REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF SAN BERNARDINO COUNTY AND RECORD OF ACTION

May 21, 2024

FROM

LUTHER SNOKE, Chief Executive Officer, County Administrative Office

SUBJECT

Agreement with Southern California Edison and Contract with GDS Associates, Inc. for a Feasibility Study and Technical Assessment of Forming a County Community Choice Aggregation

RECOMMENDATION(S)

1. Authorize the Chief Executive Officer to investigate the delivery of electric service to County residents through the implementation of community choice aggregation.
2. Approve the non-financial Declaration Regarding Pursuit or Implementation of Community Choice Aggregation Service Form.
3. Approve the non-financial Community Choice Aggregator Non-Disclosure **Agreement No. 24-412**, including non-standard terms, with Southern California Edison to receive specific confidential information to investigate the possible implementation of community choice aggregation, effective May 21, 2024, and continuing into perpetuity.
4. Authorize the Chief Executive Officer to execute and submit the Declaration Regarding Pursuit or Implementation of Community Choice Aggregation Service Form, the Community Choice Aggregator Non-Disclosure Agreement and all other documents required by Southern California Edison in order to release utility information to third parties for the County's community choice aggregation feasibility study, subject to review by County Counsel.
5. Approve **Agreement No. 24-413** with GDS Associates, Inc. for a feasibility study and technical assessment of forming a community choice aggregation, in the amount of $80,000, for the period of May 21, 2024 through May 20, 2025.
6. Direct the Chief Executive Officer to transmit the Declaration Regarding Pursuit or Implementation of Community Choice Aggregation Service Form and Community Choice Aggregator Non-Disclosure Agreement to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Luther Snoke, Chief Executive Officer, 387-4811)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Promote the Countywide Vision.
Operate in a Fiscally-Responsible and Business-Like Manner.
Ensure Development of a Well-Planned, Balanced, and Sustainable County.

FINANCIAL IMPACT

This item will not result in the use of additional Discretionary Net Funding (Net County Cost). The cost to release utility information for the County, including 21 incorporated cities, to the County, from Southern California Edison (SCE) is $14,432. The amount payable to SCE and the

recommended agreement with GDS Associates, Inc. (GDS) for a Feasibility Study and Technical Assessment (Study) of forming a Community Choice Aggregation Program (CCA Program) will be funded by the opportunity funds allocated as part of the County Administrative Office's (Department) 2023-24 budget.

BACKGROUND INFORMATION

To begin a CCA Program Study, the County is requesting the release of utility data from SCE for all SCE customer accounts located throughout the county. The utility data will be kept confidential as the County, and any third parties, are required to submit the Community Choice Aggregator Non-Disclosure Agreement (Non-Disclosure Agreement) to SCE to access the data. Community Choice Aggregation (CCA) was created in 2002 by Assembly Bill 117. A CCA Program is a program in which Community Choice Aggregators are governmental entities formed by cities and counties within the service areas of investor-owned utilities (IOUs), to purchase electricity for their residents, businesses, and municipal facilities. The local IOU, which in this case is SCE, continues to deliver the electricity through its transmission and distribution system and provide meter reading, billing, and maintenance services for CCA customers. The CCA forecasts the power needs and procures the energy for its customers. The goals of CCAs are local control, competitive utility rates, and the possibility to offer more renewable energy sources.

The Department is recommending the Board of Supervisors (Board) approve an agreement with GDS to conduct a CCA Study for the County. If approved, the release of the utility data from SCE to third parties, such as GDS, is required to complete the analysis for the Study and to determine if a County CCA Program is feasible. GDS will analyze a potential CCA Program load analysis, study, and forecast; rate analysis; a range of energy forecast costs; feasibility sensitivity analysis; proforma analysis; risk analysis; and public benefit program overview.

The Non-Disclosure Agreement is a SCE form that includes terms that differ from the standard County contract. Non-standard and missing terms include the following:

1. The Non-Disclosure Agreement requires the County to defend and indemnify SCE for claims related to the use or disclosure of confidential information.
    - The County standard contract does not include any defense or indemnification by the County of a contractor.
    - Potential Impact: By agreeing to defend and indemnify SCE, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against SCE without such limitations and the County could be responsible to defend and reimburse SCE for costs, expenses, and damages, which could exceed the total Non-Disclosure Agreement amount.

2. The Non-Disclosure Agreement requires the County, in perpetuity, to keep the information confidential and take all reasonable measures to prevent unauthorized or improper disclosure or use of the information. This includes implementing and maintaining security procedures and practices, notifying SCE of any misuse of the confidential information, and requiring all employees or consultants that receive the confidential information to read the Non-Disclosure Agreement and sign a form agreeing to be bound by its provisions.

- The County standard contract does not require the County to maintain confidential information or obtain specifically signed forms from employees or consultants.
- Potential Impact: The County could be held legally responsible if its employees or consultants improperly use or disclosure any confidential information, which could include monetary damages that exceed the Non-Disclosure Agreement amount.

3. The term of the Non-Disclosure Agreement is indefinite beginning on May 21, 2024, and continuing in perpetuity.
    - County Policies 11-05 and 11-06SP1 do not permit indefinite term contracts except for end user license agreements, software/hardware perpetual license and subscriptions, and master service agreements or unless approved by the Board.
    - Potential Impact: There is no end term to the Non-Disclosure Agreement and the County is indefinitely bound to the terms and conditions in the Agreement.

4. The Non-Disclosure Agreement does not require SCE to meet the County's insurance standards as required pursuant to County Policies 11-05, 11-07 and 11-07SP.
    - County policy requires contractors to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department and as set forth in County policy and in the County standard contract.
    - Potential Impact: The County does not have the assurance of specific insurance policies from SCE that could cover any claims that may arise under the Non-Disclosure Agreement, which could result in expenses to the County that exceed the total Agreement amount.

The Department recommends approval of the Non-Disclosure Agreement with SCE, including the non-standard terms, because it is required for the Study of implementing a CCA Program.

PROCUREMENT

The Purchasing Department supports this non-competitive procurement based on GDS's specialized expertise in CCA Studies, formations, and extensive knowledge of the County. GDS completed a CCA Study for the San Bernardino Associated Governments which will assist GDS in their updated Study for the County. They also have experience providing like analysis for large government entities.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on March 19, 2024; Purchasing (Ariel Gill, Supervising Buyer, 387-2070) on April 4, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on April 1, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on May 1, 2024; and Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on May 6, 2024.

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY Lynna Monell
DATED: May 21, 2024

cc: CAO - Snoke w/agree for sign
Contractor - c/o CAO w/agree
File - w/agree

CCM 05/24/2024