,424	3,956,665	(1,542,759)
Marketing, Outreach, Communications	1,871,500	1,670,908	(200,592)
Other Professional Services	3,508,500	2,381,175	(1,127,325)
Local Development	2,000,000	2,000,000	-
General & Administrative	1,708,545	1,145,905	(562,640)
Total Current Expenditures	256,510,714	314,869,737	58,359,023
DEBT SERVICE			
Barclay's Interest	1,685,491	2,051,338	365,847
County Interest	213,852	213,852	-
Total Debt Service	1,899,342	2,265,189	365,847
	-		
Total Expenditures, Other Uses and Debt Service	258,410,056	317,134,926	58,724,870
Net Increase (Decrease) in Available Fund Balance	59,681,291	62,475,756	2,794,465

- Fiscal Year: July 1, 2018 – June 30, 2019
- Budget as approved in May 2018
- Operating as actuals from July 1, 2018 – Dec 31, 2019 and forecasted from Jan 1, 2019 – June 30, 2019

REVENUES

REVENUE AND OTHER SOURCES	APPROVED	APPROVED		ACTUALS	FORECASTED				
	BUDGET	BUDGET	BUDGET	OPERATING	OPERATING	OPERATING	DIFFERENCE	DIFFERENCE	DIFFERENCE
	MIDYEAR	YEAR END	TOTAL	MID YEAR	YEAR END	TOTAL	MIDYEAR	YEAR END	
Electricity Sales	109,505,716	208,585,632	318,091,347	182,242,043	197,368,640	379,610,682	72,736,327	(11,216,992)	61,519,335
Investment Income	-	-	-	-	-	-	-	-	-
Total Revenue and Other Sources	109,505,716	208,585,632	318,091,347	182,242,043	197,368,640	379,610,682	72,736,327	(11,216,992)	61,519,335

- MIDYEAR = July 1, 2018 through Dec 31, 2019
- YEAR END = Jan 1, 2019 through June 30, 2019
- Electricity Sales
 - Primary difference is in first half of year and due to timing of cash flow in budget
 - Budget uses cash flow basis instead of accrual, as used on OPERATING actuals
 - Lower revenues forecasted in winter months Feb - Apr

ENERGY OPERATIONS

ENERGY OPERATIONS	APPROVED	APPROVED		ACTUALS	FORECASTED				
	BUDGET	BUDGET	BUDGET	OPERATING	OPERATING	OPERATING	DIFFERENCE	DIFFERENCE	DIFFERENCE
	MIDYEAR	YEAR END	TOTAL	MIDYEAR	YEAR END	TOTAL	MIDYEAR	YEAR END	TOTAL
Cost of Energy and Scheduling	82,956,866	153,147,162	236,104,029	129,399,844	167,901,560	297,301,404	46,442,977	14,754,398	61,197,375
Data Management/Billing/Customer Service	1,420,178	3,435,229	4,855,406	1,528,192	3,409,307	4,937,499	108,015	(25,922)	82,093
PG&E Service Fees	269,316	693,994	963,311	345,265	1,130,917	1,476,182	75,949	436,922	512,871
Total Energy Operating Costs	84,646,360	157,276,385	241,922,745	131,273,301	172,441,784	303,715,085	46,626,941	15,165,398	61,792,339

- Cost of Energy and Scheduling:
 - Similar with revenues, primary difference is in first half of year and due to timing of cash flow in budget
 - Similar with revenues, Budget uses cash flow basis instead of accrual, as used on OPERATING actuals
- Data Management:
 - Increase in costs associate with third product launch and opt-ups
- PG&E Service Fees:
 - \$0.14 per meter per month previously excluded from Budget

OVERHEAD OPERATIONS

OVERHEAD OPERATIONS	APPROVED	APPROVED		ACTUALS	FORECASTED				
	BUDGET	BUDGET	BUDGET	OPERATING	OPERATING	OPERATING	DIFFERENCE	DIFFERENCE	DIFFERENCE
	MIDYEAR	YEAR END	TOTAL	MIDYEAR	YEAR END	TOTAL	MIDYEAR	YEAR END	
Personnel	2,109,742	3,389,682	5,499,424	1,578,811	2,377,854	3,956,665	(530,930)	(1,011,828)	(1,542,759)
Marketing, Outreach, Communications	1,516,500	355,000	1,871,500	1,074,798	596,110	1,670,908	(441,702)	241,110	(200,592)
Other Professional Services	1,873,000	1,635,500	3,508,500	677,175	1,704,000	2,381,175	(1,195,825)	68,500	(1,127,325)
Local Development	1,000,000	1,000,000	2,000,000	-	2,000,000	2,000,000	(1,000,000)	1,000,000	-
General & Administrative	763,620	944,925	1,708,545	440,005	705,900	1,145,905	(323,615)	(239,025)	(562,640)
Total Overhead Operating Costs	7,262,861	7,325,107	14,587,968	3,770,789	7,383,864	11,154,652	(3,492,073)	58,757	(3,433,316)

- NET: 23.5% Reduction in Expected Costs
- Personnel:
 - Hiring deferrals and head-count reduction
 - Net cost of hired employees was reduced due to lower fringe benefits
- Marketing:
 - End of year costs mostly front-loaded by notification costs with expected savings in second half
- Professional Services:
 - Deferral of outside consultant services to second half of year
- Local Development:
 - Local Development activities have been delayed as EBCE hires staff to lead these efforts. Some additional review of Local Development budget is merited but should occur after final 2019 rates and PCIA are approved by CPUC (should occur in January/February)
- G&A

Reduced rent expenses due to deferral of relocation and overall overhead costs have been well managed

EBCE DEBT

	Principal	Interest	Total
Barclay's	14,300,000	730,869	15,030,869
County	4,636,656	213,852	4,850,508
Total	18,936,656	944,721	19,881,377

- Barclay's
 - Interest is based upon full debt repayment in June
 - Payment in February reduces interest by \$245,000
 - Interest expense includes commitment fees
- County Loan
 - Interest is based upon accrued interest through June, 2018, plus 3.69% through February, 2019
 - Repayment of County Loan is scheduled for February, 2019

BALANCE SHEET

EAST BAY COMMUNITY ENERGY AUTHORITY	
STATEMENT OF NET POSITION	
AS OF NOVEMBER 30, 2018	
ASSETS	
Current assets	
Cash and cash equivalents	\$ 49,969,045
Accounts receivable, net of allowance	22,654,866
Accrued revenue	18,978,070
Other receivables	6,945
Prepaid expenses	5,175,007
Deposits	1,390,440
Restricted cash	3,500,000
Total current assets	101,674,373
Noncurrent assets	
Capital assets, net of depreciation	32,330
Deposits	6,158,176
Total noncurrent assets	6,190,506
Total assets	107,864,879
LIABILITIES	
Current liabilities	
Accounts payable	786,028
Accrued cost of electricity	32,081,387
Accrued interest payable	200,973
Accrued payroll and benefits	175,563
Other accrued liabilities	572,308
User taxes and surcharges due to other governments	2,011,086
Loans payable to Alameda County	4,636,656
Total current liabilities	40,464,001
Noncurrent liabilities	
Note payable to bank	14,300,000
Total noncurrent liabilities	14,300,000
Total liabilities	54,764,001
NET POSITION	
Investment in capital assets	32,330
Unrestricted	53,068,548
Total net position	\$ 53,100,878

- December accruals not yet closed
- Accrued cost of electricity does not include contracted REC's and CO2 commitments
 - Expect additional \$13 million in costs
- Main consideration is debt repayment by fiscal year end

Item 19

Adopt a resolution Authorizing the Chief Executive Officer to Execute a Credit Agreement

Document Forthcoming