



REQUEST FOR PROPOSAL

For

East Bay Community Energy Authority
External Treasury Management Services

RESPONSE DUE

by

5:00 PM PT

on

November 8, 2023

For complete information regarding this project, see RFP posted at ebce.org or contact the EBCE representative listed below. Thank you for your interest!

Jason Bartlett | Sr. Finance Manager, EBCE
510.650.7584
finance@ebce.org

**REQUEST FOR PROPOSAL
SPECIFICATIONS, TERMS & CONDITIONS
for
East Bay Community Energy Authority
External Treasury Management Services**

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I. BACKGROUND

East Bay Community Energy Authority (“EBCE”) is public government agency headquartered in Oakland that operates a Community Choice Aggregator (CCA) energy program for Alameda County and fifteen incorporated cities, serving more than 640,000 residential and commercial customers. EBCE initiated service in June 2018 and is one of 25 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 East Bay Community Energy, visit <https://ebce.org/>.

In 2020, EBCE expanded service to the City of Tracy in San Joaquin County. In 2022, EBCE’s Board of Directors (the “Board”) unanimously approved the addition of the City of Stockton, and in September of 2023 they admitted the City of Lathrop. With this expansion into greater San Joaquin County, EBCE is changing names to Ava Community Energy in the end of October 2023.

EBCE first adopted a formal Reserve Policy in 2018 but has most recently amended it to the current version January 2021, please refer to Attachment A for more information. Since inception, EBCE has grown the reserve balance to approximately \$155 million and will be adding an additional \$75 million in November of this year. The current fiscal year’s budget has Board approval to add another \$100 million in November of 2024.

Currently, EBCE uses cash management services with River City Bank, where it holds all functional accounts plus approximately \$150 million in ICS accounts plus an additional \$50 million in rotating CDARS. EBCE holds a \$200 million credit facility with US Bank and an ICE Futures account with Wells Fargo.

II. STATEMENT OF WORK

A. Proposed Scope of Work

East Bay Community Energy is seeking a qualified organization to provide treasury management and advisory services to manage EBCE’s free cash balances. The treasury management services would encompass the following scope of work:

1. Work with EBCE’s Finance Department to develop a robust investment policy as well as create and deploy investment strategies that align with EBCE’s Policy, liquidity needs, and risk tolerance.
2. Assess the market risk of investments and report findings to EBCE’s Finance Department and, on an ad-hoc basis, to EBCE’s Executive Management.
3. Provide market research and analysis of the yield curve.

4. Work diligently with EBCE's Legal Department to ensure compliance with all legal requirements associated with proposed investments.
5. Attend meetings of the Finance Department, Board, or other Committees on an as-needed basis. (Virtual or in-person attendance is currently acceptable.)
6. Provide monthly, quarterly, and annual reports on the performance of the portfolio with metrics including, but not limited to:
 - Portfolio composition, portfolio return, maturity, weighted average maturity, transaction activity, maturity date, accrued interest, market and book values, yield to maturity, days to maturity, and portfolio summary statistics.
 - Monthly statements should be provided by the 5th business day following the end of the monthly and quarterly statements; and the annual statement should be provided by the 15th business day following the end of the fiscal year (EBCE's fiscal year end is June 30). If these proposed statement timelines are problematic for the proposing organization, please suggest alternatives and the reason for the suggestion.
7. Assist with the development of EBCE's Investment Policy, alongside EBCE's Finance Department, Legal Department, and custodian, and monitor any changes to the California Government Code that would affect the Investment Policy.
8. Monitor and remain up-to-date on market conditions, general economic developments, and possible regulation changes in order to make recommendations on treasury management strategies, goals, or possible changes to EBCE's Investment Policy.
9. Assist in establishing such new accounts as appropriate to implement proposed treasury management strategies.
10. Provide EBCE staff access to online investment accounts and reports.
11. Assist with cash flow and maturity analysis.
12. Assist with the end-of-year audit and reporting.

B. Term of Agreement

The initial term of the Agreement will be for one year. EBCE reserves the right to extend the Agreement for three additional years.

C. Statement of Requirements

The successful proposal submittal(s) must demonstrate that the qualified organization has the appropriate professional and technical background as well as access to adequate resources to fulfill the stated scope of work. Proposals must include all the following components in sufficient detail to allow EBCE to evaluate the proposal:

EXPERIENCE & QUALIFICATIONS

1. Introduction/Cover Sheet

- Briefly introduce the organization and summarize its most relevant experience in working with municipalities and other government agencies such as Community Choice Aggregators. Describe the organization type (e.g., corporation, partnership, etc. and if your organization is a certified small business, Veteran-owned Business Enterprise, or a local business headquartered within EBCE's service area) and years in business.
- Describe how the organization adds value to clients.

2. Firm Background & Organization

- Please describe details about the firm including relevant history and background as well as structural business relationships
- How external benefits received are acquired and their end use; particularly in reference to soft dollars, CSA credits, any broker/dealer payments, etc...
- Please disclose any pending or current litigations
- Describe the organization's specific qualifications that will enable it to develop workable solution(s) to address each point in the Proposed Scope of Work.
- Please outline the roles and responsibilities for each member of the Project Team that will be providing services to EBCE's. Attach copies of any relevant licenses and certifications; and a representation that all advisors that would be assigned to EBCE are, or will be, registered as required, and that all required registrations are current.

3. References

- Bidders are to provide a list of current clients and at least three References. Please specify any clients that are Members of the East Bay Clean Energy Authority.
 - i. References must be satisfactory as deemed solely by responsible EBCE staff. References should have similar scope and requirements to those outlined in these specifications, terms, and conditions.
 - ii. References must include: company name, contact person (name and email), address, telephone number, date of services, and description of services provided. Bidders must verify the contact information for all references provided is current and valid.
 - iii. Bidders 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 of the references provided in order to determine Bidder'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

COMPLIANCE & CONTROLS

4. Regulatory Compliance

- Please describe how the firm complies with regulatory oversight and monitors compliance with investment rules and guidelines.
- What is the frequency of staff training or continuing education with external compliance bodies?

5. Internal Operating Compliance

- How does the firm insure internal levels of operating compliance? Please describe any monitoring and internal oversight that is applied to managers.
- How frequently does firm leadership review and update internal policies?

6. External Independent Assessments of Compliance

- Please note any applicable certificates, awards, audits, or other relevant accolades awarded by external sources.

7. Security—Technology controls & cybersecurity certifications

APPROACH TO TREASURY MANAGEMENT

8. Approach to Financial Investments

- Location of Investment - Describe where investments will be held (i.e., trustee bank), and an estimate of associated fees.
- Describe your organization's approach to socially responsible investing (SRI) on behalf of municipal clients that have SRI as an important goal in their portfolios.
- Describe how your organization's approach to financial investments is consistent with EBCE's organizational goals.

9. Experience developing policies, implementing plans, and reporting for government agencies

- Please describe any experience with tailoring policies and investment plans to be in line with specific organizational interests.

10. Performance History

- Please provide any metrics you have available to account for performance standards, preferably GIPS, in 1, 3, 5, 10-year terms and since inception if applicable.
- What benchmarks do you use or recommend?

COST PROPOSAL**11. Pricing**

- Proposals should include pricing for any items related to the Proposed Scope of Work for which EBCE would be billed. Please provide incremental pricing for funds under management.
 - i. Please include any flat fees, performance-based fees, custodial costs, administration fees, or any other recurring cost items.
- Please describe any one-off costs such as set-up fees, one-time report costs, or any other ancillary cost EBCE may incur at any time during the engagement.

CLIENT SERVICES & REPORTING**12. Digital Dashboards and Real-time Visibility****13. Frequency of regular reporting**

- Describe reporting schedule and types of regular reports EBCE can expect

14. Availability for meetings & presentations

- Please detail the team's approach to ad-hoc meetings with EBCE staff, expectations on attendances to Board or subcommittee meetings, and overall communications

15. GASB 31 & 40 Compliance Assistance

- What level of assistance does your firm provide for these rulings?

ADDITIONAL INFORMATION REQUEST**16. Documentation Requested**

- Please provide the additional documentation as attachments to your proposal
 - i. Form ADV Part 1
 - ii. Form ADV Part 2A & 2B
 - iii. Sample Strategy Profile Sheets
 - iv. Sample reporting documents
 - v. Annual Compliance Report
 - 1. We attest this document will remain confidential, will not be disclosed under any circumstances, and will only be used for review purposes as they relate to this RFP in particular.

2. If your firm cannot provide this document, then please submit an attestation that you confirm no material issues or concerns were identified.

17. Proposed Work Plan and Timeline

- Describe the major tasks and estimated timeline required in order to complete the above-noted Proposed Scope of Work (see Section II-A).

18. Information or Resources Required

- Please indicate what, if any, additional information or resources would be required from EBCE in order to complete the Proposed Scope of Work.

19. Commitment to Environmental Sustainability

- Please provide a description of your organization's sustainability practices, guidelines, goals and/or financial commitments for how you address the various environmental and social impacts associated with your business and how they align with EBCE's organizational goals.
- Please identify any environmentally- or socially-responsible investments products that are available through your organization, and whether these products may be a good fit given EBCE's investment parameters.

20. Contract Terms

- Review EBCE's Standard Consulting Services Agreement form (Attachment B) with your Legal department. If Respondent requires any deviations from EBCE's standard contract terms listed in Attachment B, Respondent must provide a redline with requested edits or list the terms where Respondent will require an edit with sufficient detail explaining the need for such an edit.

D. Attachments

1. Attachment A

- EBCE Policy P-10.1 - Financial Reserve Policy

2. Attachment B

- EBCE Standard Consulting Services Agreement

III. PROPOSED CALENDAR OF EVENTS

	Action	Date
1.	Issuance of RFP	October 11, 2023
2.	Deadline for questions/clarifications	October 27, 2023
3.	Question Responses posted Online	November 1, 2023
4.	Deadline to submit proposals	November 8, 2023 - 5:00pm PT
5.	Proposal Evaluation	Week of November 13, 2023
6.	Finalist selection/interviews	Week of November 27, 2023
7.	Final Negotiations and/or Best and Final Offer	Week of December 11, 2023
8.	Award of Contract by Board of Directors	January 17, 2024

IV. EVALUATION CRITERIA

A. Technical Evaluation

Evaluations will be based upon the information provided in the proposals and such other information requested by EBCE, 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 RFP requirements. Proposals that fail to meet RFP requirements could be rejected. EBCE 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.

The review/evaluation team will select the proposal that offers the greatest value to EBCE based on an analysis of the criteria in the following table. The technical evaluation will be the basis for short list selections for interview.

	Technical Evaluation Criteria	Weighting
1.	Experience & Qualifications	25%
2.	Compliance & Controls	10%
3.	Approach to Treasury Management	20%
4.	Cost Proposal	25%
5.	Client Services & Reporting	15%
6.	Additional Information Requested	5%
	TOTAL	100%
	Bonus Points Available	
a.	Businesses within EBCE Service Territory	5.0%
b.	Union Labor	2.5%
c.	Disabled Veteran Business Enterprises	2.5%
d.	Disadvantaged Communities	2.5%
	BONUS TOTAL	12.5%

B. Interview Evaluation

Presentations may be held in-person at a location to be determined, or remotely using Microsoft Teams or Zoom platforms, and will be arranged and initiated by EBCE. The Interview shall be attended by no more than five (5) representatives of the proposing organization. The presentation duration shall be a maximum of 45 minutes, which will be followed by a question-and-answer session lasting up to approximately 45 minutes. The interview will include two components:

1. Presentation by Proposing Organization

The presentation is an opportunity to communicate the proposed approach and team, highlighting qualifications and communication style, related accounting experience, financial management techniques, approach to diversity and inclusion, and unique/creative approaches to work. It will be evaluated based on content and effectiveness.

2. Question and Answer Session

This session will address communication skills, ability to interact with EBCE personnel, and other related questions regarding EBCE, this RFP, and the firm's proposal.

As reflected in the Evaluation Criteria, contract award will not be based solely on cost, but on a combination of factors as determined to be in the best interest of EBCE. EBCE will not be bound to award the contract(s) based solely on the lowest bid submitted.

EBCE's form of a standard 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 proposer and may require annual updating during the term of a Consulting Services Agreement. Proposers are expected to note any exceptions to the Consulting Services Agreement in the Proposer's response and failure to do so may preclude consideration of any requested change at a later date.

After evaluating the proposals and discussing them further with the Finalists or the tentatively selected Consultant(s), EBCE reserves the right to further negotiate the proposed work and/or method and amount of compensation. EBCE further reserves the right to consider the changes made to the Consulting Services Agreement in its evaluation and selection.

V. SUBMITTAL PROCEDURES

A. Submittal of Proposals

All bids must be received at East Bay Community Energy by 5:00 p.m. PST on November 8, 2023. Bids will be received only at the addresses shown below any bid 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 bidder unopened. **Electronic bids must be submitted in a non-alterable format such as a .pdf.**

1. Bidders **must** submit an electronic copy of their proposal via email to the following:
 - a. Jason Bartlett, Senior Finance Manager - EBCE: finance@ebce.org
2. Bidders are responsible for all their costs required for the preparation and submission of a bid.
3. Only one bid response will be accepted from any one 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 bid responses will be held as confidential until the Review Committee has completed its evaluation, a recommended award has been made by the EBCE Board of Directors, and the contract has been fully negotiated.

5. California Government Code Section 4552: In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid 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 bidder 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 bidder.
6. Bidder 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 Consultant(s) may be subject to criminal prosecution.
7. The undersigned Bidder 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. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Bid Documents.
8. It is understood that EBCE reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of one-hundred and eighty (180) days, unless otherwise specified in the Bid Documents.

B. Response Format

1. Bid responses are to be straightforward, clear, concise, and specific to the information requested.
2. **Objections for the form of Consulting Services Agreement:** Bidders 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.

C. EBCE Contact

The evaluation phase of the competitive process will begin upon receipt of bids until a contract has been awarded. Bidders must not have any contact with EBCE personnel nor should they lobby evaluators or 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 disqualification of bidder.

All questions regarding these specifications, terms and conditions are to be submitted in writing, via e-mail, by 5:00 p.m. PST on Friday October 27, 2023 to:

Attn: Jason Bartlett

East Bay Community Energy

E-Mail: finance@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.

VI. LEGAL TERMS, AND CONDITIONS

Consultant Services

EBCE intends to award one Consulting Services Agreement based upon the highest-ranked score for each technical area described in Section 4. The selected consultants shall comprise a shortlist of available consultants.

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 Consultant(s)'s proposal.

Form of Proposals

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

Amended Proposals

Bidders 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 in a written format. The Contact will not merge, collate, or assemble proposal materials.

Withdrawal of Proposal

Bidders may withdraw their proposals at any time prior to the Deadline to Submit Proposals. The Consultant(s) must submit a written withdrawal request signed by the Consultant(s)'s duly authorized representative addressed to and submitted to the Contact.

Late Responses

To be considered, proposals must be received electronically by email and (optional) in person or via courier/mail or to the place specified by 5:00 p.m. PT on Friday, November 8, 2023. No late responses will be considered.

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 Consultant(s) proprietary information is contained in documents submitted to EBCE, and Consultant(s) claims that such information falls within one or more CPRA exemptions, Consultant(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 Consultant(s) prior to such disclosure. If Consultant(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 Consultant(s) fails to obtain such remedy within EBCE's deadline for responding to the CPRA request, EBCE may disclose the requested information.

Consultant(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 Consultant(s).

DO NOT MARK YOUR ENTIRE BID 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 Consultant(s) and its agents in this RFP process, including reports, recommendations, specifications, and data, shall be treated by the Consultant(s) and its agents as confidential. The Consultant(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 Consultant(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 Bidders agree to provide the Contact with a valid e-mail address to receive this communication.

EBCE Rights

EBCE and its Contact reserve the right to do any of the following at any time:

- a. Reject any or all proposal(s), without indicating any reason for such rejection;
- b. 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;
- c. Request that Bidders supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
- d. Terminate the RFP, and at its option, issue a new RFP;
- e. Procure any equipment or services specified in this RFP by other means;
- f. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
- g. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
- h. Negotiate with any or none of the Bidders;
- i. Modify in the final agreement any terms and/or conditions described in this RFP;
- j. Terminate failed negotiations with any Consultant(s) without liability, and negotiate with other Consultant(s)(s);
- k. Disqualify any Consultant(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;
- l. Eliminate, reject, or disqualify a proposal of any Consultant(s) who is not a responsible Consultant(s) or fails to submit a responsive offer as determined solely by EBCE or its representative; or
- m. Accept all or a portion of a Consultant(s)'s proposal.

Supplier Diversity

Pursuant to California Senate Bill 255, Community Choice Aggregators (CCAs) are required to report to the California Public Utilities Commission on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, Bidders that execute a contract with EBCE will be required to complete a Supplier Diversity Questionnaire. EBCE will not consider race, sex, color, ethnicity, or national origin in

procurement decisions; providing such information will not impact the selection process or good standing of executed contracts.

EBCE encourages all eligible parties to get certified with the CPUC as a women, minority, disabled veteran and/or LGBT -owned business enterprise (WMDVLGBTBE). For overview information on the CPUC Supplier Diversity Program, please visit the program homepage (<https://www.cpuc.ca.gov/supplierdiversity/>). For information on the certification process and requirements, please visit the Certifications page (www.cpuc.ca.gov/Certifications/).

In the proceeding attachments, the name reverts back to East Bay Community Energy and EBCE as they are current working documents approved to form.

Attachment A

East Bay Community Energy Financial Reserve Policy (Effective as of January 20, 2021, per Resolution No. R-2021-2)

Purpose

EBCE's reserve policy (this "Policy") is established to provide a suitable cash balance to be held to meet target levels of annual operating expenses. This Policy will be maintained as described in the Guidelines to provide for the following objectives:

- Maintain long-term EBCE financial independence and rate stability,
- Meet EBCE strategic objectives,
- Secure favorable commercial terms with vendors and power providers,
- Support EBCE's pursuit of, and maintenance upon receiving, a credit rating,
- Provide a source of funds for unanticipated expenditures, and
- Make cash available for other operational needs as approved by the Board of Directors (the "Board").

Guidelines

EBCE shall maintain a cash reserve (the "Reserve").

EBCE shall strive to maintain the dollar amount in the Reserve during any fiscal year to be equal to a percentage (the "Target Percentage") of the operating expenses projected for such fiscal year based on the relevant annual budget. The reserves shall be funded by available surplus revenues as determined by the most recent audited financial statements. If the Board does not take action to determine a new Target Percentage before the beginning of a fiscal year, then the Target Percentage from the prior fiscal year will continue to be the Target Percentage for the new fiscal year, until the Board decides to make any changes. The Board may change the Target Percentage at any time during the fiscal year.

Generally, starting in fiscal year 2021-22, the Target Percentage shall be 50%, but may range from 25% and 75%; provided that upon a finding of special circumstances by the Board, the Board may determine to use a Target Percentage outside of this range for any fiscal year (or other period of time).

In connection with its recommendations with respect to the Reserve and the Target Percentage, Staff will monitor EBCE's liquidity through the annual audited financial statements.

Spending Authority

Authority to spend from money in the Reserve must align with Board approved budgets or approved for special action by the Board.

Board Discretion

The Board may, by resolution, modify or suspend any provision of this Policy for any duration at any time.

Attachment B
EBCE 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], 2023 (“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 2300
 Oakland, CA 94612
 Email: [email] @ebce.org
 Phone: [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.

14.15 Supplier Diversity.

EBCE is required to report to the California Public Utilities Commission on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, Contractor agrees to document and provide information to EBCE regarding Contractor's status and any engagement of women, minority, disabled veteran, and LGBT owned business enterprises in its provision of Services under this Agreement. Specifically, Contractor agrees to complete EBCE's Supplier Diversity questionnaire, which may be updated or revised during the term of the Agreement, and otherwise reasonably cooperate with EBCE to provide the information described above. Contractor shall provide such information in the timeframe requested by EBCE and in no event later than January 31 of the year following the Effective Date of this Agreement.

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
For a general partnership, a limited partnership, or a limited liability partnership:	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 limited liability company (LLC)	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 sole proprietor, or a sole proprietor doing business under another name:	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.		
	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]

EAST BAY COMMUNITY ENERGY AUTHORITY

Legal form of business, state of formation

A Joint Powers Authority

By _____

By _____

Title _____

Title _____

Date _____

Date _____

By _____

APPROVED AS TO FORM:

Title _____

Date _____

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

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

[Draft Scope of Work here and remove italicized language below when finalizing]

A Scope of work should aim to be as concise as possible while ensuring all necessary details of the services are captured. A good Scope should include:

- *Summary of Services*
- *Purpose and Objectives of Services (This could be in narrative form and provide the general purpose of the services)*

And may include:

- *Definitions of any Critical Terms (Any definitions, clarifications could be included here)*
- *List of any Supplemental Documents (If there is a lengthy document that does not make sense to copy and paste into the Scope of Work it could be referenced here)*
- *Tasks and Deliverables*
 - *List each task (and any related subtasks)*
 - *List required updates/reports on progress*
 - *List deliverable for each task*
 - *List schedule/due date for each task and for each deliverable*
 - *List any other milestone dates*
- *Exclusions/Exceptions and Additional Services (If there is anything that is specifically excluded from the Scope of Work that can be listed here. If there are additional services or costs (such as new services or travel costs), we can list the proposed costs and the process for selecting them here)*
- *Any Other Conditions (If there is something unique to the project that does not fit into the other categories).*

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.

A. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.