



Consent Item 8

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, VP Marketing and Account Services

SUBJECT: Consulting Services Agreement for Graphic and Web Design Services with Celery Design Collaborative

DATE: July 17, 2019

Recommendation

Adopt a resolution authorizing the CEO to sign an agreement for graphic and web design services with Celery Design Collaborative for the purpose of providing graphic and web design services to EBCE for the contract period of 7/17/19 to 7/31/20, in the amount of \$100,000.

Background and Discussion

Alameda County issued a request for proposals in December 2016 for Community Outreach, Marketing and Customer Notification services. Four proposals were received by the Community Development Agency's (CDA) Planning Department and were reviewed pursuant to the County's procurement process. On January 13, 2017, a County Selection Committee (CSC) panel of two Community Choice Aggregation (CCA) Steering Committee members convened to interview, score, and rank the proposals.

Circlepoint, a certified Small, Local, Emerging Business (SLEB), was the top scoring proposal and recommended to the board, resulting in Procurement Contract No. 14862 that went into effect on April 11, 2017 and ends on April 11, 2018.

On April 12, 2018, EBCE entered into a Professional Services Agreement with Circlepoint to cover the remaining budget originally allocated to this agreement based on the approval of the Board at the April 11, 2018 public meeting. The agreement amount was \$295,000 with a term through June 30, 2019 and a scope to support the launch of Phase 1 and begin planning for Phase 2.

On July 18, 2018, EBCE amended the agreement to add budget in order for Circlepoint to continue to support community outreach, marketing, and customer notification for the Phase 2 launch to residential customers. The amended agreement was not to exceed \$828,510. On April 17, 2019, the Board approved an extension to the Circlepoint agreement through August 31, 2019 in order to allow time for a competitive solicitation of services from similar firms to address EBCE's on-going needs.

At this point, EBCE is executing many aspects of the agreement through in-house staff but continues to need support for graphic and web design. EBCE staff issued a competitive solicitation for an independent graphic and web design consultant on April 25, 2019. Ten proposals were submitted by the deadline of May 17. A small committee of three staff members scored the proposals independently and interviewed the top four contenders. Based on the interviews and references, staff selected Celery Design Collaborative, a small firm located in Berkeley and registered as a Small, Local, and Emerging Business (SLEB) with the County of Alameda. More information on Celery Design Collaborative is available at <http://www.celerydesign.com/>.

Fiscal Impact

The contract is budgeted at \$100,000 and will be billed based on time and materials. Hourly rates are included in the contract.

Attachment

- A. Resolution Authorizing the CEO to execute an agreement for graphic design services; and
- B. Consulting Services Agreement for Graphic and Web Design Services By And Between East Bay Community Energy Authority and Celery Design Collaborative

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
EAST BAY COMMUNITY ENERGY AUTHORITY TO AUTHORIZE THE CEO TO EXECUTE
AN AGREEMENT FOR GRAPHIC AND WEB DESIGN SERVICES

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY
FIND, RESOLVE AND ORDER AS FOLLOWS:

Section 1. The East Bay Community Energy Authority (“EBCE”) was formed 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 and energy-related climate change programs in all of the member jurisdictions.

Section 2. EBCE issued a Request for Proposals for graphic and web design services to support the on-going needs of marketing and outreach and received ten qualified responses.

Section 3. EBCE selected Celery Design Collaborative as the successful bidder subject to entering into a mutually acceptable Consulting Services Agreement.

Section 4. The Chief Executive Officer is hereby authorized to execute an agreement with Celery Design Collaborative in a form substantially similar to the attached Consulting Services Agreement in an amount not to exceed \$100,000 for a one-year term.

ADOPTED AND APPROVED this 17th day of July, 2019.

Dan Kalb, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**Consulting Services Agreement for
Graphic and Web Design Services
By and Between East Bay Community Energy Authority and
Celery Design Collaborative**

This Consulting Services Agreement (“Agreement”) is made this 17th day of July, 2019, (“Effective Date”) by and between East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (“EBCE”) and Celery Design Collaborative, a California Limited Liability Corporation (“Consultant”) for the purpose of providing graphic and web design services to EBCE.

Section 1. Recitals

1.1 The Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) with the power to conduct its business and enter into agreements.

1.2 Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

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

Section 2. Term

The term of this Agreement is from the Effective Date of this Agreement through July 31, 2020 unless terminated earlier pursuant to Section 8.

Section 3. Scope of Work/Compliance with Laws and Regulations

3.1 Consultant agrees to perform the scope of work in Exhibit A, which will be divided into several task orders (collectively the “Work”) in accordance with the compliance schedule in Exhibit B.

3.2 Consultant represents and warrants that has the skill and expertise to perform the Work. Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work.

3.3 Consultant and its Subconsultants must comply with all federal, state and local laws and regulations in performing the Work under this Agreement.

Section 4. Consultant Staffing

Exhibit C contains a list of Consultant's project manager and all team members. Consultant will not change or substitute the project manager or any team members or add additional team members without EBCE's advanced consent.

Section 5. Subconsultants

5.1 Consultant agrees to use only those Subconsultants listed on Exhibit D. Any changes to Exhibit D to add or remove a Subconsultant must be approved by EBCE in advance, in its sole and absolute discretion.

5.2 Consultant agrees to require all Subconsultants to comply with the terms of this Agreement, including without limitation, maintaining insurance in compliance with the insurance obligations under Section 9, the Confidentiality requirements under Section 11 and indemnifying EBCE under Section 12.

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is \$100,000.

6.2 If the Work under this Agreement is to be performed on a time and materials basis, Consultant must submit invoices to EBCE on a monthly basis complete with the name of the individual that conducted the Work, the time spent and a brief description of the tasks performed during that time. On all invoices, Consultant must include the total compensation left on the Agreement after deducting the amount of the invoice and must submit invoices to EBCE by the 20th of the month following the month in which Consultant performed the Work.

6.3 If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the task or project to the satisfaction of EBCE for full payment, unless other arrangements have been made.

6.4 EBCE will not agree to pay any markups on Subconsultant Services or supplies unless such markups are included in Exhibit E, Compensation/Budget and such markups were included in Consultant's bid, if applicable.

6.5 The following are conditions on EBCE's obligation to process any payments under this Agreement:

6.5.1 If the Consultant is a U.S. based person or entity, the Consultant must provide to EBCE a properly completed Internal Revenue Service Form W-9 before EBCE will process payment. If the Consultant is a U.S based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant must

provide EBCE with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income before EBCE will process payment.

6.5.2 If the Consultant is not a U.S. based person or entity, the Consultant must provide EBCE with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before EBCE will process payment.

6.6 EBCE agrees to pay invoices within forty-five (45) days of receipt. Invoices may be sent to EBCE by U.S. mail or electronic mail to AP@EBCE.org and cc ahenderson@EBCE.org. Invoices will be deemed received on the next business day following the date of transmission via electronic mail or three days after placement in the U.S. mail.

6.7 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. Consultant 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 7. Records Retention and Ownership of Work Product

7.1 The Consultant must retain all ledgers, books of accounts, invoices, vouchers, cancelled checks, background materials, or other records relating to its performance under this Agreement for a period of three years following termination of this Agreement.

7.2 EBCE owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without restriction or limitation upon their use and immediately when and as created by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement. Work Product(s) includes, but is not limited to, all writings, reports, drawings, plans, data, video, media, photographs, renderings, plans, software, models, documents or other materials developed or discovered under this Agreement. All Work Product(s) will be considered "works made for hire." And all Work Product(s) and any and all intellectual property rights arising from their creation will be and remain the property of EBCE without restriction or limitation upon their use, duplication or dissemination by EBCE. Consultant agrees not to obtain or attempt to obtain copyright protection in its own name for any Work Product.

Section 8. Termination

8.1 EBCE may terminate this Agreement for any reason by giving Consultant written notice. The termination notice may set the date of termination, but if no such date is given, termination is effective seven (7) days following the date of the written notice.

8.2 EBCE may terminate this Agreement immediately upon written notice for any material breach of this Agreement by Consultant or any of its Subconsultants. If EBCE terminates this Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess costs in addition to any other remedies available to EBCE.

8.3 Upon termination for any reason, EBCE has the option of requiring the Consultant to complete work up to the date of termination or to cease work immediately. EBCE has the further option to require Consultant to provide EBCE any finished or unfinished Work or Work Product prepared by the Consultant up to the date of termination.

8.4 EBCE will pay Consultant the reasonable value of services satisfactorily rendered by the Consultant to EBCE up to the date of written Notice of Termination. If EBCE authorizes Consultant to continue performing the Work through the date of termination, EBCE will pay Consultant the reasonable value of services satisfactorily rendered up through the date of termination, providing such services are in compliance with the Compensation/Budget in Exhibit E.

8.5 Upon termination of this Agreement, and at no cost to EBCE, Consultant, its Subconsultants and anyone working for EBCE under control of Consultant must return all Work Product to EBCE. Consultant may only retain copies of the Work Product by express written permission of EBCE.

Section 9. Insurance

9.1 Consultant must procure, maintain and comply with the insurance requirements in Exhibit F throughout the full Term of this Agreement. Consultant must provide proof of insurance either in the form of a certificate of insurance or, if requested by EBCE, a copy of the insurance policy, prior to performing any work under this Agreement.

9.2 Consultant agrees not to terminate any of the required insurance coverage during the term of this Agreement. Consultant must give EBCE ten (10) days written notice and obtain EBCE's written approval prior to making any modifications in the insurance coverage.

9.3 Consultant must either include Subconsultants under its insurance policies or require each Subconsultant to comply with the insurance obligations in Exhibit F.

Section 10. No Discrimination or Conflict of Interest

10.1 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race or national origin.

10.2 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not

violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify EBCE immediately if it identifies any conflicts of interest. Consultant understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

10.3 In accordance with the California Political Reform Act (Cal. Gov't Code section 81000 *et seq.*), Consultant will cause each of the following people performing services under this Agreement to file a Form 700 within 30 days after the person begins performing services under this Agreement and subsequently in conformance with the requirements of the Political Reform Act by filing the original with the EBCE Clerk to the Board of Directors. Each of the identified positions must disclose interests in accordance with the EBCE Resolution-2018-7, Conflict of Interest Code as may be amended from time to time.

Name	Position or Assignment
N/A	

Section 11. Confidentiality

11.1 Except as authorized by EBCE or as otherwise required by law, Consultant shall not disclose to any third party(ies) any draft or final Work Product, discussions or written correspondence between Consultant and its Subconsultants or discussions or written correspondence between Consultant and EBCE staff. In the event Consultant receives a request from any third-party requesting disclosure of any Work Product, discussions, communications or any other information Consultant is prohibited from disclosing, Consultant will immediately notify EBCE and wait for direction from EBCE before disclosing the information.

11.2 For the purposes of this Section 11, "third parties" refers to any person or group other than EBCE staff and Board members. For example, "third parties" include community groups, Board advisory groups, other governmental agencies, other consultants or members of the community.

11.3 This Section 11 will survive the expiration or termination of this Agreement.

Section 12. Indemnity

12.1 Consultant agrees, at its sole cost and expense, to indemnify, defend, with counsel reasonably approved by EBCE, protect and hold harmless EBCE, its officers, directors, employees, agents, attorneys, designated volunteers, successors and assigns, and those EBCE agents serving as independent contractors in the role of EBCE staff (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, penalties, judgements, liens and losses of whatever nature that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant's or Subconsultant's performance or failure to perform the Work under this Agreement, regardless of whether the Consultant or its Subconsultants acted or failed to act

intentionally, willfully, recklessly or negligently. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any breach of this Agreement and any infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of any person(s) caused by EBCE's use of any services, Work Product or other items provided by Consultant or its Subconsultants under this Agreement.

12.2 Consultant's obligations in Subsection 11.1 do not apply to the extent any claim, loss, damage, injury, expense or liability that results from the sole negligence or willful misconduct of Indemnitees.

12.3 Consultant's obligation to defend EBCE applies to the maximum extent allowed by law and includes defending Indemnitees as set forth in California Civil Code sections 2778 and 2782.8.

12.4 The Consultant's obligations under Section 12 applies regardless of the existence or amount of insurance the Consultant carries or has made available to EBCE.

12.5 The Parties agree that this Section 12 survives the expiration or earlier termination of the Agreement.

Section 13. Consultant is an Independent Contractor

13.1 Consultant and its Subconsultant(s) are and at all times will be independent contractors. Consultant has complete control over its operations and employees and is not an agent or employee of the EBCE and must not represent or act as the EBCE's agent or employee. Consultant agrees, on behalf of itself and its employees and Subconsultants, that it does not have any rights to retirement benefits or other benefits accruing to EBCE employees, and expressly waives any claim it may have to any such rights.

13.2 As an independent contractor, Consultant has complete control over its Subconsultants, Subsuppliers, affiliates agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subconsultants"). Subject to the requirements of Section 5 of this Agreement, Consultant is solely responsible for selecting, managing and compensating its Subconsultants, and for ensuring they comply with this Agreement.

Section 14. Miscellaneous Terms and Conditions

14.1 EBCE Authority.

The Chief Executive Officer or his/her designee is authorized to take all actions under this Agreement, including without limitation, amendments that fall within the Chief Executive Officer's signing authority, termination or modification of terms.

14.2 Waiver.

Waiver by either party of any one or more conditions, Sections, provisions or performance of this Agreement will not be a waiver of any other provision; nor will failure to enforce a provision or Section in one instance waive the right to enforce such provision or Section in the future. In no event will payment by EBCE to Consultant constitute or be construed as a waiver by EBCE of any breach or default of this Agreement, nor will such payment prejudice any of EBCE's other rights or remedies.

14.3 Governing Law.

Consultant and EBCE agree that this Agreement will be interpreted under the laws of the State of California.

14.4 Venue.

Any litigation resulting from this Agreement will be filed and resolved by a state court in Alameda County, California, or if appropriate, the federal courts in the Northern District of California located in San Francisco.

14.5 Audit Rights.

All records or documents required to be kept pursuant to this Agreement must be made available for audit at no cost to EBCE, at any time during regular business hours, upon written request by EBCE. Copies of such records or documents shall be provided to EBCE at EBCE's offices unless an alternative location is mutually agreed upon.

14.6 Recitals and Exhibits.

The Recitals in Section 1 above are intentionally made a part of this Agreement. All Exhibits and any other documents incorporated by reference are a part of this Agreement.

14.7 Notices.

Any notices required to be given under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission, providing that a hard copy is also sent via U.S. mail. All notices must be sent to the addresses below:

EBCE Attn: Annie Henderson
 C/o WeWork
 1111 Broadway, 3rd Floor
 Oakland, CA 94607
 Email: ahenderson@ebce.org
 Phone: 510-640-9681

Consultant Attn: Brian Dougherty
 1718 San Pablo Avenue
 Berkeley, CA 94702
 Email: brian@celerydesign.com
 Phone: 510-649-7155

14.8 Assignment.

Except to the extent this Agreement authorizes Consultant to use Subconsultants, Consultant will not assign any part of this Agreement without the EBCE's prior written consent. EBCE, at its sole discretion, may void this Agreement if a violation of this provision occurs.

14.9 Integrated Agreement.

The Recitals, this Agreement and the Exhibits attached to this Agreement contain the complete understanding between EBCE and Consultant and supersedes any prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral respecting the Work up through the Effective Date of this Agreement.

14.10 Amendments.

Any and all amendments or modifications to this Agreement must be made in writing and signed by each Party before such amendment will be effective.

14.11 Government Claims Act.

Nothing in this Agreement waives the requirements to comply with the Governmental Claims Act, where applicable.

14.12 Severability.

If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the Work can still be performed, the Parties agree to sever the invalid or unenforceable Section from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.

14.13 Counterparts.

This Agreement may be entered into by counterparts, each of which shall be considered an original against the party that signed it.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement on the dates below to be effective upon the Effective Date.

EBCE, a California Joint Powers Authority

Celery Design Collaborative, a California LLC

Nick Chaset, CEO
Date:

Brian Dougherty, Founder and Creative Director
Date:

Approved as to form:

General Counsel

LIST OF EXHIBITS

- EXHIBIT A: SCOPE OF WORK
- EXHIBIT B: SCHEDULE
- EXHIBIT C: CONSULTANT STAFFING
- EXHIBIT D: SUBCONSULTANTS
- EXHIBIT E: COMPENSATION/BUDGET
- EXHIBIT F: INSURANCE REQUIREMENTS

EXHIBIT A
SCOPE OF WORK

Task 1.0 **Graphic Design Services**

1. Develop exceptionally professional, clean, and compelling layout and final artwork for print and digital collateral, including but not limited to displays, flyers, brochures, presentations, reports, social media, e-newsletters, mailers, ads, banners, infographics, templates, icons, and other visual formats
2. Provide flexible capacity to complete multiple design projects simultaneously during busy periods, and ability to rapidly ramp up or down the capacity dedicated to this contract to meet fluctuating client needs. Volume of work may fluctuate between 10 to 40 or more hours per week, with an average around 20 hours per week.
3. Develop ideas for communicating complex concepts through clean, professional, and compelling visual design
4. Understand the EBCE brand and articulate the brand message through appropriate design solutions
5. Maintain and update brand guideline documents
6. Create artistic and creative illustrations for marketing materials to support EBCE programs and services as needed
7. Contribute to the planning of specific advertising and communications campaigns as needed
8. Maintain consistently excellent standards of quality and attention to detail in all drafts and final products
9. Ability to work at a highly professional level in Adobe Creative Suite
10. Attend and direct EBCE photo shoots as needed

Task 2.0 **Web Design, Hosting, and Maintenance Services**

1. Coordinate with external design consultant to successfully transfer EBCE.org website to EBCE management.
2. Host and maintain existing EBCE.org website and apply appropriate updates as necessary.
3. Develop exceptionally professional, clean, and compelling new pages for EBCE.org that stay within brand guidelines and incorporate best practices in user interface, user experience, and Americans with Disabilities (ADA) compliance.
4. Demonstrate superior skills in developing functionality within WordPress to support the needs of the programs and general services of EBCE, such as but not limited to pop-up windows, embedded forms, and dynamic layouts.
5. Provide and follow a clearly defined process for creation and execution of new web content and features that includes wireframes, mock-ups, user-acceptance testing, final review by client in a pre-production environment, and notification of client directly after code release.
6. Analyze website analytics and recommend ways to improve metrics.
7. Provide direction and/or instruction to EBCE staff on basic WordPress features in order for staff to self-serve for simple needs.

8. Provide flexible capacity to complete multiple design projects simultaneously during busy periods, and ability to rapidly ramp up or down the capacity dedicated to this contract to meet fluctuating client needs.

Task 3.0

Client Communication

1. Assign a lead designer as point person for this account with availability to meet in-person on site at EBCE office on a regular basis (weekly if needed) to make on-the-spot design revisions as well as explore visual design concepts collaboratively with EBCE staff
2. Communicate effectively in writing and in verbal conversation, establishing and maintaining effective working relationships with all persons encountered during the performance of duties
3. Track client direction and feedback with utmost attention to detail in order to deliver promptly and accurately upon all requests
4. Deliver products by deadlines as directed by client
5. Maintain system of saving and tracking design files on client's online cloud storage system with high attention to detail in tracking draft versions
6. Utilize project management software that provides visibility of project progress and status to client
7. Track hours effectively and bill client accurately
8. Respond to client communications within 1 business day

**EXHIBIT B
SCHEDULE**

Task 1 Graphic Design Services	On-going
<i>Power Content Label</i>	<i>Begin 7/17/19 complete by 8/15/19</i>
<i>Other items</i>	<i>TBD</i>
Task 2 Web Design, Hosting, and Maintenance Services	On-going
<i>Website Transfer</i>	<i>Begin 7/17/19 complete by 8/31/19</i>
<i>Other items</i>	<i>TBD</i>
Task 3 Client Communication	On-going
<i>General Kick-off Meeting</i>	<i>ASAP</i>
<i>Web Transfer Kick-off Meeting</i>	<i>ASAP</i>
<i>PCL Kick-off Meeting</i>	<i>ASAP</i>
<i>Other items</i>	<i>TBD</i>

**EXHIBIT C
CONSULTANT STAFFING**

Consultant project team will consist of the following Key Personnel, as applicable during the contract term:

Name	Title
Brian Dougherty	Creative Director
Stephanie Welter-Krause	Art Director and Design Lead
Amy Glaiberman	Art Director and Design Lead
Christopher Paguio	Senior Designer
Shannon McGill	Senior Designer
William Lark	Senior Creative Technologist
Jennifer Jackson	Copywriter

Consultant agrees that it shall not transfer or reassign the individuals identified above as Key Personnel without the express written agreement of EBCE, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Consultant no longer be employed by Consultant during the term of this Agreement, Consultant shall make a good faith effort to present to EBCE an individual with greater or equal qualifications as a replacement subject to EBCE's approval, which approval shall not be unreasonably withheld.

EXHIBIT D
SUBCONSULTANTS

EXHIBIT E
COMPENSATION/BUDGET

This agreement is billed on a time and material basis, per the rates indicated below. Total invoices during the term of this agreement shall not exceed \$100,000. Any direct costs, such as web hosting, will be billed at the amount charged to the Consultant with no additional mark-up on price.

Name	Title	Hourly Rate
Brian Dougherty	Creative Director	\$150
Stephanie Welter-Krause	Art Director and Design Lead	\$150
Amy Glaiberman	Art Director and Design Lead	\$150
Christopher Paguio	Senior Designer	\$125
Shannon McGill	Senior Designer	\$125
William Lark	Senior Creative Technologist	\$175
Jennifer Jackson	Copywriter	\$175

Exhibit F

INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance. Consultant must procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Consultant is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant must obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Exhibit F.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.

B. Acceptability of Insurers. The insurance policies required under this Exhibit F must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional named insureds.

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to EBCE. Any insurance or self-insurance maintained by EBCE, its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Consultant and Consultant's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against EBCE.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by EBCE. At EBCE's option, Consultant must either reduce or eliminate the deductibles or self-insured retentions with respect to EBCE, or Consultant must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant agrees not to cancel any insurance coverage during the Term. Consultant further agrees not to, reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of EBCE. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to EBCE. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Consultant must, within two business days of notice from the insurer, phone and notify EBCE via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

H. EBCE Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements of this Exhibit F, EBCE may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, EBCE may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant must promptly reimburse EBCE for any premium paid by EBCE or EBCE, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant must furnish EBCE with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Agreement. The endorsements are subject to EBCE's approval. EBCE may request, and Consultant must provide complete, certified copies of all required insurance policies to EBCE. Consultant must maintain current endorsements on file with EBCE. Consultant must provide proof to EBCE that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant must furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify EBCE under Section 12 of this Agreement.

K. Subconsultant Insurance Requirements. Consultant's insurance coverage must include its Subconsultants or Consultant must require each of its Subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all of the requirements of this Exhibit F.