

RESOLUTION NO. 2016-15

RESOLUTION OF THE BOARD OF DIRECTORS OF SILICON VALLEY CLEAN ENERGY AUTHORITY DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE CONFIRMATION AGREEMENTS WITH TERMS CONSISTENT WITH THOSE PRESENTED WITH EACH OF THE SHORT-LISTED ENERGY SERVICE PROVIDERS AND TO ENTER INTO THE LOCKBOX AGREEMENTS WITH RIVER CITY BANK.

THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the Silicon Valley Clean Energy Authority ("Silicon Valley Clean Energy") was formed on March 31, 2016; and

WHEREAS, launch of service of the community choice aggregation program is planned for April 3, 2017; and

WHEREAS, Silicon Valley Clean Energy administered a competitive process to select contractors capable of providing energy, renewable energy, carbon free energy, and related products and services (the "Product") from energy generating sources that are cleaner and have a higher percentage of renewable energy than that provided by the incumbent utility and at competitive prices; and

WHEREAS, Silicon Valley Clean Energy has identified six energy service providers (each, an "Energy Service Provider" or "ESP") as having competitive proposals and the ability to meet the aforementioned goals;

WHEREAS, Silicon Valley Clean Energy has negotiated a separate EEI Master Agreement (the "Master Agreement") with each ESP;

WHEREAS, Silicon Valley Clean Energy has also negotiated a form of Confirmation Agreement with each of the ESPs;

WHEREAS, a Confirmation Agreement is an agreement between an energy purchaser and an energy supplier (e.g., an ESP) that binds the purchaser and a supplier to supply specific quantities of specific types of energy products at specific prices and is governed by the terms and conditions of the Master Agreement;

WHEREAS, Silicon Valley Clean Energy has agreed to provide a "multi-party lockbox", into which Silicon Valley Clean Energy customer payments will be deposited, as security for the power purchase obligations of Silicon Valley Clean Energy;

WHEREAS, three of the ESPs have elected to participate in the multi-party lockbox;

WHEREAS, River City Bank was selected to administer the multi-party lockbox;

WHEREAS, three agreements with River City Bank are necessary to establish the “multi-party lockbox”: an Intercreditor and Collateral Agency Agreement, a Security Agreement and a Deposit Account Agreement (collectively, the “Lockbox Agreements”) and forms of these three agreements were negotiated with three participating ESPs as well as River City Bank and are intended to be entered into at the same time that Silicon Valley Clean Energy enters into the Confirmation Agreements with the ESPs that are participating in the multi-party lockbox;

WHEREAS, staff is presenting to the Board for its review one form of each of the Confirmation Agreements and the Lockbox Agreements;

WHEREAS, there are minor differences in each form of Confirmation Agreement based upon changes requested by each ESP, these differences are not material in the overall context of the proposed transaction;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute each of the aforementioned Confirmation Agreements and Lockbox Agreements for the reasons provided above and because of the timing of the execution of the Confirmation Agreement it is infeasible to bring the final Confirmation Agreement and Lockbox Agreements back to the Board and comply with the Brown Act;

WHEREAS, the Board has determined that (1) the approval of the Confirmation Agreements are not a project under the California Environmental Quality Act (CEQA), (2) if the approval of the Confirmation Agreements are a project under CEQA the Agreements do not have the potential for causing a significant impact on the environment under State CEQA Guidelines Section 15061(b)(3), and (3) if the approval of the Confirmation Agreements are a project under CEQA, the Agreements are categorically exempt under State CEQA Guidelines Section 15308 as actions for the protection of the environment.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

1. Execute a Confirmation Agreement with terms consistent with those presented to the Board of Directors, for a term of up to 57 months subject to the condition that the average cost of power purchased in aggregate under all of the Confirmations shall not exceed a cost threshold of \$50 per MWh, with the following short-listed Energy Service Providers:

3 Phases Renewables Inc.

Energy America, LLC

Exelon Generation Company, LLC

Morgan Stanley Capital Group, Inc.

Powerex Corp.

Shell Energy North America (US), L.P.

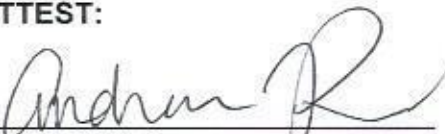
2. Execute the Lockbox Agreements with River City Bank, and in the case of the Intercreditor and Collateral Agency Agreement, with the participating ESPs, in a form containing terms consistent with those presented to the Board of Directors, and transfer funds to River City Bank sufficient to meet contractual obligations under the foregoing agreements.

3. File with the Santa Clara County Clerk, a Notice of Exemption until CEQA.

ADOPTED AND APPROVED this 14th day of December, 2016.


Chair

ATTEST:


Secretary