



REQUEST FOR PROPOSAL

For

Contract Management and Deal Capture Tool

RESPONSE DUE

by

5pm

on

February 12th, 2021

For complete information regarding this project, see RFP posted at <https://ebce.org/solicitations/> or contact the EBCE representative listed below.

Thank you for your interest!

Cici Saekow | Senior Power Resources Manager, EBCE
(510) 902-9300
csaekow@ebce.org

**EAST BAY COMMUNITY ENERGY
REQUEST FOR PROPOSAL
SPECIFICATIONS, TERMS & CONDITIONS
for
East Bay Community Energy Authority:
Contract Management and Deal Capture Tool**

Table of Contents

BACKGROUND	1
TERMS OF AGREEMENT	1
RFP SCHEDULE	1
DESCRIPTION OF PRODUCT AND NATURE OF RFP	2
PRODUCT	2
SCOPE OF WORK	2
CLOUD COMPUTING REQUIREMENTS	4
OPERATIONS AND MAINTENANCE	6
PROCEDURES, TERMS, AND CONDITIONS	7
GENERAL	7
EVALUATION CRITERIA	10
PROVIDER SERVICES	11
INSTRUCTIONS TO PROVIDERS	11
EBCE CONTACT	11
SUBMITTAL OF PROPOSALS	12
RESPONSE FORMAT	13
Attachment A: REQUIRED RESPONSE INFORMATION	13
CURRENT REFERENCES	15
Attachment B: CONSULTING SERVICES AGREEMENT	16

BACKGROUND

East Bay Community Energy (EBCE) is a not-for-profit public agency that operates a Community Choice Energy program for Alameda County and 15 incorporated cities, serving more than 550,000 residential and commercial customers throughout the county. EBCE initiated service in June 2018 and is one of 19 Community Choice Aggregation (CCA) programs operating in California. CCAs are expediting the climate action goals of their communities and those of California. EBCE is committed to providing clean power at competitive rates while reinvesting in our local communities. For more information about EBCE, visit <https://ebce.org/>

TERMS OF AGREEMENT

The initial term of the Agreement(s) will be for one year and includes an option to extend the agreement(s) for three additional years.

RFP SCHEDULE

	Action	Date
1.	Issuance of RFP	Thurs, Jan 14 th , 2021
2.	Deadline for questions/clarifications	Thurs, Jan 21 st , 2021 at 5pm
3.	Response to questions posted online	Mon, Jan 25 th , 2021
4.	Proposals Due	Fri, Feb 12 th , 2021 at 5pm
5.	Proposal Selection	February 2021
6.	Negotiate and Execute Contract (subject to EBCE Board approval if applicable)	March 2021
7.	Implementation of Software Solution	April 2021

DESCRIPTION OF PRODUCT AND NATURE OF RFP

PRODUCT

EBCE desires to procure and implement a software solution to support asset management of its power portfolio. EBCE is seeking a tool or platform that staff can use and customize to meet the Scope of Work. Qualified firms, contractors, software s or entities (hereinafter “provider”), that meet the requirements outlined in this Request for Proposals (hereinafter “RFP”), and can provide the services requested, are encouraged to participate. For the listed items below respond in the proposal with “Yes”, “No” or “Future Release” and explain in detail how the provider will have the ability to perform each requirement.

The successful software will cover the technical areas below, but are not limited to:

- Contract Management database
- Deal Capture functionality
- Power Purchase Agreement (hereinafter “PPA”) Management
- Ad-hoc report and dashboard
- System Control
- Export and Retrieve Raw Data
- Cloud Computing Requirements
- Operations and Maintenance

SCOPE OF WORK

The following section details the scope of work and requirements EBCE seeks and is meant as an initial guide for the submitted proposal. EBCE is looking for a comprehensive product to manage power purchase agreements, perform risk management, track portfolio positions, and satisfy reporting needs. The successful proposal submission must demonstrate that the provider has the appropriate professional and technical background and can fulfill the stated scope of work.

1. Contract Management Database
 - a. Store hundreds of energy contract and vendor contact data elements
 - i. Capture numerical and text fields for unique contract provisions
 - b. Capture entire contract lifecycle from negotiations to execution and retirement which can span a few months to over 20 years
 - c. Tag and assign parent-child relationship between various contracts

- d. Optional: securely store the associated documents with each contract
2. Deal Capture Functionality
 - a. Facilitate entry of specific value fields based on different contract types (i.e. Carbon Free, Index+, Shaped Energy, Resource Adequacy contracts)
 - i. For example, enter only quantity and price for Year One and the system can autofill for the life of contract.
 - b. Create new fields and associated attributes based upon user-defined logic
 - i. For example, if the input location is Northern California then only the associated pricing nodes will be displayed in the Pnode field.
 - c. Ability to enter comments for all data fields including but not limited to changes in volume, quantity, and milestone for a contract
 3. PPA Management
 - a. Track individual and portfolio contract milestones of different energy agreements including Energy Storage Agreements
 - b. Alert user of impending milestone status
 - c. Manage and track different energy products (i.e. Renewable Energy Certificates, Resource Adequacy, Ancillary Service)
 4. Ad-hoc Report and Dashboard
 - a. Filter, summarize and display data elements based on user-created logic
 - i. For example, display contract information on an hourly interval based on an annual value input
 - b. Create custom reports for regulatory compliance and budget tracking purposes
 - i. For example, track historic cost of shaped energy contracts
 5. System Control
 - a. System to notify user of any system error and explain the associated cause
 - b. System has history and version control
 - c. System has user access and identity management control
 - d. Maintain confidentiality of information on remote servers
 6. Export and Retrieve Raw Data

- a. Ability to retrieve/export data for Ad-Hoc Reporting purposes: software must provide a reporting mechanism so that users can create queries and reports (i.e. CSV, Excel)
- b. Ability to automatically ingest and map raw data via API from either a direct data source or internal EBCE Google BigQuery database
- c. Ability to compare the retrieved data with existing data to conduct simple calculations
 - i. For example, conduct calculations between expected and actual amounts of megawatts, dollars, and Renewable Energy Certificates
- d. Automated Data Harvesting via API From Exchanges (i.e. ICE), Data Repositories, and Other Providers

CLOUD COMPUTING REQUIREMENTS

Cloud computing requirements are put in place with governance and regulatory compliance in mind for applications within our portfolio.

Identity Management

Provider must have its own identity management system to control access to information and computing resources. Please provide details of these controls.

Physical and Personnel Security

Provider must ensure that physical machines are adequately secure and that access to these machines and all relevant customer data is restricted and that access is documented. Please provide details of these controls.

Application Security

Provider must ensure that the applications available as a service via the cloud are secure by implementing testing and acceptance procedures for outsourced or packaged application code. It also requires that application security measures be in place in the production environment. Please provide details of these controls.

Architecture and Software Isolation

The cloud provides services via an abstraction layer – a web portal. Behind this abstraction layer is a hidden world of complexity that includes firmware, hypervisors, operating systems, virtual machines, user portals, charge back and metering systems, provisioning, orchestration, and other essential functions. Much of this functionality and its supporting software do not typically exist within IT infrastructures.

1. By adding new functionality and software to the architecture, what is known as an attack surface can emerge. From a security and privacy perspective, it is important

for the provider to detail how they will protect EBCE data from this. Please provide details of these controls.

2. Another area for concern is how the provider handles software isolation. This is how data is set-up and shared across databases and common application platforms, particularly in multi-tenant applications. All public sector cloud data must be isolated from shared systems, databases, and applications. Please provide details of these controls.

Data Storage & Protection

1. All EBCE data must reside in the continental U.S.
2. Provide all locations of where EBCE data will be stored (geographical locations) to include host sites in the case of a system failure
3. List the type of encryption used to secure the data
4. Detail how the data is protected against leaks
5. Provide a list of provider employees and third parties that can access EBCE data
6. Provide a copy of the procedure for regulating access to the data
7. Provide a list of formats into which the data the data can be stored and converted
8. Provide Data backup schedules
9. Provide the method by which EBCE data will be sanitized from your storage when the contract is terminated, to include backup copies
10. Provide a copy of the provider's disaster recovery plan
11. Provide the process used to vet technicians

Data Availability

The provider must assure EBCE that they will have regular and predictable access to their data and applications. The provider will have a method of providing continued operations for EBCE if the provider's operations are shut down. Additionally, the provider must have a method to return all data to EBCE if the provider goes out of business or is shut down. Please provide details of these controls.

Business Continuity and Data Recovery

Provider must have business continuity and data recovery plans in place to ensure that service can be maintained in case of a disaster or an emergency and that any data loss will be recovered. These plans must be provided to EBCE.

Incident Response

1. Provide a copy of your incident response plan.
2. Provider must detail any circumstances that might cause our data to be inaccessible such as a subpoena, litigation, or e-discovery for another customer's data or services.

Compliance & Privacy

1. All EBCE cloud data must reside in the continental U.S.
2. Provider must ensure that all critical data (credit card numbers, for example) are masked and that only authorized users have access to data in its entirety. Moreover, digital identities and credentials must be protected including any data that the provider collects or produces about customer activity in the cloud. Please provide details of these controls.
3. EBCE data will not be used for vendor advertising or other promotional purposes. EBCE data will not be sold to third parties. Please provide details of these controls.
4. Provider can preserve, identify, collect, process, analyze and produce all forms of electronic files. All public sector cloud data must be discoverable in accordance with state and federal laws. Please provide details of these controls.

OPERATIONS AND MAINTENANCE

Ease of Implementation

Providers shall describe their project methodology or approach in implementing the Scope of Work and Cloud Computing requirements described above. Please include any applicable key activities, milestones, schedule, and deliverables in the offer submission.

Risk Mitigation

Highlight and explain any areas that provider believes could pose technical challenges or risks to the project and explain how the provider plans to mitigate the risk.

EBCE Support

Providers to highlight the technical information (templates, documentation, processes) and internal EBCE resources needed to develop the software solution. Please note if access to any EBCE system is required to complete testing and development.

Customer Support

Providers shall detail the level of customer support available to EBCE during and post-implementation (i.e. provider response time to issues, # of maintenance hours available).

PROCEDURES, TERMS, AND CONDITIONS**GENERAL*****Incurring Cost***

This RFP does not commit EBCE to award or pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

Claims Against EBCE

Neither your organization nor any of your representatives will have any claims whatsoever against EBCE or any of its respective officials, agents, or employees arising out of or relating to this RFP or these RFP procedures, except as set forth in the terms of a definitive agreement between EBCE and your organization.

Guarantee of Proposal

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for one hundred eighty (180) days after the due date for receipt of proposals.

Basis for Proposal

Only information supplied by EBCE in writing by the Contact in connection with this RFP should be used as the basis for the preparation of Provider's proposal.

Form of Proposals

Proposals must be submitted electronically by e-mail to csaekow@ebce.org.

Amended Proposals

Providers may submit amended proposals before the Deadline to Submit Proposals. Such amended proposals must be complete replacements for previously submitted proposals and must be clearly identified as such in a written format. The Contact will not merge, collate, or assemble proposal materials.

Withdrawal of Proposal

Provider may withdraw their proposals at any time prior to the Proposal Due Date. Provider must submit a written withdrawal request signed by the Provider's duly authorized representative addressed to and submitted to the EBCE contact, Cici Saekow, csaekow@ebce.org.

Late Responses

To be considered, proposals must be received electronically by email by February 12th at 5pm PST.

No Public Proposal Opening

There will be no public opening for this RFP.

California Public Records Act (CPRA)

All proposals become the property of EBCE, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Provider proprietary information is contained in documents submitted to EBCE, and Provider claims that such information falls within one or more CPRA exemptions, Provider(s) must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, EBCE will make best efforts to provide notice to Provider prior to such disclosure. If Provider(s) contends that any documents are exempt from the California Public Records Act (CPRA) and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Alameda County, before EBCE's deadline for responding to the CPRA request. If Provider(s) fails to obtain such remedy within EBCE's deadline for responding to the CPRA request, EBCE may disclose the requested information.

Provider(s) further agrees that it shall defend, indemnify, and hold EBCE or its agents, harmless against any claim, action, or litigation (including, but not limited to, all judgments, costs, fees, and attorney's fees) that may result from EBCE's assertion of an

exemption or privilege as a basis for withholding any information marked confidential by the Provider(s).

DO NOT MARK YOUR ENTIRE OFFER CONFIDENTIAL. ONLY MARK THOSE PAGES THAT YOU BELIEVE CONTAIN PROPRIETARY INFORMATION.

Confidentiality

All data and information obtained from or on behalf of EBCE by the Provider(s) and its agents in this RFP process, including reports, recommendations, specifications, and data, shall be treated by the Provider(s) and its agents as confidential. The Provider(s) and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from EBCE.

Generally, each proposal and all documentation, including financial information, submitted by a Provider(s) to EBCE is confidential until a contract is awarded, when such documents become public record under State and local law, unless exempted under CPRA.

Electronic Mail Address

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential Providers agree to provide the EBCE Contact with a valid e-mail address to receive this communication.

EBCE Rights

EBCE reserves the right to do any of the following at any time:

1. Reject any or all proposal(s), without indicating any reason for such rejection;
2. Waive or correct any minor or inadvertent defect, irregularity, or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation;
3. Request that Providers supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
4. Terminate the RFP, and at its option, issue a new RFP;
5. Procure any equipment or services specified in this RFP by other means;
6. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
7. Extend a deadline specified in this RFP, including deadlines for accepting proposals;

8. Negotiate with any or none of the Providers;
9. Modify in the final agreement any terms and/or conditions described in this RFP;
10. Terminate failed negotiations with any Provider(s) without liability, and negotiate with other Provider(s);
11. Disqualify any Provider(s) on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to EBCE;
12. Eliminate, reject, or disqualify a proposal of any Provider(s) who is not a responsible Provider(s) or fails to submit a responsive offer as determined solely by EBCE or its representative; or
13. Accept all or a portion of a Provider(s)'s proposal.

EVALUATION CRITERIA

Evaluations will be based upon the information provided in the proposals and such other information requested by EBCE Contact, or as deemed appropriate by EBCE. Proposals must provide clear, concise information and sufficient detail to enable reviewers/evaluators to evaluate the responsiveness and quality of the proposals to all RFP requirements. Evaluators will also review the proposals for format to ensure conformance with the Response Information detailed in Attachment A . Proposals that fail to meet all Response Information could be rejected. The EBCE Contact may waive minor irregularities in proposals if doing so would be in the best interest of EBCE. Evaluators may recommend discontinuing evaluation of any proposal that is considered not in compliance with the RFP requirements.

EBCE will select the proposal that offers the greatest value based on an analysis of the following criteria:

1. Experience and Qualifications
2. References
3. Solution Alignment to Business Need
4. Cost

As reflected in the Evaluation Criteria, contract awards will not be based solely on cost, but on a combination of factors that are in the best interest of EBCE. EBCE will not be bound to award the contract(s) based solely on the lowest offer submitted. After evaluating the proposals and discussing them further with the finalists or the tentatively selected Provider(s), EBCE reserves the right to further negotiate the proposed work and the cost. EBCE reserves the right to consider the changes made to EBCE's Consulting Services Agreement in its evaluation and selection.

In addition to these technical evaluation criteria, EBCE will also consider a set of Special Procurement Preferences. Specifically, EBCE seeks to support businesses that are within its service territory. Businesses with office(s) located in EBCE's service territory and businesses that have at least 25% of their workforce who reside in EBCE's service territory shall be given special consideration in the solicitation. EBCE also desires to support the use of union labor where

possible. Businesses who use union labor and/or unionized contractors shall also be given special consideration in the solicitation.

PROVIDER SERVICES

EBCE intends to award one Consulting Services Agreement based upon the highest-ranked score for each technical area described in section above. The selected providers shall comprise a shortlist of available providers.

EBCE's form of a Consulting Services Agreement is attached as **Attachment B** and includes EBCE's current insurance requirements. Please note that these requirements are subject to change by EBCE prior to execution of a contract with a selected Provider and may require annual updating during the term of a Consulting Services Agreement. Providers are expected to note any exceptions to the Consulting Services Agreement in the Provider's response and failure to do so may preclude consideration of any requested change at a later date.

INSTRUCTIONS TO PROVIDERS

EBCE CONTACT

The evaluation phase of the competitive process will begin upon receipt of offers until a contract has been awarded. Providers must not have any contact with EBCE personnel nor should they lobby any member of the staff or Board of Directors during the evaluation process. Any communications outside of the procedures set forth in this RFP may result in the disqualification of Provider.

All questions regarding these specifications, terms and conditions are to be submitted in writing, via e-mail, by 5:00 p.m. PST on Thurs, Jan 21st, 2021 to:

Cici Saekow
East Bay Community Energy
E-Mail: csaekow@ebce.org

The EBCE website will be the official notification posting place of all Requests for Interest, Proposals, Quotes and Addenda. Go to <http://www.ebce.org/solicitations> to view current opportunities.

SUBMITTAL OF PROPOSALS

All offers must be received at East Bay Community Energy by 5:00 p.m. on February 12th, 2021. Offers will be received only at the addresses shown below any offer received after that time and date or at a place other than the stated address will not be considered and will be returned to the provider unopened. **Electronic offers must be submitted in a non-alterable format such as a .pdf.**

1. Providers **must** submit an electronic copy of their proposal via email to the following:
 - a. Cici Saekow, Senior Power Resources Manager, Email: csaekow@ebce.org
2. Providers are responsible for their costs required for the preparation and submission of a bid.
3. Only one offer response will be accepted from any Provider including any person, partnership, corporation, or other entity; however, several alternatives may be included in one response. For purposes of this requirement, “partnership” means, and is limited to, a legal partnership formed under one or more of the provisions of the California or other state’s Corporations Code or an equivalent statute.
4. All other information regarding the offer responses will be held as confidential until EBCE has completed its evaluation, a recommended award has been approved by the EBCE Board of Directors, and the contract has been fully executed.
5. California Government Code Section 4552: In submitting an offer to a public purchasing body, the provider offers and agrees that if the offer is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the provider for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the provider.
6. Provider expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), EBCE will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Provider(s) may be subject to criminal prosecution.
7. The undersigned Provider certifies that it is, at the time of bidding, and throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Provider further certifies that it is regularly engaged in the general class and type of work called for in the Offer Documents.

8. It is understood that EBCE reserves the right to reject this offer and that the offer shall remain open to acceptance and is irrevocable for a period of one-hundred and eighty (180) days, unless otherwise specified in the proposal documents.

RESPONSE FORMAT

1. Responses are to be straightforward, clear, concise and specific to the information requested.
2. Responses, in whole or in part, are NOT to be marked confidential or proprietary. EBCE may refuse to consider any response or part thereof so marked. Responses submitted to this RFP may be subject to public disclosure. EBCE shall not be liable in any way for disclosure of any such records.
3. Objections for the form of Consulting Services Agreement: Providers must provide any and all specific objections to the Form Consulting Services Agreement in order for any changes to be considered. Stating an objection does not guarantee that EBCE will accept such changes.

Attachment A: REQUIRED RESPONSE INFORMATION

All specific documentation listed below are required to be submitted in order for a offer to be deemed complete. Providers shall submit all documentation, in the order listed below and clearly label each section with the appropriate title (i.e. Table of Contents, Letter of Transmittal, Key Personnel, etc.).

1. **Table of Contents:** Offer responses shall include a table of contents listing the individual sections of the proposal and their corresponding page numbers. Tabs should separate each of the individual sections.
2. **Letter of Transmittal:** Offer submission shall include
 - a. Description of Provider's capabilities and approach in providing its services to EBCE.
 - b. How the provider will fulfill each requirement detailed in the Product section of the RFP.
 - c. Provide a brief synopsis of the highlights of the Proposal and overall benefits of the Proposal to the EBCE.
 - d. This synopsis should not exceed three pages in length and should be easily understood.
3. **Key Personnel:** Offer responses shall identify the lead contact and include a complete list of all key personnel associated with the RFP. This list must include all key personnel, and a description of their qualifications, who will provide services/training to EBCE staff and all key personnel who will provide maintenance

and support services. For each person on the list, the following information shall be included:

- a. The person's relationship with Provider, including job title and years of employment with Provider;
 - b. The role that the person will play in connection with the RFP;
 - c. Address, telephone, fax numbers, and e-mail address;
 - d. Person's educational background; and
 - e. Person's relevant experience, certifications, and/or merits.
4. **Costs:** Provider shall include offer costs in the following manner:
- a. Software license costs (EBCE is expecting 8 active user accounts).
 - b. Initial configuration and set-up.
 - c. Hosting fees, if applicable and pricing model (by user, enterprise, module, etc.).
 - d. Training costs.
 - e. Ongoing technical support/ maintenance costs, by year.
 - f. Additional requirements or service, such as consultative services
 - g. Optional functionality
5. **Overview of the Organization**
- a. Provide a brief description of your organization.
6. **References:**
- a. Providers are to provide a list of current clients. Form on the next page.
 - b. References must be satisfactory as deemed solely by responsible EBCE staff. References should have similar scope, volume and requirements to those outlined in these specifications, terms and conditions. Providers must verify the contact information for all references provided is current and valid. Providers are encouraged to notify all references that responsible EBCE staff may be contacting them to obtain a reference. EBCE staff may contact some or all the references provided to determine Provider's performance record on work similar to that described in this request. EBCE staff reserves the right to contact references other than those provided in the Response and to use the information gained from them in the evaluation process.
7. **Exceptions, Clarifications, Amendments, and Requests for Waivers:**
- a. This shall include clarifications, exceptions, amendments, and requests for waivers, if any, to the RFP requirements and associated offer documents.
 - b. EBCE IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR OFFER DISQUALIFICATION.

CURRENT REFERENCES

East Bay Community Energy Authority

Contract Management and Deal Capture Tool

Provider Name: _____

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Attachment B: CONSULTING SERVICES AGREEMENT

**Consulting Services Agreement for
Services By And Between East Bay Community Energy Authority and
[Vendor's Legal Name]**

This Consulting Services Agreement (“Agreement”) is made this [xx] day of [Month], 2020 (“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 [Vendor's Legal Name], a [legal form of business, state of formation, i.e. a California corporation] (“Consultant”) for the purpose of providing [brief description of services i.e. regulatory support, videography, etc] 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 [termination date], 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 (the “Work”) in Exhibit A in accordance with the compliance schedule in Exhibit B.

3.2 Consultant represents and warrants that it 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 consultation with EBCE.

Section 5. Subconsultants

5.1 Consultant agrees to use only those Subconsultants listed on Exhibit D. Consultant shall notify EBCE within a reasonable period of time of any changes, additions, or removals of a Subconsultant.

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 [\$\$\$\$].

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 contract number provided by EBCE and the total compensation left on the Agreement after deducting the amount of the invoice. Notification to EBCE is required once the contract budget has been used up by 80% (including invoiced work and work that may not have been invoiced yet) which is \$ [] for this Agreement. Invoices must be submitted 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 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. 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)" means all writings, reports, drawings, plans, data, video, media, photographs, renderings, plans, software, models, and other similar documents and materials developed or created by Consultant or its Subconsultants on behalf of or for use by EBCE under this Agreement. All Work Product(s) will be considered "works made for hire," and together with 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 to stay in compliance with the insurance coverage requirements 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 that would reduce its 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 on an annual basis in conformance with the requirements of the Political Reform Act by filing the original with the EBCE Clerk to the Board of Directors. Form 700 submissions should be sent to cob@ebce.org, with carbon copy to the EBCE contact. Each of the identified positions must disclose interests in accordance with the EBCE Resolution-2018-7, Conflict of Interest Code, which may be amended from time to time. For the work currently outlined in Exhibit A, this Agreement **does/ does not** require the Filing of Form 700 at this time.

Name	Position or Assignment

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 Except with regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by EBCE, and 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 “EBCE 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 (“Claims”) 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 With regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by EBCE, and protect and hold harmless the EBCE Indemnitees from and against any and all Claims to the extent arising out of or resulting from Consultant’s or Subconsultant’s negligence, recklessness, or willful misconduct. In no event shall the cost to defend charged to Consultant exceed the Consultant’s proportionate percentage of fault.

12.3 Consultant’s obligations in Subsection 12.1 and 12.2 do not apply to the extent any Claim results from the negligence or willful misconduct of the EBCE Indemnitees.

12.4 Except as limited by Subsection 12.2, 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.

12.5 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.

12.6 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, Sub, suppliers, 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: [relationship owner]
East Bay Community Energy
1999 Harrison Street, Suite 800
Oakland, CA 94612
Email: [your email]@ebce.org
Phone: [your number]

Consultant

Attn: [relationship owner with vendor]
[Vendor legal name]
[Vendor address]
[Vendor address]
Email: [vendor relationship owner email]
Phone: [vendor relationship number]

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 executed in one or more counterparts, all of which taken together will constitute one and the same instrument and each of which will be deemed an original.

14.14 No Party Deemed Drafter.

This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

Section 15. Authorized Signatories

15.1 Proper Countersignatures

Type of Entity	Authorized Signatories		
For a corporation:	Pursuant to California Corporations Code Section 313 proof of authority to execute the Agreement is established if one of the corporate officers listed in Column A below and one of the corporate officers listed in Column B below both sign the documents.		
	Column A	AND	Column B
	Chairman of the Board, or		Secretary, or
	President, or		Assistant Secretary, or
	Vice President		Chief Financial Officer, or
			Assistant Treasurer
	If the agreement is signed by any combination of persons other than those listed above or by an individual, then the agreement must be accompanied by a copy of the Board minutes, resolution, Corporate Secretary’s certificate, or articles of incorporation stating that the signatories have the authority to bind the corporation.		
For a general partnership, a limited partnership, or a limited liability partnership:	All the general partners must sign the Agreement (a general partnership agreement is sufficient to establish the names of all general partners) unless the person signing the Agreement provides proof that he/she has authority to bind the partnership.		
For a limited liability company (LLC)	Copies of the following documents should be provided to establish who has authority to bind the LLC: (1) State Forms LLC-1 and LLC-12 if the company was formed in California; and (2) the operating agreement for the LLC – whether formed in California or another state.		
For a sole proprietor, or a sole proprietor doing business under another name:	Only the individual who owns the business can sign. Either a Fictitious Business Name Statement or a EBCE Business Tax Certificate is sufficient to establish the authority of an individual to bind a sole proprietorship.		

[signatures on following page]

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the date set forth above.

[VENDOR'S LEGAL NAME]

Legal form of business, state of formation

By _____

Title _____

Date _____

By _____

Title _____

Date _____

[*remove if chart in 15.1 confirms only one signature is required]

EAST BAY COMMUNITY ENERGY AUTHORITY

A Joint Powers Authority

By _____

Title _____

Date _____

APPROVED AS TO FORM:

EBCE 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

[Scope of Services]

Additional Services:

Consultant will not provide additional services outside of the services identified in Exhibit A, unless it obtains advance written authorization from the project manager or lead EBCE representative prior to commencement of any additional services.

Exhibit B

SCHEDULE

[Schedule - can be detailed or as simple as "As directed by EBCE"]

Exhibit C

CONSULTANT STAFFING

[Include names of all team members who will be providing EBCE services.]

Exhibit D

SUBCONSULTANTS

[If subconsultants are authorized in advance, they should be listed here, otherwise it can state either of these: "Subconsultants are not authorized under this Agreement." or "Subconsultants must be authorized in advance, in writing by EBCE."]

Exhibit E

COMPENSATION/BUDGET

[If the compensation is hourly, a table of hourly rates by title should be included. If fixed fee, describe what amounts are to be paid based on what milestones]

The maximum compensation under this Agreement is [\$\$\$\$].

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.

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.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and in aggregate.

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 the requirements of this Exhibit F.