



REQUEST FOR QUALIFICATIONS

RFQ Number # 101

RFQ NAME: SPECIAL COUNSEL TO THE EAST BAY COMMUNITY ENERGY AUTHORITY

Seeking specialty legal services in the following areas: Regulatory Compliance Counsel, Bond And Finance Counsel, General Public Agency Counsel, Public Contracts Counsel, Energy Procurement Counsel, Labor And Employment Counsel, CEQA Counsel.

RFQ release date:	June 19, 2018
Contact name: Address:	Leah Goldberg General Counsel 1111 Broadway, 3 rd Floor Oakland, CA 946087
E-mail address:	Legalservicesrfp@ebce.org
Deadline for questions and objections:	June 25, 2018
RFQ due date:	July 9, 2018
Time:	5:00 p.m. (Pacific Time)
Location:	Legalservicesrfp@ebce.org

Request for Qualifications: Special Counsel to East Bay Community Energy Authority (“EBCE”) -- regulatory compliance counsel, bond and finance counsel, general public agency counsel, public contracts counsel, energy procurement counsel, labor and employment counsel, CEQA counsel.

GENERAL INFORMATION ABOUT THIS REQUEST FOR QUALIFICATION

EBCE is a Joint Powers Authority whose members include, the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, Union City, San Leandro and the County of Alameda. EBCE’s purpose is to aggregate the electric load within EBCE’s jurisdiction and provide low cost, greenhouse gas-free

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and renewable energy to our customers. EBCE began serving commercial and municipal customers on June 1, 2018 and will commence serving residential customers on November 1, 2018.

Through this Request for Qualifications (“RFQ”) process, EBCE’s General Counsel is seeking to establish a pool of qualified law firms to provide legal advice and assistance in several areas of the law. EBCE intends to compile a list of qualified firms to provide special counsel services, including advising and representing EBCE as necessary in front of various regulatory bodies; power procurement including drafting short and long term power purchase agreements and associated confirmation documents; bond and financing counsel to advise EBCE and possibly prepare legal opinions on various funding options or security for power purchases; CEQA compliance; public contracting requirements and other general public agency issues such as conflicts of interest laws, and Brown Act compliance; labor and employment advice possibly including employee benefits.

Please note that the RFQ specifies minimum qualifications for all firms seeking to qualify. EBCE may engage one or more firms to provide legal services.

This RFQ consists of the body of this document and the following attachments and appendices:

Attachment A: Form of Legal Services Agreement	Appendix 1: Form of Statement of Qualifications
Appendix A: Assigned Attorneys	Appendix B: Contact Information: Assigned Attorneys

I. BACKGROUND

EBCE operates under a Joint Powers Agreement that established EBCE as a separate public agency apart from its members. Each of its member agencies adopted an ordinance electing to implement, through EBCE, a community choice aggregation program.

EBCE is governed by a Board of Directors consisting of 12 voting members (one from each of the member agencies) and one ex-officio member that represents the Community Advisory Committee. Each member city and Alameda County appoints a director and one alternate. The Directors serve at the pleasure of their city councils or the County Board of Supervisors. The ex-officio member chairs the Community Advisory Committee.

The EBCE Board of Directors appointed EBCE's Chief Executive Officer ("CEO") and its General Counsel. The CEO oversees all of EBCE's operations except for the General Counsel functions. Under the Joint Powers Agreement, the General Counsel is responsible for providing legal advice to the Board of Directors and for overseeing all legal work for EBCE.

II. SCOPE OF SERVICES

The scope of services described in this section is to provide a general description of EBCE's expectations and the services that may be required. The particular services required will vary according to EBCE's particular needs at the time. A firm may apply to provide services in more than one service area.

A. Regulatory Counsel

Regulatory Counsel will be expected to provide the following services in connection with EBCE's regulatory obligations:

1. Provide advice and assistance with ongoing regulatory obligations and filings required of a CCA, including without limitation integrated resource plans, resource adequacy compliance, compliance with California's Renewable Portfolio Standards, and overall representation on issues that will impact EBCE;
2. Represent EBCE in formal regulatory proceedings, as necessary, in front of the California Public Utilities Commission, the California Independent System Operator, the California Energy Commission, the California Air Resources Board, or any other energy-related regulatory agency;
3. Provide advice about various compliance requirements set by the regulatory agencies listed above and assist with drafting, filing and serving compliance documents, as necessary;

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4. Keep the EBCE General Counsel or his/her designee informed of new regulatory requirements, pending or new legislation or case law that will impact EBCE;
5. Attend meetings and participate in telephone conference calls with EBCE staff and EBCE General Counsel or his/her designee as necessary; and
6. Regularly communicate with and keep the EBCE General Counsel informed of communications with and advice requested by staff. The General Counsel's Office will direct all legal work.

B. Power Procurement Counsel

Power Procurement Counsel will be expected to be familiar with Power Purchase Agreements and the legal limitations applicable to public agencies such as the Public Records Act and the Brown Act in order to provide the following services:

1. Help identify and assemble a portfolio of electricity sources to supply sufficient power at all times to EBCE;
2. Prepare and evaluate requests for bids for electrical power;
3. Negotiate, draft or review Power Purchase Agreements and other agreements to provide for adequate power supplies to EBCE, including without limitation, Master Power Purchase and Sale Agreements and short term Power Purchase Agreements;
4. Advise on necessary delegations to the CEO or his/her designee to enable EBCE to respond nimbly to resource needs and execute Power Purchase Agreements and related documentation;
5. Assist with preparing requests for bids for power facilities in which EBCE may purchase local or state located renewables;
6. Advise EBCE on the financial obligations and commitments required by or of the power suppliers;
7. Attend meetings and participate in telephone conference calls with EBCE's staff including the Director of Power Procurement and EBCE's General Counsel's office as necessary; and
8. Regularly communicate with and keep the EBCE General Counsel informed of communications with and advice requested by staff. EBCE's General Counsel will direct all legal work.

C. Finance Counsel

Finance Counsel will be expected to advise EBCE on the legality of various financial mechanisms to provide financing to EBCE or to secure power purchase obligations and provide the following services:

1. Secure short term and long term financing;
2. Insulate EBCE's members from EBCE liabilities;
3. Draft legal opinions as necessary to secure financing;
4. Advise on and establish security mechanisms to secure power purchases;

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5. Advise on security mechanisms that EBCE may want to accept from power suppliers;
6. Attend meetings and participate in telephone conference calls with EBCE staff and the EBCE General Counsel's Office as necessary;
7. Regularly communicate with and keep EBCE's General Counsel informed of communications with and advice requested by staff. EBCE's General Counsel will direct all legal work.

D. Public Agency Counsel

Public Agency Counsel will be expected to be knowledgeable about the laws that public agencies must comply with and to assist EBCE, its staff and General Counsel with the following:

1. Advise on questions related to the Brown Act, the Public Records Act, the Political Reform Act and other conflict of interest requirements;
2. Draft policies and resolutions;
3. Provide updates to the General Counsel's Office about changes in law, significant cases or Attorney General opinions;
4. Provide staff training on public law issues, requirements and mandated trainings;
5. Periodically attend public meetings as counsel to the Board of Directors or the Community Advisory Committee in the General Counsel's absence;
6. Attend meetings and participate in telephone conference calls with EBCE staff and the EBCE General Counsel's Office as necessary;
7. Regularly communicate with and keep the EBCE General Counsel informed of communications with and advice requested by staff. The EBCE General Counsel will direct all legal work.

E. Public Contracting Counsel

Public Contracting Counsel will be expected to be knowledgeable about the requirements that public agencies must comply with to secure supplies, other goods and services and possibly public works and to provide the following specific services:

1. Review requests for bids to ensure compliance with legal requirements;
2. Advise EBCE about when and whether a public bidding process is required or when EBCE is required to accept the lowest responsible bid in various situations;
3. Review or draft construction contracts;
4. Advise or represent EBCE in any bid challenges;
5. Assist EBCE in drafting appropriate policies for procurement of goods and services or public works;
6. Attend meetings and participate in telephone conference calls with EBCE staff and EBCE's General Counsel as necessary;
7. Regularly communicate with and keep the EBCE General Counsel informed of communications with and advice requested by staff. The EBCE General Counsel will direct all legal work.

F. Labor and Employment Counsel

Labor and Employment Counsel will be expected to provide advice or represent EBCE in legal or regulatory proceedings and to provide the following services:

1. Provide necessary employee trainings including sexual harassment training;
2. Review, advise about or update employment policies;
3. Keep the General Counsel's Office informed about any significant changes in law or case law or Attorney General opinions;
4. Conduct workplace investigations as necessary;
5. Represent EBCE in any employment matters before any regulatory agency or in any courts;
6. Draft employment agreements, separation agreements, noncompete agreements or any similar documents;
7. Attend meetings and participate in telephone conference calls with EBCE staff and the EBCE General Counsel as necessary;
8. Regularly communicate with and keep the EBCE General Counsel informed of communications with and advice requested by staff. The EBCE General Counsel will direct all legal work.

G. CEQA Counsel

CEQA Counsel will be expected to provide advice or represent EBCE in legal and regulatory proceedings including:

1. Review of various documents including, without limitation, staff reports and planning documents to advise on CEQA compliance;
2. Represent EBCE in any CEQA-related litigation;
3. Draft CEQA documentation;
4. Attend meetings and participate in telephone conference calls with EBCE staff and the EBCE General Counsel as necessary;
5. Regularly communicate with and keep the EBCE General Counsel informed of communications with and advice requested by staff. The EBCE General Counsel will direct all legal work.

III. PROCUREMENT PROCESS AND STATEMENT OF QUALIFICATION REQUIREMENTS

A. Procurement Process

This RFQ is available on the EBCE website www.EBCE.org.

All addenda and notices related to this procurement will be posted by EBCE on the EBCE website and EBCE suggests that all potential Proposers check the website frequently for any updates or answers to questions. In the event that this RFQ is obtained through any means other than the EBCE website, EBCE will not be responsible for the completeness, accuracy, or timeliness of the final RFQ document.

EBCE will not be responsible for, nor be bound by, any oral instructions or explanations issued by its representatives. Contact with representatives other than the representative listed in this section is grounds for disqualification. Questions or requests for additional information or clarifications regarding this RFQ must be submitted by email addressed to legalservicesrfp@ebce.org as listed on page 1 of this RFQ. EBCE's response will be in the form of an addendum to this RFQ and will be posted on the EBCE website. All addenda will become part of this RFQ.

Please take note that the deadline for submitting inquiries or requests for clarifications is 1:00 p.m. (Pacific Time) on June 25, 2018. EBCE will not respond to inquiries or requests for clarifications submitted after the deadline. Time of receipt will be determined by the time of receipt indicated in EBCE's inbox.

B. Statement of Qualifications

The Statement of Qualifications (“SOQ”) submitted in response to this RFQ must be submitted on the form of the document attached as **Appendix 1**. Please use a typeface font of no less than **12 point**. Appendices and attachments **are not required** to use a typeface font of at least 12 point. Please take care that all attachments and appendices are readable.

The SOQ must address each of the questions listed in the form Statement of Qualifications in the order specified. Please be concise in your responses. The attachment of a firm resume in lieu of responding to one or more of the questions set forth in **Appendix 1** is strongly discouraged and may negatively impact the evaluation of the Statement of Qualifications.

Each SOQ will be reviewed to determine if all required documentation and information was included with the submittal and if the proposer has met the minimum qualifications specified in Section IV. If a proposer fails to provide the required documentation and information or fails to meet the minimum qualifications, the SOQ will be deemed non-responsive. A nonresponsive SOQ will be eliminated from further consideration.

SOQs must be sent via email addressed to legalservicesrfp@ebce.org and received no later than 5:00 p.m. (Pacific Time) on July 9, 2018. Late submissions will not be considered. Time of receipt will be determined by the time of receipt indicated in EBCE’s inbox. Please use PDF (portable document format) for the submission of your SOQs. If files are particularly large, a proposer may want to send a separate email immediately after submitting his or her bid to the same mailbox indicating that a bid was submitted so that EBCE will be aware of any proposals that were filtered out by EBCE’s e-mail servers.

IV. MINIMUM QUALIFICATIONS

If a proposer fails to provide the required documentation and information or fails to meet the minimum qualifications specified below, the SOQ will be deemed nonresponsive. A nonresponsive SOQ will be eliminated from further consideration.

A. California Bar Membership

All attorneys in the firm who will provide services to the EBCE must be members in good standing of the State Bar of California. This requirement does not apply to Power Procurement Counsel.

B. Public Agency Experience

All attorneys submitting bids for Public Agency Counsel, CEQA Counsel, Labor and Employment Counsel and Public Contracting Counsel must have at least 10 years public agency experience.

C. Regulatory Compliance Experience

Five or more years (minimum 2013, 2014 and 2015) appearing before energy related regulatory bodies in California, including the California Public Utilities Commission.

D. Power Procurement Experience

Five or more years experience advising on and procuring power on behalf of a municipal utility, a CCA or other load serving entity with specific experience drafting Power Purchase Agreements and Confirmation Letters.

G. Finance Counsel Experience

Recent experience assisting a California CCA or a municipal utility to secure power purchases, and five (5) years of municipal finance experience serving as bond counsel in California involving municipal finance transactions.

V. SELECTION PROCESS AND EVALUATION CRITERIA

A. Selection Process

Set forth below are the criteria that EBCE will use to evaluate responses to this RFQ. EBCE will evaluate the SOQs of the firms that have met the minimum qualifications. EBCE reserves the right to interview prospective firms prior to making its selection. EBCE also reserves the right to rely on information from sources other than the information provided by the proposers.

In order to be included in the pool, a firm must receive a minimum score of **70 points**. It is EBCE's intention to keep the pool in place through June 30, 2023.

EBCE's General Counsel reserves the right, however, to terminate the pool prior to June 30, 2023, or to extend the expiration date for the pool. Additionally, the EBCE General Counsel may make additions to the pool through another process. EBCE also reserves the right to engage counsel, other than firms within the established pool at any time during the term of the pool through alternative means, including without limitation, other RFQ processes or sole source depending upon the assistance required. The inclusion of a firm in the pool established through this RFQ is not a guarantee of selection for any work.

B. Special Procurement Preferences

EBCE desires to support firms that reflect its values and has identified three categories that will be given special consideration during bid evaluation and selection. Firms in these categories will receive bonus points ranging from 2.5% to 5% for a maximum total bonus of 10% in the bid scoring process. Alameda County businesses where the primary or a satellite business office is located in Alameda County and includes at least 25% Alameda County residents under their employment will receive a bonus of five points out of 100 points scoring system. Firms that use union labor will receive a bonus equal to 2.5 points out of 100 points scoring system. Firms that support diversity and whose owners are a majority women, minorities, disabled veterans, lesbian, gay, bisexual or transgender (or a combination of the above) will receive a bonus equal to 2.5% or 2.5 points out of a 100 point scoring system. EBCE also looks for the highest standards of responsible behavior and integrity in all of its business relationships. EBCE will consider a firm's business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions as determined through references or third-party sources.

C. Award of Contract

EBCE intends to award separate contracts as the need arises for any of the services solicited in this RFQ. EBCE's form of a Legal Services Agreement for Special Counsel is attached as **Attachment A** and includes EBCE's standard form of indemnification for Special Counsel and EBCE's current insurance requirements. Please note that the insurance requirements are subject to change by EBCE prior to execution of a contract with a selected firm and may require annual updating during the term of a Legal Services Agreement. Firms are expected to note any exceptions to the form of agreement in the firm's SOQ and failure to do so may preclude consideration of any requested change(s) at a later date.

Proof of insurance coverage is not required to be submitted with the SOQ, but will be required at the time a Legal Services Agreement is entered into for any particular transaction.

D. Evaluation Criteria

EBCE will evaluate responses to this RFQ based on the following factors.

Evaluation Criteria	Total Points
1. <u>Competency to Perform the Scope of Work and Assigned Staff.</u> a. Firm’s general experience in the specialty area. (10 points) b. Assigned staff’s professional and educational qualifications. (5 points) c. Assigned staff’s depth of experience with each specific service area for which the firm is applying. (25 points)	40
2. <u>Ability to Meet EBCE’s Requirements.</u> a. Responsiveness to EBCE’s requirements specified in the form of Special Counsel Legal Services Agreement attached as Attachment B. (5 points) b. Availability of Lead Special Counsel to work with EBCE. (5 points)	10
3. <u>Technical Competence.</u> a. Knowledge and understanding of the legal requirements and practical issues related to each specific service area for which the firm is applying. (25 points) b. Analytical and written communication skills. (5 points) c. Overall organization and quality of SOQ, including cohesiveness, conciseness, clarity of response and attention to detail. (5 points)	35
4. <u>Fee Structure.</u>	5
5. <u>Special Preferences.</u> a. Alameda County Preference. (5 points) b. Union Labor. (2.5 points) c. Diversity (2.5 points)	10
Total	100

E. Grounds for Disqualification

Grounds for disqualification include:

1. Contact regarding this procurement with any EBCE official or employee or evaluation team member other than the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.
2. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
3. Influencing any EBCE staff member or evaluation team member throughout the solicitation process, including the development of specifications.
4. Evidence of submitting incorrect information in the response to a solicitation or misrepresenting or failing to disclose material facts during the evaluation process.
5. Offering gifts or souvenirs, even of minimal value, to EBCE officers or employees.
6. Existence of any lawsuit, unresolved contractual claim or dispute between the Proposer and EBCE.
7. Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
8. Proposer's default under any EBCE agreement, resulting in termination of such agreement.

VI. MISCELLANEOUS MATTERS

A. Public Nature of Proposal Material

All correspondence with EBCE including responses to this RFQ will become the exclusive property of EBCE and will become public records under the California Public Records Act (Cal. Government Code Section 6250 et seq.) All documents that you send to EBCE will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.

Therefore, any proposal containing language purporting to render all or significant portions of the proposal "Confidential", "Trade Secret" or "Proprietary",

or that fails to provide the exemption information required as described below will automatically be considered a public record in its entirety and will be disclosed to the requesting party subject to the procedures specified below.

Do not mark your entire proposal as “confidential.”

After the announcement of the selected firm(s), all proposals received in response to this RFQ will be subject to public disclosure. If you believe that there are portion(s) of your proposal that are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act that provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as “Trade Secret” and refer to the appropriate section of the Public Records Act that provides the exemption as well as the factual basis for claiming the exemption.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, EBCE may not be in a position to establish that the information that a proposer submits is a trade secret. If a request is made for information marked “Confidential,” “Trade Secret” or “Proprietary”, EBCE will provide proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

B. Costs

All costs associated with responding to this request are to be borne by the proposer.

C. Effect of RFQ

EBCE reserves the right to terminate this RFQ process at any time, to accept or reject any or all SOQs, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the SOQ. EBCE is not obligated to proceed with hiring any counsel as a result of this RFQ.

This RFQ process is not intended to, nor will it create a binding contract or agreement of any kind between EBCE and the selected proposer. EBCE’s standard form of agreement (Attachement A) will form the basis of the contract between the parties on a transaction basis.

D. Nondiscrimination

EBCE requires that any firm with which it contracts agree that it will not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of any work for EBCE.

E. Gift Prohibition

EBCE officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms, or corporations either engaged in business with EBCE, or proposing to do business with the EBCE. Offering of any gift to any EBCE employee or official will be grounds to disqualify a proposer to this RFQ. To avoid even the appearance of impropriety, proposers should not offer any gifts or souvenirs, even of minimal value, to EBCE officers or employees.

F. Objections and Protests

1. Any objections to the structure, content or distribution of this RFQ must be in writing and received by the contact listed below no later than **1:00 p.m. (Pacific Time) on June 25, 2018**. Objections must be as specific as possible and identify the section number and title, as well as a description and rationale for the objection.
2. If an unsuccessful proposer wants to dispute the selection, the protest must be submitted in writing to the contact listed below no later than ten days after the announcement of the selection, detailing the grounds and factual basis of the protest and providing all supporting information. Protests will not be considered for objections to the RFQ requirements which must be addressed under F.1., above. Failure to submit a timely written protest to the contact listed below will bar consideration of the protest.
3. The address for submitting objections or protests is:

Stephanie Cabrera, Clerk to the Board
EBCE
1111 Broadway, 3rd Floor
Oakland, CA 94607

G. Additional Matters

1. EBCE reserves the right to waive any informality or irregularity in any SOQ.

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2. EBCE reserves the right to negotiate the fees of any firm selected for the pool.

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ATTACHMENT A - FORM OF LEGAL SERVICES AGREEMENT

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

THIS AGREEMENT is entered into this XX day of _____, 2018, by and between the East Bay Community Energy Authority, a joint powers authority (“**Authority**” or “**EBCE**”), and _____, a _____ (“**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 _____, 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 _____ and will extend through the completion of the services to be performed by Special Counsel, as described in Exhibit A, subject to the Termination provisions in Section 19 of this Agreement.

2. **SERVICES TO BE PERFORMED**

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

3. **COMPENSATION TO CONSULTANT**

EBCE will compensate Special Counsel for services performed pursuant to this Agreement in a total amount not to exceed _____ dollars (\$_____.00) 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, to the fullest extent allowed by law and without limitation of the provisions of this Agreement related to insurance, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the Authority and its members, officers, officials, Directors, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action, demands, damages and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of, pertaining to, or related to the performance of this Agreement by Special Counsel or Special Counsel's employees, officers, officials, agents or subcontractors. Such costs and expenses will include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation. The acceptance of the Services by Authority will not operate as a waiver of the right of indemnification. The provisions of this Section 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.

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. _____ represents Special Counsel 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:

Email:
Phone:

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.

[For bond counsel Agreements only

In the event EBCE exercises its right to terminate this Agreement without cause, but proceeds with the sale of the Bonds described in Exhibit (the "Bonds"), EBCE agrees to pay Special Counsel for services performed and reimbursable expenses incurred to the date of termination from the proceeds of the sale of the Bonds. Special Counsel recognizes and agrees that payment under this subsection is contingent upon the sale of the Bonds.]

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. **COUNTERPARTS**

This Agreement may be signed in counterparts, each of which will be one and same agreement and will be binding upon the party that signed it.

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

SPECIAL COUNSEL

EAST BAY COMMUNITY ENERGY
AUTHORITY

A Joint Powers Authority

By _____

By _____

Title _____

Title _____

Date _____

Date _____

APPROVED AS TO FORM:

Leah S. Goldberg, General Counsel

Exhibit A
Scope of Services

Special Counsel will represent Authority with respect to:

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.

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 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 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 Two Million Dollars (\$2,000,000.00) 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 of the requirements of this Exhibit C.

Exhibit D
Conflict Waivers

Exhibit E
Special Counsel's Personnel

**APPENDIX 1 - STATEMENT OF QUALIFICATIONS FOR SPECIAL COUNSEL TO
EAST BAY COMMUNITY ENERGY**

Please prepare your responses in Appendix 1 in the same order as is listed here.

NAME OF FIRM: _____

A. Role of Firm

1. Please check the applicable box for each area for which your firm wishes to provide services to EBCE:

- Regulatory counsel
- Power procurement counsel
- Public contracting counsel
- CEQA counsel
- General public law counsel
- Regulatory compliance counsel
- Labor and employment counsel
- Finance counsel

B. Minimum Qualifications

1. Please provide an Appendix that includes the California Bar Membership information, including Bar numbers, along with the information about other personnel that you propose as Special Counsel in response to Section E.1. below. If applying for power procurement counsel, please list the bar numbers and the licensing state for all personnel proposed.
2. The minimum qualifications in section IV B-G of the RFQ requires the proposer firms to have certain minimum experience. In an Appendix B, please provide information on your firm's qualifications to provide the services and specially include the following information as applicable.
 - a. Public Agency Experience: Identify the public agencies that your firm represents or has represented as general counsel or special counsel. List the tasks you have provided for the client. List the amount of time your firm spent on these tasks.

- b. Public Contracting Experience: Identify the clients that your firm has represented in this area, the types of documents your firm has prepared, list the tasks your firm has provided in this area and the amount of time your firm has spent on these tasks. List any public contracts litigation your firm has been involved with, the nature of the claims litigated and the results of that litigation if it has been completed.
- c. Labor and Employment Experience: Identify the public agencies that your firm has represented as specialty labor and employment counsel. List the tasks that you have provided for the client including without limitation the trainings you have provided to employees. Detail any litigation your firm has handled and the outcome of the litigation, if completed. List the amount of time your firm spent on these tasks.
- d. Regulatory Compliance Experience: List the documents your firm has prepared or reviewed to be submitted to a regulatory agency. List the regulatory agencies in front of which your firm has appeared on behalf of a client and identify whether the client was a CCA or municipal utility or other load serving entity, as appropriate. List all compliance tasks your firm has conducted for clients and the amount of time your firm spent on these tasks.
- e. Power Procurement Experience: List the load serving entities that you have assisted in procuring power and the types of documents that you have reviewed or drafted to purchase the power or secure the power purchase. List the type of financial security documents your firm has prepared. List the power generation sources and MW capacity from which your clients have purchased power or developed projects, including specific details on storage contracting experience. Please also detail specific experience related to behind the meter distributed energy resources.

In addition to the above information, provide responses to the following question. For long-term wholesale renewable energy PPA contracts in CA (>10years), what terms would you propose in a form PPA related to each of the following areas. Please provide any creative approaches or suggestions on reaching mutually agreeable terms for consideration.

- i. EBCE credit support
- ii. Energy curtailment
- iii. Energy imbalance risk

- f. Finance Counsel Experience: List the type of financing that your firm has assisted energy clients to employ in securing power or constructing power generation facilities in order to provide electric power. If your firm served as bond or disclosure counsel to public agencies, please list the clients and transactions that your firm has successfully closed.
- g. CEQA Counsel: List the clients for whom you have provided counsel and the types of documents reviewed and prepared. List any CEQA litigation and the outcomes of that litigation, if completed. List the time your firm has spent on the transactional CEQA tasks.

C. Specific Expertise

For each area in which your firm is proposing to provide legal services to EBCE, provide the following information:

- 1. Previous projects demonstrating the firm's expertise in the area that your firm is proposing to provide legal services. (Recent projects or ongoing projects preferred, but projects listed should be no older than three years.)
- 2. The primary attorney involved in that work.
- 3. The names of any associate attorneys involved in that work.
- 4. The client contact names and phone numbers.

D. Firm Experience

In an appendix, briefly describe your firm's practice areas, number of attorneys in the firm, number of attorneys who practice in the area for which the proposer is responding, the locations in which your firm has offices.

E. Personnel Proposed as Special Counsel

- 1. Please complete **Appendix A** to provide information regarding the attorneys to be assigned. Please designate the attorney who will serve as the Lead Special Counsel, and each attorney who will be assigned to assist him/her.
- 2. Please complete **Appendix B** to provide contact information for the attorneys to be assigned.

3. Please attach the resume of each attorney to be assigned.
4. Discuss any limitations on any identified Lead Special Counsel's ability to oversee a transaction, such as other firm management responsibilities, travel to oversee other's clients' transactions and the Lead Special Counsel's method of addressing these potential limitations.
5. Discuss the division of responsibilities between the identified Lead Special Counsel and the other attorneys assigned to work with the Lead Special Counsel.

F. Fee Structure

Please address each of the questions specified below:

1. Whether the firm would be willing to agree to a flat fee arrangement. If so, please give a list of what the flat fee would be for a particular scope of services such as: drafting a master power purchase agreement, preparing an employee handbook, conducting sexual harassment training.
2. The standard hourly rate of each attorney and paralegal who would be assigned to the transaction.
3. A list of reimbursable expenses and the rate charged for each. (EBCE will only pay actual costs for postage, telephone, travel and photocopies.)
4. Any reduced fees offered to other municipalities, governmental entities or nonprofit organizations.
5. Any other fees or charges.

G. References

For each area in which the proposer seeks to serve as Special Counsel to EBCE please provide two references, at least one of which must be a California JPA/municipality, county or local serving entity. List the references' names, titles, and contact information.

H. Conflict of Interest

1. Please identify any actual or potential conflicts of interest your firm might have in providing services to EBCE.
2. Does your firm have a conflict of interest policy? If so, please provide a copy with your SOQ.

I. Litigation or Administrative Proceedings

1. Please state whether or not there is any pending litigation involving the firm or any attorney in the firm arising from legal services provided by the attorney or the firm. If the answer is yes, please describe the nature and the status of the litigation.
2. Are there any pending criminal or administrative actions (including disciplinary matters) involving the firm or any attorney in the firm which arise from legal services provided by any of the attorneys proposed to work for EBCE under the SOQ or the firm? If yes, please describe the nature of such actions and the status. Please limit the response to this question to: (a) malpractice claims and (b) other actions which if an adverse result were to occur would negatively impact the ability of the attorney/firm to render legal services to EBCE
3. For the types of actions described above in questions 1 and 2, please state whether any such actions have been brought or filed since January 1, 2008, which have been resolved. If yes, please explain.

J. Debarments or Suspensions

Please indicate whether your firm, or any individual attorneys who are principals, partners or employees of your firm, have been debarred or suspended by any public entity from obtaining or performing a contract, including the surrounding circumstances.

K. Exceptions to Form Agreement

Please note any exceptions to the form agreement attached as **Attachment A** to the RFQ.

L. Please be sure to include the following attachments and appendices to the firm's Statement of Qualifications:

Appendices:

Description of Firm and Firm History
Resume of Each Attorney to be Assigned

Appendix A Assigned Attorneys
Appendix B Contact Information: Assigned Attorneys

Appendix A
Assigned Attorneys
Please include all attorneys proposed be assigned.

Firm Name: _____

Name	Title	Role	Specific Expertise	How Long In Current Firm	How Long in Current Position	CA Bar Number	Other States Licensed to Practice

Appendix B
Contact Information: Assigned Attorneys

Firm Name: _____

Name:

Role:

Address and Telephone Number: