



Staff Report Item 17

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, Chief Operations Officer

SUBJECT: REIMBURSEMENT RESOLUTION FOR FINANCING OFFICE BUILDING PURCHASE

DATE: July 21, 2021

Recommendation

Approve the attached Resolution declaring EBCE's intent to incur debt to reimburse the costs of purchasing real property for an office site at 251 8th Street, in Oakland.

Background and Discussion

On July 9, 2021, the Board of Directors authorized the CEO to execute a Purchase and Sale Agreement for real property located at 251 8th Street in Oakland. The site will be used for EBCE offices and may serve other functions as well. The EBCE will pay cash for the purchase, in order to avoid delays with escrow, but intends to obtain financing to reimburse itself for the bulk of the purchase price. At this point, staff is reviewing financing options for this "refinancing," and no final decision has been made regarding the structure of the financing.

Staff is currently exploring options for both taxable and tax-exempt financing for this transaction. Under federal tax laws, proceeds of tax-exempt bonds (or other types of debt obligations) generally cannot be used to reimburse expenditures made before the debt issuance date. One exception is where the issuer makes a formal declaration of official intent to reimburse itself through financing. Once the declaration of official intention is made, then proceeds of tax-exempt debt may be used for expenditures made before the issuance of the debt (but not earlier than 60 days before the date of the declaration). The attached resolution will constitute such "declaration of intention" for purposes of Treasury Regulation Section 1.150-2.

Adoption of the attached Resolution will allow the EBCE to seek tax-exempt bond financing if that is determined to be the best course of action. This Resolution is not

an authorization to issue bonds (or other types of debt) or and does not otherwise bind the Authority into issuing tax-exempt debt, if circumstances change. Staff will return with an authorization resolution prior to the issuance of tax-exempt debt or any other type of financing transaction.

In addition to requiring Board approval, any financing of the office building will require approval from another local agency with jurisdiction over the office site, either the City of Oakland or Alameda County, after a noticed public hearing pursuant to Government Code Section 6586.5(a)(2).

Fiscal Impact

This Resolution does not have any fiscal impact on the EBCE, but simply authorizes the EBCE to seek tax-exempt financing in the future. Authorization of financing or tax-exempt debt would require subsequent Board approval.

Committee Recommendation

N/A

Attachments

A. Resolution

RESOLUTION NO. __

A RESOLUTION OF THE BOARD OF DIRECTORS

**OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DECLARING ITS OFFICIAL
INTENT TO REIMBURSE ITSELF FOR CERTAIN CAPITAL COSTS FROM THE PROCEEDS
OF LONG-TERM DEBT**

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

WHEREAS, the Authority desires to finance the acquisition, equipping, rehabilitation, improving of certain real property currently located at 251 8th St in the City of Oakland (or a substitute facility that would meet the needs of the Authority) to be used for the Authority’s governmental purposes (the “Project”);

WHEREAS, the Authority is considering financing the costs of the Project through the issuance of tax-exempt obligations (“Debt”);

WHEREAS, the Authority expects to expend moneys (other than moneys derived from the issuance of bonds or other debt) on expenditures relating to the costs of the Project prior to the issuance of the Debt, which expenditures would be properly chargeable to a capital account under general federal income tax principles;

WHEREAS, the Authority reasonably expects to reimburse certain of such capital expenditures with the proceeds of the Debt;

WHEREAS, the Authority expects that the maximum principal amount of proceeds of the Debt which will be issued to pay for the costs of the Project (and related issuance costs) will not exceed \$10,000,000;

WHEREAS, at the time of the reimbursement, the Authority will evidence the reimbursement in a writing which identifies the allocation of the proceeds of the Debt to the Authority for the purpose of reimbursing the Authority for the capital expenditures made prior to the issuance of the Debt;

WHEREAS, the Authority expects to make the reimbursement allocation no later than eighteen (18) months after the later of (i) the date on which the earliest original expenditure is paid or (ii) the date on which the Project are placed in service (or abandoned), but in no event later than three (3) years after the date on which the earliest original expenditure for the Project is paid;

WHEREAS, the Authority will not, within one (1) year of the reimbursement allocation, use the proceeds of the Debt received in the reimbursement allocation in a manner that will result in the creation of replacement proceeds of the Debt or another issue; and

WHEREAS, this Resolution is intended to be a “declaration of official intent” in accordance with Section 1.150-2 of the Treasury Regulations.

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

Section 1. This Board finds and determines that the forgoing recitals are true and correct.

Section 2. In accordance with Section 1.150-2 of the Treasury Regulations, the District declares its intention to issue the Debt in a principal amount not to exceed \$10,000,000, the proceeds of which will be used to pay for the costs of the Project, including the reimbursement to the Authority for certain capital expenditures relating to the Project made prior to the issuance of the Debt.

Section 3. This declaration of intent does not bind the Authority to make any expenditure, incur any indebtedness, or proceed with the Project.

Section 4. This Resolution shall take effect immediately upon its adoption.

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

Dianne Martinez, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board