



Consent Item 9

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operating Officer

SUBJECT: Amendment to Legal Services Agreement with Chapman and Cutler LLP for Preparation of Preliminary Offering Statement for Prepay Transaction

DATE: July 21, 2021

Recommendation

Adopt a Resolution authorizing a First Amendment to the Consulting Services Agreement between EBCE, SVCE and Chapman and Cutler LLP to prepare and issue the Preliminary Offering Statement and final Offering Statement for the municipal bonds to be issued for the prepay transaction, and to increase the compensation by \$100,000, for a total amount not to exceed \$335,000, which will be shared by EBCE and SVCE.

Background and Discussion

As EBCE and Silicon Valley Clean Energy (SVCE) prepare a prepay transaction through which municipal bonds will be issued, it is required that a Preliminary Offering Statement (POS) be composed to market the bonds, and that a final Offering Statement (OS) be composed and printed/distributed following the pricing of the bonds. Chapman & Cutler, serving as Issuer's Counsel and Disclosure Counsel already for the prepay transaction, is highly experienced and positioned to produce the POS and OS for the EBCE-SVCE prepay.

The existing Consulting Services Agreement with Chapman & Cutler - approved by the EBCE Board on September 16, 2020 - only covers the scope of their work as Issuer's and Disclosure Counsel.

Financial Impact

The cost of this additional scope is anticipated to be less than \$100,000, payable from the proceeds of the prepay bonds. That is to say, there is no out-of-pocket cost to EBCE; the cost will be paid out of the savings realized from the prepay transaction. Further, that cost will be split between EBCE and SVCE.

Attachment

- A. Resolution of the Board of Directors Approving a First Amendment to the Consulting Services Agreement with Chapman & Cutler LLP
- B. Draft First Amendment for Consulting Services with Chapman & Cutler LLP

RESOLUTION NO. __

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING A FIRST AMENDMENT TO THE CONSULTING SERVICES AGREEMENT FOR LEGAL SERVICES WITH BETWEEN EBCE, SVCE AND CHAPMAN AND CUTLER LLP

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS the pursuit of an energy prepay enables a meaningful power procurement cost savings opportunity in which EBCE utilizes its tax-exempt status to access the municipal bond market to prepay existing energy supply contracts at a discounted rate;

WHEREAS Chapman and Cutler LLP was selected to serve as Issuer’s Counsel and Disclosure Counsel for the prepay through a solicitation issued jointly with Silicon Valley Clean Energy in June 2020,

WHEREAS in October 2020 the CEO executed a Consulting Services Agreement with Silicon Valley Clean Energy and Chapman and Cutler for legal services for an amount not to exceed \$235,000,

WHEREAS it is required that a Preliminary Offering Statement be composed to market the bonds, and that a final Offering Statement be composed and distributed following the pricing of the bonds;

WHEREAS staff has found Chapman and Cutler’s team deeply experienced and a leader in the narrow field of legal firms providing counsel on energy prepay transactions.

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

Section 1. Authorize CEO to negotiate and execute an Amendment to the Consulting Services Agreement between EBCE, SVCE and Chapman and Cutler LLP to expand the scope of work and to increase the total compensation by \$100,000, for a total amount not to exceed \$335,000.

ADOPTED AND APPROVED this 21st day of July, 2021.

Dianne Martinez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

First Amendment to Consulting Services Agreement for Services by and Between East Bay Community Energy Authority and Silicon Valley Clean Energy Authority, and Chapman and Cutler LLP

This First Amendment to the Agreement with Chapman and Cutler LLP for Consulting Services (“First Amendment”) is made this 21st day of July, 2021, by and between the East Bay Community Energy Authority, a Joint Powers Agency formed under the laws of the State of California (“EBCE”), Silicon Valley Clean Energy Authority, a Joint Powers Agency formed under the laws of the State of California (“SVCE”), and Chapman and Cutler LLP (“Chapman and Cutler”), an Illinois Limited Liability Partnership, for the purposes of adding additional scope and compensation.

Recitals

- A. EBCE, SVCE, and Chapman and Cutler entered into that certain Consulting Services Agreement dated October 19, 2020 (“Agreement”), wherein Chapman and Cutler agreed to provide legal services to EBCE and SVCE, with compensation not to exceed \$235,000.
- B. EBCE, SVCE, and Chapman and Cutler now desire to amend the Agreement to add additional compensation, increasing the not-to-exceed amount by \$100,000 for a total amount not to exceed \$335,000.

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

- 1. Section 6 of the Agreement (“Compensation and Payment”) is amended in part to increase the total compensation of the Agreement by \$100,000 for a total amount not to exceed three hundred ten thousand dollars (\$335,000).
- 2. Exhibit E (“Compensation/Budget”) of the Agreement is replaced in its entirety by Exhibit E, attached hereto.
- 3. All other terms and conditions in the Agreement not otherwise modified by this First Amendment will remain in full force and effect.

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

East Bay Community Energy Authority,
A Joint Powers Authority

Chapman and Cutler LLP,
An Illinois Limited Liability Partnership

Nick Chaset
Chief Executive Officer

Name:
Title:

Date: _____

Date: _____

Approved as to form:

EBCE General Counsel

Silicon Valley Clean Energy Authority,
A Joint Powers Authority

Girish Balachandran
Chief Executive Officer

Date: _____

Approved as to form:

SVCE General Counsel

Exhibit E

Compensation/Budget

Consultant will perform the legal services referred to in Exhibit A of the original Consulting Services Agreement, and will also perform the legal services of preparing and distributing the Preliminary Offering Statement and final Offering Statement for the EBCE-SVCE energy prepayment transaction, for a fixed fee of \$335,000 (the “Fixed Fee”). The Fixed Fee will be payable solely from proceeds of the bonds at closing of the Transaction described in Exhibit A.

Consultant will record the time of its team members for work relating to the Transaction at a blended rate of \$750 per hour. In the event EBCE and SVCE determine not to proceed with the Transaction or terminate this Agreement prior to closing of the Transaction, ECBE and SVCE will be jointly and severally obligated to pay Consultant the lesser of (i) its actual time charges (at the foregoing blended rate) as of the date of such determination or termination, as applicable, or (ii) \$30,000.

The maximum compensation under this Agreement is \$335,000.