



REQUEST FOR PROPOSAL

For

**East Bay Community Energy
Printing and Mailing Services**

RESPONSE DUE

by

5:00 p.m.

on

June 8, 2018

**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!

Annie Henderson, VP - Marketing and Account Services, EBCE
(510) 640-9681 | ahenderson@ebce.org

**EAST BAY COMMUNITY ENERGY
REQUEST FOR PROPOSAL
for
East Bay Community Energy:
Printing and Mailing Services**

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STATEMENT OF WORK

East Bay Community Energy (EBCE) is seeking proposals from qualified firms (“Vendor”) to provide printing and mailing services for EBCE. The proposing Vendor shall have relevant expertise, experience, and an approach that demonstrates its ability to provide the required services. The successful Vendor will assist with the areas listed below:

- Printing of customer notifications, including letters, envelopes, and postcards
- Bulk mailing of customer notifications
- Tracking and reporting of progress and costs
- Additional ad hoc printing and mailing services for additional program collateral
- Manage sensitive customer information and mailing lists

EBCE intends to award a single on-call master Vendor agreement based upon the highest-ranked scores.

1. BACKGROUND

In December 2016, the County of Alameda (County) and eleven (11) cities within Alameda County entered into a Joint Powers Agreement, forming the EBCE Authority to deliver a Community Choice Energy (CCE) program that delivers competitive electric rates, greenhouse gas reductions, higher renewable content than the incumbent utility, and local economic benefits. EBCE is governed by a Board of Directors consisting of elected representatives from each member jurisdiction and their alternates. EBCE staff administers the day-to-day affairs of the Agency.

At full implementation, EBCE will serve the electric needs of nearly 600,000 residential, municipal and business accounts in partnership with Pacific Gas & Electric. The program will enroll customers in two phases, the first in June 2018 for commercial customers, and the second in November 2018 for residential customers. Solar customers will be enrolled every other month throughout 2019.

As part of the residential enrollment phase, EBCE is required to issue four customer notifications between the months of September and December 2018. Solar customers will also receive four notifications, timed to align with their enrollment schedule. EBCE will also be conducting other forms of customer outreach and marketing that will require the assistance of a printing and mailing service provider.

2. TERM OF AGREEMENT

The initial term of the Agreement(s) will be through June 30, 2020. ECBE reserves the right to extend the agreement(s) for an additional one-year term.

3. STATEMENT OF REQUIREMENTS

- 3.1.** The successful proposal submittal(s) must demonstrate that the Vendor has the appropriate professional and technical background as well as access to adequate resources to fulfill the stated scope of work in a timely manner.

3.2. Printing Services, including but not limited to:

- Print up to 150,000 pieces per weekly batch
- Printing in various formats such as letters and postcards
- Sourcing and printing on high percentage recycled paper

3.3. Mailing Services, including but not limited to:

- Report of National Change of Address review
- Bulk and standard mailing
- Ability to sign non-disclosure agreement for handling sensitive customer data

3.4. Tracking and Reporting of Progress and Costs, including but not limited to:

- Reports on progress of projects from initial proof through delivery to post office
- Reports on printing costs and postage

3.5. Additional ad hoc printing and mailing of program collateral, including but not limited to:

- Printing and mailing of other program collateral

The tasks requested for an individual project will be authorized through a separate Task Order prepared prior to the start of work, which will also include the time limit within which such services must be completed and the compensation for such services. Vendor cannot perform any services unless authorized by a fully executed Task Order.

4. QUALIFICATIONS

4.1. Minimum Qualifications

- Experience working with a CCE or similar on customer notification
- Ability to print and mail jobs of 500,000+ pieces over a four-week period
- Ability and willingness to sign a Non-Disclosure Agreement that protects customer data privacy
- Availability to complete critical Task Orders during the following terms:

Quantity	Term
500,000 customer notifications/month	September 2018 through December 2018
4,000-8,000 customer notifications/month	January 2019 through December 2019
550,000 customer notifications	June 2019
550,000 customer notifications	October 2019

4.2. Desirable Qualifications

- Located within Alameda County
 - Additional preference given to business with at least 25% of employees residing within Alameda County
- Union membership
- DBE, DVBE, MBE, WBE, and/or LGBTBE certification
- B corporation certification, as a proxy for the company's high standards of responsible behavior and integrity in its business practices, environmental track record, and commitment to fair employment practices and compensation

5. VENDOR SERVICES

5.1. Vendor Selection and Shortlists

EBCE intends to award a single on-call master Vendor agreement based upon the highest-ranked score for each technical area described in Section 4.

5.2. Initiating and Responding to Service Orders

- To initiate a Service Order, EBCE will create a Service Order Request detailing the specific project duties, tasks, and deliverables and a desired timeframe for completion. Service Order Requests will be forwarded via email to the Vendor who will respond within two (2) business days of the request with a response that confirms its ability to complete the assignment in the requested timeframe, its proposed approach, and the costs associated with the proposed approach based on the rates included in the Agreement, and its expertise and experience in completing similar work.
- There is no guarantee that any or a minimum number of Service Orders will be issued to the Vendor.

6. PROPOSED CALENDAR OF EVENTS

Action	Date
1 Issuance of RFP	May 18, 2018
2 Deadline to submit questions	May 23, 2018
3 Response to questions posted	May 25, 2018
4 Deadline to submit proposals	June 8, 2018
5 Proposal Evaluation	June 11 – June 25, 2018
6 Finalist selection/interviews If needed	June 26 – June 29, 2018
7 Complete Professional Services Agreement	July 16, 2018
8 Award of Contract by Board of Directors	July 18, 2018

7. 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, or 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 shall 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 fully executed Professional Services Agreement between EBCE and your organization.

Guarantee of Proposal

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for the contemplated term of the Professional Services Agreement.

Basis for Proposal

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

Form of Proposals

Proposals must be submitted electronically by e-mail; submittal by US postal service is also an option, but must be received by the Deadline to Submit Proposals.

Amended Proposals

Vendors 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. EBCE will not merge, collate, or assemble proposal materials.

Withdrawal of Proposal

Vendors may withdraw their proposals at any time prior to the Deadline to Submit Proposals. The Vendor must submit a written withdrawal request signed by the Vendor'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 June 8, 2018, 5:00 PM 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 Vendor proprietary information is contained in documents submitted to EBCE, and Vendor claims that such information falls within one or more CPRA exemptions, Vendor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. DO NOT MARK YOUR ENTIRE PROPOSAL CONFIDENTIAL.

In the event of a request for such information, EBCE will make best efforts to provide notice to Vendor prior to such disclosure. If Vendor contends that any documents are exempt from the 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, before EBCE's deadline for responding to the CPRA request. If Vendor fails to obtain such remedy within EBCE's deadline for responding to the CPRA request, EBCE may disclose the requested information.

Vendor 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 attorneys' fees) that may result from EBCE's assertion of an exemption or privilege as a basis for withholding any information marked confidential by the Vendor.

Confidentiality

All data and information obtained from or on behalf of EBCE by the Vendor and its agents in this RFP process, including reports, recommendations, specifications, and data, shall be treated by the Vendor

and its agents as confidential. The Vendor 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 Vendor 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 Vendors agree to provide the Contact with a valid email 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 Vendors 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 Vendors;
- i. Modify in the final Professional Services Agreement any terms or conditions described in this RFP;
- j. Terminate failed negotiations with any Vendor without liability, and negotiate with other Vendor(s);
- k. Disqualify any Vendor 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 Vendor who is not a responsible Vendor or fails to submit a responsive offer as determined solely by EBCE or its representative; or
- m. Accept all or a portion of a Vendor's proposal.

EVALUATION CRITERIA

Evaluations will be based upon the information provided in the proposals and such other information requested by Contact or 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. The Contact or 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 all of the RFP requirements.

The review/evaluation team will select the proposal that offers the greatest value to EBCE based on an analysis of the following criteria:

Evaluation Criteria		Points
1. Understanding of the scope of work required by EBCE	<ul style="list-style-type: none"> ● Quality, clarity, and responsiveness of the proposal ● Detailed summary of services provided relevant to services requested 	20
2. Vendor’s capabilities (minimum) (<i>failure to meet any of the following will result in disqualification</i>)	<ul style="list-style-type: none"> ● Experience with a Community Choice Energy or similar on customer notification (20) ● Ability to provide required services (20) ● Ability to sign NDA (10) ● Vendor references (10) 	60
3. Vendor’s capabilities (desired)	<ul style="list-style-type: none"> ● Located in Alameda County (3) <ul style="list-style-type: none"> ○ with at least 25% of employees residing in Alameda County (2) ● Union membership (2.5) ● DBE, DVBE, MBE, WBE, and/or LGBTBE certification (2.5) ● B Corporation certification (1) 	11
4. Cost	<ul style="list-style-type: none"> ● Estimated cost of proposed services 	9
TOTAL		100

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.

After evaluating the proposals and discussing them further with the Finalists or the tentatively selected Vendor(s), EBCE reserves the right to further negotiate the proposed work or method and amount of compensation.

INSTRUCTIONS TO BIDDERS

EBCE CONTACT

The evaluation phase of the competitive process shall begin upon receipt of bids until a Professional Service Agreement has been awarded. Bidders shall not have any contact (whether oral or in writing) with any member of the EBCE staff or Board of Directors during the evaluation process related to this RFP, outside of the RFP process described herein. Attempts by Bidder to lobby evaluators, or to contact staff or Board Members will result in disqualification of bidder.

All questions regarding these specifications, terms and conditions are to be submitted in writing, via email, by 5:00 p.m. PST on Friday, May 23, 2017 to:

Annie Henderson
East Bay Community Energy
Email: ahenderson@ebce.org

The EBCE website will be the official notification posting place of Proposal, Response to Questions, Addenda, and Final Award Notification. Go to <https://ebce.org/solicitations/> to view current contracting opportunities.

FORM OF PROFESSIONAL SERVICES AGREEMENT

Attached to this RFP as Exhibit 1, is a Form Professional Services Agreement. Bidder must include all objections to the Form Professional Services Agreement in its response. Failure to do so may result in EBCE's refusal to consider changes to the Professional Services Agreement. Additionally, EBCE may consider Bidder's objections to the Professional Services Agreement when considering and reviewing Bidder's response.

SUBMITTAL OF PROPOSALS

All bids must be received at East Bay Community Energy by 5:00 p.m. on Friday June 8, 2018. Bids will be received only at the addresses shown below. Any bid received after said time or date or at a place other than the stated address may 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. Annie Henderson, VP Marketing and Account Services, EBCE: ahenderson@ebce.org
2. All costs required for the preparation and submission of a bid will be borne by Bidder.
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.
4. All other information regarding the bid responses will be held as confidential until such time as the review of the RFP has been completed, a recommended award has been made to the EBCE Board of Directors, and a Professional Services Agreement has been fully executed.
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 will 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 Vendor may be subject to criminal prosecution.
7. The undersigned Bidder certifies that it is, at the time of bidding, and shall be 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 any or all bids.

RESPONSE FORMAT

1. Bid responses are to be straightforward, clear, concise and specific to the information requested.
2. Bid responses are not to be marked confidential or proprietary in whole. EBCE may refuse to consider any bid response so marked. Bid responses submitted in response to this RFP may be subject to public disclosure. EBCE will not be liable in any way for disclosure of any such records. Portions of a bid response may be marked confidential in compliance with the CPRA as noted elsewhere in this RFP.

REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted in order for a bid to be deemed complete. Bidders must submit all documentation, in the order listed below and clearly label each section with the appropriate title (i.e. Cover Letter, Key Personnel, Costs, Objections, References).

1. **Cover Letter:** Bid responses must include a description of Bidder's capabilities and approach in providing its services to EBCE, including the type of equipment used, proposed printing and mailing methodology for greatest cost effectiveness, and project management approach which would be employed to deliver 500,000 letters over four weeks. Additionally, responses should provide a brief synopsis of the company's background and confirm availability to complete critical Service Orders given the schedule provided in section 4.1 Minimum Qualifications. This letter should not exceed five pages in length.
2. **Key Personnel:** Bid responses must identify the lead contact and, if different, the name of the project manager(s) that will work on printing and mailing projects with EBCE. For each person on the list, the following information must be included:
 - (a) Job title, job description, and years of employment with Bidder;
 - (b) The role that the person will play in connection with the services provided;
 - (c) Address, telephone, and email address; and
 - (d) Person's relevant experience, certifications, and merits.
3. **Costs:** Bidder must include estimated costs for the following example projects. Also, please report whether there are certifications and logos you are authorized to use including but not limited to FSC, union label, and the Soy Ink Seal. If you have suggestions for how to reduce printing and mailing costs, please include those suggestions in a narrative. Please complete the below table as part of your response:

Project	Format	Paper	Quantity	Estimated Cost for Printing	Estimated Cost for Mailing
1A	<ul style="list-style-type: none"> • Full color • Single page double-sided letter • 8.5 x 11 • Regular #10 envelope with printed address 	10% recycled 10 lb.	500,000		
1B	<ul style="list-style-type: none"> • Full color • Single page double-sided letter • 8.5 x 11 • Regular #10 envelope with printed address 	100% recycled 10 lb.	500,000		
2	<ul style="list-style-type: none"> • Full color • double-sided postcard • 6 x 11 • printed address 	30% recycled 10 lb.	500,000		
3	<ul style="list-style-type: none"> • Full color • Tri-fold brochure • 8.5 x 11 • No mailing 	30% recycled 10 lb.	25,000		N/A

4. **References:** Bidders are to provide a list of current clients using the attached sheet. References should have similar scope, volume, and requirements to those outlined in these specifications, terms and conditions. Bidders must verify the contact information for all references provided is current and valid. Bidders are encouraged to notify all references that 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 and to use the information gained from them in the evaluation process.

5. **Objections for the form of Professional Services Agreement:** Bidders must provide any and all objections to the Form Professional Services Agreement in Exhibit 1.

CURRENT REFERENCES

East Bay Community Energy: Printing and Mailing Services

Bidder 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:	

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

EXHIBIT 1
Form of Consulting Services Agreement for
Printing and Mailing Services
By And Between East Bay Community Energy Authority and

This Consulting Services Agreement (“Agreement”) is made this ____ day of _____, 201_, (“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 _____, a _____ (“Consultant”) for the purpose of providing printing and mailing 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 _____, unless terminated earlier pursuant to Section 8.

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

3.1 Consultant agrees to perform the scope of work in Exhibit A, which will be divided into several task orders (collectively the “Work”) in accordance with the compliance schedule in Exhibit B. The scope of work for each task order must be agreed to in writing and signed by each party prior to Consultant’s commencing the work under the task order.

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

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

Section 4. Consultant Staffing

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

Section 5. Subconsultants

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

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

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is _____.

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

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

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

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

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

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

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

6.7 EBCE, as a Joint Powers Authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of EBCE's constituent members in connection with this Agreement.

Section 7. Records Retention and Ownership of Work Product

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

7.2 EBCE owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without

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

Section 8. Termination

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

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

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

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

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

Section 9. Insurance

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

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

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

Section 10. No Discrimination or Conflict of Interest

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

10.2 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify EBCE immediately if it identifies any conflicts of interest Consultant understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

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

///

///

Name	Position or Assignment

Section 11. Confidentiality

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

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

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

Section 12. Indemnity

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

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

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

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

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

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

Section 13. Consultant is an Independent Contractor

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

13.2 As an independent contractor, Consultant has complete control over its Subconsultants, 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:
C/o WeWork
1111 Broadway, 3rd Floor
Oakland, CA 94607
Email: @ebce.org
Phone:

Consultant

Attn:

Email:
Phone:

14.8 Assignment.

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

14.9 Integrated Agreement.

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

14.10 Amendments.

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

14.11 Government Claims Act.

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

14.12 Severability.

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

14.13 Counterparts.

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

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

EBCE, a California Joint Powers Authority

(full name of consultant and the entities status e.g. "a California Corporation")

Nick Chaset, CEO

By:
Title:

Date:

By:
Title:
Date:

Approved as to form:

Leah S. Goldberg
General Counsel

LIST OF EXHIBITS

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: SCHEDULE

EXHIBIT C: CONSULTANT STAFFING

EXHIBIT D: SUBCONSULTANTS

EXHIBIT E: COMPENSATION/BUDGET

EXHIBIT F: INSURANCE REQUIREMENTS

EXHIBIT G: TASK ORDER

EXHIBIT A
SCOPE OF WORK

**EXHIBIT B
SCHEDULE**

EXHIBIT C
CONSULTANT STAFFING

**EXHIBIT D
SUBCONSULTANTS**

EXHIBIT E
COMPENSATION/BUDGET

Exhibit F

INSURANCE REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

providing at least the same coverage. Consultant must furnish such proof at least two weeks prior to the expiration of the coverages.

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

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

EXHIBIT G

TASK ORDER

This Task Order is entered into this _____ day of _____, by and between the East Bay Community Energy Authority, a California Joint Powers Authority and _____, a _____.

RECITALS

- A. The parties entered into that certain Consulting Services Agreement for printing and mailing services dated _____ (“Agreement”).
- B. Associated with that Agreement was a scope of work containing various tasks.
- C. The parties desire to have consultant conduct one or more tasks consistent with that Agreement.

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

- 1. Consultants will conduct the following tasks in accordance with the following timeline.

(List tasks and timeline.)

- 2. EBCE agrees to pay consultant _____ for completing these tasks, which compensation is consistent with the Agreement.
- 3. All terms and conditions in the Agreement will remain in full force and effect.

EBCE, a California Joint Powers Authority

(full name of consultant and the entities status e.g. “a California Corporation”)

Nick Chaset, CEO

By:
Title:

Date:

By:
Title:
Date:

Approved as to form:

Leah S. Goldberg
General Counsel