



Staff Report Consent Item 6

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, VP Marketing and Account Services

SUBJECT: Climate Corps Fellowships - Agreement between EBCE and Strategic Energy Innovations

DATE: June 20, 2018

Recommendation

Approve the "Agreement for Placement of Climate Corps Program Fellows between The East Bay Community Energy Authority and Strategic Energy Innovations" for up to \$112,841 to fund up to two year-long fellows that will support community outreach as part of Phase 2 launch to residential customers

Background

EBCE presented an overview marketing plan to interested members of the public on June 8, 2018. This overview plan indicated that EBCE will conduct outreach directly to community members and through community organizations. In order to deliver this outreach, EBCE must increase personnel resources for scheduling and staffing events.

Climate Corps is an award-winning fellowship program that provides incredible professional development opportunities for emerging climate protection leaders through implementation of climate change resiliency projects with local governments, non-profits and for-profit businesses. The Climate Corps program is run by Strategic Energy Innovation in San Rafael. Alameda County and the cities of Fremont, Hayward, Oakland, and Piedmont currently have open positions for Climate Corps fellows. Additional, other CCAs such as MCE Clean Energy and Silicon Valley Clean Energy have used this program to support outreach to their service communities.

Analysis & Discussion

The Climate Corps fellow(s) could start as early as July 1 or as late as September 1, depending on the selected candidate. The service term runs through June 2019. The total cost for each fellow for July 2018 through June 2019 is \$56,420.50 - a total of \$112,841 for two fellows for a one-year term.

Attachments

- A. Agreement for Placement of Climate Corps Program Fellows between The East Bay Community Energy Authority and Strategic Energy Innovations

**AGREEMENT FOR PLACEMENT OF CLIMATE CORPS PROGRAM FELLOWS
BETWEEN
THE EAST BAY COMMUNITY ENERGY AUTHORITY
AND
STRATEGIC ENERGY INNOVATIONS**

This Agreement for Placement of Climate Corps Program Fellows is made and entered into this ____ day of _____ 2018, by and between the East Bay Community Energy Authority, a California joint powers authority ("EBCE"), and Strategic Energy Innovations, a California nonprofit corporation formed under Section 501(c)(3) of the Internal Revenue Code ("SEI").

RECITALS

- A. SEI is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California; and
- B. SEI seeks to place up to two (2) Climate Corps Program Fellows ("Fellows") with EBCE to engage in climate and energy initiatives, and to monitor these services during the term of this Agreement; and
- C. EBCE would like to hire up to two (2) Fellows to assist with various clean energy initiatives.

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

SECTION 1. SCOPE OF SERVICES.

SEI and EBCE will perform those services specified in detail in Exhibit A, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement will be from July 1, 2018 to June 30, 2019, inclusive, subject to the provisions of Section 10 of this Agreement.

SECTION 3. COMPENSATION.

The compensation to be paid to SEI will not exceed Fifty-Six Thousand Four Hundred Sixty-Two Dollars and Fifty Cents (\$56,462.50) per Fellow. The rate and schedule of payment is set out in Exhibit B, entitled "COMPENSATION," which is attached hereto and incorporated herein.

SECTION 4. METHOD OF PAYMENT.

Exhibit B, entitled "COMPENSATION," sets forth the manner in which EBCE will compensate SEI.

SECTION 5. INDEPENDENT CONTRACTOR.

It is understood and agreed that SEI, in the performance of the work and services to be performed by SEI, will act as and be an independent contractor and not an agent or employee of EBCE; and as an independent contractor, neither SEI nor any of SEI's officers, employees, subcontractors, agents, or Fellows will obtain any rights to retirement benefits or other benefits that accrue to EBCE's employees, SEI will explain this to the Fellows, and SEI hereby expressly waives any claims it may have to any such rights.

SECTION 6. ASSIGNABILITY.

The parties agree that the expertise and experience of SEI are material considerations for this Agreement. SEI agrees that it will not assign or transfer any interest in this Agreement nor the performance of any of SEI's obligations hereunder, without the prior written consent of EBCE, and any attempt by SEI to so assign this Agreement or any rights, duties or obligations arising hereunder will be void and of no effect. SEI may not engage any subcontractor to perform services otherwise to be performed by SEI under this Agreement without EBCE's prior written consent.

SECTION 7. INDEMNIFICATION.

SEI will defend, indemnify and hold harmless EBCE, its officers, directors, employees and agents from and against any claim, loss or liability arising out of, directly or indirectly, or resulting in any way, in whole or in part, from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by SEI's

officers, employees or agents. SEI will indemnify, defend, and protect EBCE against any claims from any Fellows or SEI employees or officers for any EBCE benefits. EBCE's acceptance of SEI's services and duties, EBCE's payment of funds, or SEI's acceptance of such funds will not operate as a waiver to the right of indemnification under this Section 7.

SECTION 8. INSURANCE REQUIREMENTS.

SEI agrees to have and maintain the insurance policies set forth in Exhibit C, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates or binders will be subject to EBCE's approval as to form and content. SEI must provide EBCE with a copy of the certificates of insurance along with all endorsements before work commences under this Agreement. SEI must provide EBCE copies of the insurance policies upon request.

SECTION 9. NONDISCRIMINATION.

SEI must 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 this Agreement.

SECTION 10. TERMINATION.

- A. EBCE and SEI will each have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.
- B. If SEI 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.

SECTION 11. GOVERNING LAW.

EBCE and SEI agree that the law governing this Agreement will be that of the State of California.

SECTION 12. COMPLIANCE WITH LAWS.

SEI must comply with all applicable laws, ordinances, codes and regulations of federal, state and local governments.

SECTION 13. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for SEI in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by EBCE, or as required by law.

SECTION 14. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by SEI or any other person engaged directly or indirectly by SEI to perform the services required hereunder will be and remain the property of EBCE without restriction or limitation upon their use.

SECTION 15. WAIVER.

SEI agrees that waiver by EBCE of any breach or violation of any term or condition of this Agreement will not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. EBCE's acceptance of the performance of any work or services by SEI will not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 16. SEI'S BOOKS AND RECORDS.

- A. SEI must maintain any and all ledgers, books of account, invoices, vouchers, cancelled 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 three (3) years, or for any longer period required by law, from the date of final payment to SEI pursuant to this Agreement.

- B. SEI must maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

- C. Any records or documents required to be maintained pursuant to this Agreement will be made available for inspection or audit at no cost to EBCE, at any time during regular business hours, upon written request by EBCE. Copies of such documents will be provided to EBCE for inspection at EBCE's offices. Otherwise, unless an alternative is mutually agreed upon, the records will be available at SEI's address indicated for receipt of notices in this Agreement. SEI acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this Agreement (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.
- D. Where EBCE has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of SEI's business, EBCE may require that custody of the records be given to EBCE and that the records and documents be maintained at EBCE's offices. Access to such records and documents must be granted to any party authorized by SEI, SEI's representatives, or SEI's successor-in-interest.

SECTION 17. CONFLICT OF INTEREST.

SEI must 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, SEI's employees assigned to perform services as specified in Exhibit A of this Agreement ("SEI's Assigned Employees") will not be required to complete and file a Form 700. In the event that the EBCE subsequently determines to require SEI's Assigned Employees to complete and file a Form 700, EBCE will notify SEI 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"). SEI will cause SEI's Assigned Employees to complete and file the Form 700 with EBCE's Clerk to the Board, 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.

SECTION 18. NO RIGHTS AGAINST EBCE MEMBER AGENCIES.

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

SECTION 19. NOTICES.

All notices and other communications required or permitted to be given under this Agreement must be in writing and may be personally served or mailed, postage prepaid, and return receipt requested or sent via electronic mail, addressed to the respective parties as follows:

To EBCE: East Bay Community Energy
Attn: Annie Henderson
1111 Broadway, 3rd Floor
Oakland, CA 94607
ahenderson@ebce.org

To SEI: Strategic Energy Innovations
Attn: Nathan McKenzie, Program Manager
899 Northgate Dr., Suite 410
San Rafael, CA 94903
nathan@seiinc.org

Notice will be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail, and one day after sent via electronic mail provided that a copy is also sent via U.S. mail or the party sending the notice receives notification of receipt.

SECTION 20. ACKNOWLEDGMENTS.

SEI must acknowledge that the services provided by the Climate Corps Fellows was made possible by EBCE, where appropriate, in written documents and informational materials as well as oral communications concerning the services by the Climate Corps Fellows placed at EBCE.

SECTION 21. VENUE.

In the event that suit must be brought by either party to this contract, the parties agree that venue will be exclusively vested in the state courts of the County of Alameda, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Francisco, California.

SECTION 22. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. 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. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may be modified only by a written amendment duly executed by the parties to this Agreement.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:


LEAH S. GOLDBERG
General Counsel

“EBCE”

EBCE, a Joint Powers Authority

By _____
SCOTT HAGGERTY
Title: Chair, EBCE Board of Directors

“SEI”

STRATEGIC ENERGY INNOVATIONS, a
California nonprofit corporation

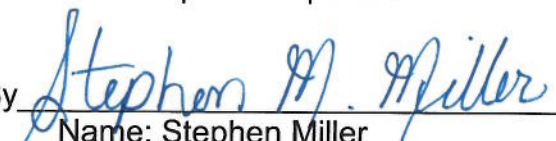
By 
Name: Stephen Miller
Title: Deputy Director

EXHIBIT A
SCOPE OF SERVICES

- A. The Fellows are recruited, trained, supported, and placed with local host agencies by SEI to support specific climate- and energy-focused environmental initiatives at local agencies to perform work agreed upon between local host agencies and SEI. The Fellows are not local host agencies' employees and are not paid by host agencies for their service. The Fellows' service is provided by SEI to local agencies as a service of SEI. Fellows have the opportunity to spend at least ten (10) months learning cutting edge and valuable skills while helping Bay Area California communities address climate, energy and broader sustainability policies, projects and initiatives; <http://www.climate-corpsclimatecorps-bayarea.org/> provides further information.
- B. SEI must perform all of the following services in consideration of receiving the grant:
1. Place up to two (2) Fellows with EBCE. As possible, place the Fellows in the Summer Session (July and August 2018). Each Fellow must provide 360 hours of service with EBCE during the period of July 1, 2018 through August 30, 2018, of which up to 27 hours may be spent in job-related training;
 2. Continue the Fellowship into the Full Cycle Session (September 2018 through June 2019). Each Fellow must each provide 1,732 hours of service with EBCE during the period of September 4, 2018 through June 30, 2019, of which up to 132 hours may be spent in job-related training;
 3. Train and support the Fellows through a comprehensive training program including, but not limited to, providing Fellows with a training manual, a multi-day orientation led by an array of experts, monthly trainings, one

mid-year two-day retreat, and two Professional Development Assessment reviews;

4. Collaborate with EBCE to develop a Fellowship Program Plan that aligns with EBCE and Climate Corps Program goals and defines the training plans for the Fellows;
5. Provide assistance for defining and developing metrics for each initiative that will track the climate/ energy impacts through the term of this AGREEMENT;
6. Consult at least once a month with EBCE staff member(s) assigned to supervise the Fellows for the purpose of assessing progress, addressing any performance issues, and improving the quality of the broader program.
7. Pay a living stipend and end of program award to Fellow during the Service Term, including any additional funding provided by EBCE for Fellow as may be set out in the work plan.

C. The EBCE agrees to:

1. Take part in the recruitment and interview process to identify Fellows best suited for the targeted initiatives;
2. Collaborate with SEI to establish a Fellowship Program Plan for each Initiative. Initiatives must be well-defined and include specific learning objectives, along with climate/ energy/ sustainability goals and outcomes or have the capacity to define specific climate and energy impacts. Work plans must be finalized based on mutually acceptable terms to EBCE and SEI within the first week of Fellows' placement;

3. Assign supervisors to meet weekly with the Fellows, coordinate other necessary staff supervision needed for successful implementation of the Fellowship Program Plan;
4. Support the Fellows to complete monthly reporting to SEI, communicating whether progress is being made on initiatives and whether there are any noteworthy changes to the Fellowship Program Plan;
5. Evaluate the effectiveness of the program twice during the term of this AGREEMENT regarding the Fellows' activities by submitting a Professional Development Assessment;
6. Allow SEI to share results from this program through grant reporting and other means as SEI deems appropriate;
7. Assume full risk and responsibility for any accidents related to allowing the Fellow to operate any Partner-owned vehicles while under this Agreement.

EXHIBIT B
COMPENSATION

- A. EBCE hereby grants to SEI, and SEI hereby accepts a sum of up to Fifty-Six Thousand Four Hundred Twenty Dollars and Fifty Cents (\$56,420.50) (as detailed below) per Fellow to be used for the placement and administration of services for up to two Fellows (both on a "Full Cycle" of 10 months) and for the 2-month "Extension" of each Fellow. SEI will disburse these funds after EBCE approval of an invoice from SEI upon full execution of this Agreement.

	Fee to SEI	Additional Monthly Stipend at \$750	Additional End of Program at \$750	TOTAL
July 2018 - August 2018	\$10,250.00	\$1,500.00	\$0.00	\$11,750.00
Sept 2018 - June 2019	\$35,000.00	\$7,600.00	\$750.00	\$43,250.00
Additional Admin fee of 15%		\$1,350.00	\$112.50	\$1,462.50
TOTAL	\$45,250.00	\$10,350.00	\$862.50	\$56,462.50

- B. Should EBCE fail to select at least one Fellow after participating in the recruiting effort, then EBCE agrees to compensate SEI in the amount of Two Thousand Five Hundred Dollars (\$2,500) for the recruiting effort.
- C. In the event of termination under Section 10 of this AGREEMENT, the following provisions will apply:
1. SEI cannot guarantee Fellow's participation in the Program for the full Service Term. If, before the end of the Service Term, Fellow leaves the Program voluntarily, is terminated by either SEI or Partner for performance-related reasons, or is hired by Partner as an employee, he or she will be considered withdrawn from the Program, and SEI and Partner will discuss whether to find a replacement. If SEI or Partner decide not to replace at least one Fellow, or if SEI fails to find a replacement for at least one Fellow after reasonable efforts to do so, then this MOU will terminate effective as of the date of all Fellows' withdrawal from the Program.

2. Following Fellow's withdrawal with replacement, SEI will refund to Partner a sum equal to the undistributed Living Stipend for the period between withdrawal and replacement.
 3. Following Fellow's withdrawal from the Program without replacement, SEI will: (a) refund to Partner a lump-sum amount equal to the remaining Living Stipend and End of Program Award that have not been distributed to Fellow at time of withdrawal and (b) if applicable, return to Partner the remaining balance of any reimbursement account for additional funds as set out in the Program Plan. If Fellow withdraws before any installment of SEI's fee (under Section 1.5) is due, Partner will have no obligation to pay that installment and SEI will have no obligation to refund any amounts corresponding to the remaining Living Stipend and End of Program Award for the period following the installment due date.
- D. In the event that a Fellow terminates his or her participation early, depending upon EBCE's needs, SEI staff will:
1. Recruit for a replacement should the Fellow leave prior to the late January/ early February spring semester registration into SEI certificate courses; or
 2. Work with EBCE to transition the Fellow's work internally (to other Fellows/staff) in which case, SEI will reimburse EBCE for unexpended funds as detailed in paragraph C. above.

EXHIBIT C
INSURANCE

SEI, at SEI's sole cost and expense, must procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by SEI, its agents, representatives, employees, subcontractors or Fellows.

A. Minimum Scope of Insurance

Coverage must be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage must be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There will be no endorsement reducing the scope of coverage required above unless EBCE approves such reduction in advance.

B. Minimum Limits of Insurance

SEI must maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by EBCE. At the option of EBCE, either: the insurer must reduce or eliminate such deductibles or self-insured retentions as respects EBCE, its officers, employees, agents and contractors; or SEI must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount equal to the deductibles or self-insured retentions.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. EBCE, its directors, officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, SEI; products and completed operations of SEI; premises owned, leased or used by SEI; and automobiles owned, leased, hired or borrowed by SEI. The coverage must contain no special limitations on the scope of protection afforded to EBCE, its directors, officers, employees, agents and contractors.
 - b. SEI's insurance coverage must be primary insurance as respects EBCE, its directors, officers, employees, agents and contractors. Any insurance or self-insurance maintained by EBCE, its officers, employees, agents or contractors must be excess of SEI's insurance and will not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by SEI will not affect coverage provided EBCE, its directors, officers, employees, agents, or contractors.
 - d. Coverage must state that SEI's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage must contain a waiver of subrogation in favor of EBCE, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage must contain waiver of subrogation in favor of EBCE, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement must be endorsed to state that coverage must not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to EBCE, except that ten (10) days' prior written notice will apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to EBCE.

F. Verification of Coverage

SEI must furnish EBCE with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance must be provided before SEI commences work or services under the Agreement.

G. Fellows

SEI must include all Fellows as insureds under its policies or will obtain separate certificates and endorsements for each Fellow.

