



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer

SUBJECT: Legal Services Spend Increase for FY 2020-2021

DATE: May 19, 2021

Recommendation

Adopt a Resolution authorizing staff to spend up to \$1,066,000 on legal services for Fiscal Year 2020-2021.

Background and Discussion

The Board of Directors approved a total legal budget of \$970,000 in June, 2020, and authorized staff to contract with the following law firms:

- Braun Blasing Smith Wynne - Policy
- Davis Wright Tremaine - Policy
- Hall Energy Law - Power Procurement
- Keyes and Fox - Policy/Compliance/Power Procurement
- Liebert Cassidy Whitmore - Employment/HR
- Richards, Watson and Gershon - General Counsel Services
- Wilson Sonsini Goodrich Rosati - Power Procurement

The anticipated budget breakdown across these functions was anticipated to be:

Outside General Counsel: \$300,000 - \$350,000
Regulatory & Policy \$200,000 - \$250,000
Power Procurement and Local Development \$350,000 - \$400,000
Other - \$30,000 - \$60,000

In addition to the firms listed above, EBCE contracted with:

- The Law Offices of Joe Wiedeman - Policy

General Counsel costs were on the higher side of our estimate, mostly due to the cost of responding to Public Records Act Requests, as well as increased contracting volumes with consultants and COVID-19 related grants. Power Procurement legal costs were on the higher side of our estimate, mostly due to the cost of the Request for Offers procurement process. Policy costs were on the higher side of our estimate, as we have an attorney, Joe Wiedman, providing coverage for a staff member that is now working on another team, and BBSW work cost more than anticipated. While the policy-related legal costs exceeded our original budgeted amount, this was offset by lower costs on other non-legal policy related items. EBCE also incurred legal costs related to the setup of two JPAs.

Fiscal Impact

Staff is seeking approval of a Resolution that would authorize the CEO to negotiate and execute contracts with the identified legal firms consistent with the increased total legal services spend of \$1,066,000 for Fiscal Year 2020-2021.

It is likely that the spend for all legal vendors will be less than \$1,066,000, but it would be in EBCE's best interest to have this amount contracted for legal services if necessary. At this time, staff has identified a need to increase the not to exceed amounts on the Agreements with Richards, Watson and Gershon, Hall Energy Law, and Wilson Sonsini Goodrich Rosati.

Attachments

1. Resolution Authorizing the Chief Executive Office to Negotiate and Execute Agreements with Selected Law Firms

RESOLUTION NO. __

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AGREEMENTS WITH SELECTED LEGAL VENDORS

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) 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-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS in June 2018, EBCE issued a broad legal services RFP to select law firms to provide legal expertise across various staff functions, including legislative and regulatory policy, power procurement, general counsel services, finance, and other areas; and

WHEREAS EBCE has previously utilized the following firms to secure such legal expertise: Braun Blasing Smith Wynne, Davis Wright Tremaine, Hall Energy Law, Keyes and Fox, Liebert Cassidy Whitmore, Richards, Watson and Gershon, The Law Office of Joseph F. Weidman, and Wilson Sonsini Goodrich Rosati; and

WHEREAS EBCE is pleased with the prior services by these law firms; and

WHEREAS EBCE has entered into Consulting Services Agreements with the aforementioned law firms and desires to amend certain Agreements in varying amounts that may exceed \$100,000 for Fiscal Year 2020-2021.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO or a designee is hereby authorized to negotiate and execute Consulting Services Agreements and necessary Amendments for one-year terms with firms providing legal services. These firms may include Braun Blasing Smith Wynne, Davis Wright Tremaine, Hall Energy Law, Keyes and Fox, Liebert Cassidy Whitmore, Richards, Watson and Gershon, The Law Office of Joseph F. Weidman, and Wilson Sonsini Goodrich Rosati.

Section 2. The Consulting Services Agreements and necessary Amendments may be for varying amounts that exceed \$100,000 but the total spend on legal services shall not exceed \$1,066,000 through June 30, 2021.

ADOPTED AND APPROVED this 19th day of May, 2021.

Dan Kalb, Chair

ATTEST:

Adrian Bankhead, Assistant Clerk of the Board