



Staff Report Item 7

TO: East Bay Community Energy Board of Directors

FROM: Leah S. Goldberg, General Counsel
Nick Chaset, CEO

SUBJECT: Legal Services Agreements with Richards Watson & Gershon and Troutman Sanders

DATE: June 20, 2018

Recommendation

1. Approve an amendment to the Legal Services Agreement with Richards Watson & Gershon adding \$25,000 to the contract amount for a total contract amount of \$290,000 and extending the Legal Services Agreement to August 30, 2018.
2. Approve a resolution authorizing the CEO to negotiate and execute a legal services agreement with Troutman Sanders to provide legal services in connection with power procurement for an amount of \$150,000 for the period November 15, 2017 through August 31, 2018.

Background and Discussion

EBCE anticipates issuing a request for proposals for legal services in the next few weeks. EBCE will be requesting proposals in the areas of energy law, with special emphasis on power procurement; labor and employment law; public agency law including CEQA; energy regulatory matters; financing and bonding; and certain subspecialty legal areas. Through this RFQ, we hope to create a list of eligible firms that will be available to assist EBCE as matters arise. Eligible firms will remain on the list for 3 to 5 years. We anticipate that this RFQ will be issued in the next two weeks, with responses due mid-July. Legal Services Agreements will be entered into as necessary.

On January 17, 2018, the Board of Directors approved a six-month extension of the Legal Services Agreement with Richards, Watson & Gershon. The Board approved this Agreement on January 30, 2017. The agreement was amended and extended in June 2017 and again in January 2018. Although EBCE is no longer relying on Richards, Watson & Gershon for General Counsel services, the firm provides specialty counsel in the area of public law. We anticipate

that \$25,000 will cover existing invoices and any specialty legal services in this area through the end of August.

Troutman Sanders has been working with EBCE for the past few months providing power procurement legal services, including drafting or reviewing power purchase agreements and associated documents. This work was approved through an Engagement Letter with Troutman Sanders. Alameda County's Finance Department would prefer a Legal Services Agreement instead of the Engagement L. Therefore to cover past costs and to cover anticipated costs through the end of August 2018, EBCE desires to enter into a legal services agreement with Troutman Sanders in an amount not to exceed hundred and \$150,000 on a time and material basis. The County's refusal to pay the invoices based on an Engagement Letter came to our attention during the latter part of the first week in June and there was not enough time to complete a Legal Services Agreement prior to posting for this Board meeting. Accordingly, EBCE requests the Board of Directors approval of a resolution authorizing the CEO to negotiate and execute a Legal Services Agreement with Troutman Sanders.

Fiscal Impact

The total fiscal impact over and above what was already committed in the Engagement Letter with Troutman Sanders is \$75,000 and covers legal services from these two firms through August 31, 2018.

Attachments

- A. Amendment to an Agreement with Richards Watson and Gershon; and
- B. Resolution Authorizing CEO to negotiate and execute a legal services agreement with Troutman Sanders

**Amendment to Agreement with Richards Watson & Gershon,
a Professional Corporation for Specialty Legal Services**

This Amendment to Agreement with Richards Watson & Gershon for Specialty Legal Services (“Amendment”) is made this 20th day of June, 2018, by and between the East Bay Community Energy Authority, a Joint Powers Agency formed under the laws of the State of California (“EBCE”) and Richards Watson & Gershon, a professional corporation (“RWG”), for the purposes of extending the Term and adding funding to the Agreement for Legal Services.

Recitals

- A. EBCE and RWG entered into that certain agreement for legal services dated January 30, 2017, (“Agreement”) wherein RWG agreed to provide general counsel legal services to EBCE.
- B. The Agreement was amended on January 17, 2018 to add additional funds and extend the term of the agreement to June 30, 2018.
- C. In February 2018, EBCE hired in-house General Counsel, but RWG’s continued to serve as specialty counsel.
- D. EBCE desires to continue to use RWG’s expertise in the area of public law, and RWG has the expertise and manpower available to assist EBCE in this area.

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

- 1. Section 2 of the Agreement is hereby amended to read in full as follows:

TERM: the term of this Agreement shall commence on January 30, 2017 and shall expire on August 31, 2018, unless extended with the approval of the Board of Directors of EBCE.

- 2. Section 3 of the Agreement is amended to increase the not to exceed amount of the Agreement to \$290,000.
- 3. All other terms and conditions in the Agreement not otherwise modified by this Amendment will remain in full force and effect.

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

East Bay Community Energy Authority,
A Joint Powers Authority

Richards Watson & Gershon,
a professional corporation

Inder Khalsa, Partner

Scott Haggerty
Chair Board of Directors

Approved as to form:

Leah S. Goldberg, General Counsel

RESOLUTION NO. _____
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
WITH TROUTMAN SANDERS

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

Section 1. The East Bay Community Energy Authority (“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. EBCE signed an Engagement Letter with Troutman Sanders wherein Troutman Sanders agreed to provide legal services relating to energy procurement; and Troutman Sanders has been providing such legal services since November 15, 2017.

Section 3. EBCE submitted the Troutman Sanders invoices to Alameda County for payment, but the invoices were rejected for failure to have a Legal Services Agreement other than the Engagement Letter. EBCE desires to pay Troutman Sanders for its services. In order to pay Troutman Sanders for past legal services and to provide funding for future legal services, EBCE and Troutman Sanders will need to enter into a Legal Services Agreement.

Section 4. The Chief Executive Officer is hereby authorized to negotiate and execute a Legal Services Agreement with Troutman Sanders in an amount not to exceed \$150,000 with a term from November 15, 2017 through August 31, 2018.

ADOPTED AND APPROVED this 20th day of June, 2018.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Secretary