



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