



Staff Report Item 4

TO: East Bay Community Energy Executive Committee
FROM: Nick Chaset, CEO
SUBJECT: Professional Services Agreement with Energy GPS (Action Item)
DATE: October 12, 2018

Recommendation

Approve a professional services agreement with Energy GPS, LLC (Principal: Jeffrey S. Richter; Location: Portland, OR) to provide technical energy services support to energy procurement activities, and authorize the CEO, or his designee, to execute the agreement.

Background

At the July 18, 2018 Board of Directors meeting, the Board approved a staff recommendation to select Energy GPS as one of two providers of technical energy services to support energy procurement activities. This Board approval included a delegation to the CEO to negotiate and execute this contract. The purpose of this Board item is to seek approval of the proposed contract terms that the EBCE staff have negotiated with Energy GPS. Staff specifically wants to highlight the Indemnification, Liability and Insurance contract terms.

Indemnification and Liability:

The proposed contract includes the following Indemnification and Liability Terms:

- Full indemnification against claims by third parties with no limitation on liability
- There shall be no limitation on liability for damages caused by willful misconduct or recklessness
- Indemnification against all other claims subject to the following limitations on liability,
 - All recoveries from Energy GPS' \$2 million Professional Insurance, or
 - The greater of three times fees or \$200,000

Each of these key Indemnification and Liability Terms match contract terms that other public agencies in California have negotiated and approved for a similar scope of services with Energy GPS.

Insurance:

The proposed contract increases Energy GPS' Professional Liability/Errors & Omissions Insurance from \$2,000,000 to \$3,000,000 for aggregate claims.

The Insurance Terms of this contract exceed the levels that other public agencies in California have negotiated and approved for a similar scope of services with Energy GPS.

Attachment:

- A. Proposed Contract with Energy GPS

**Consulting Services Agreement for
Services By And Between East Bay Community Energy Authority and
Energy GPS Consulting, LLC**

This Consulting Services Agreement (“Agreement”) is made this _____ day of _____, 2018, (“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 Energy GPS Consulting, LLC, an Oregon limited liability company (“Consultant”) for the purpose of providing energy market consulting 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 _October 1, 2019, 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 further warrants to EBCE that all of the Work shall be performed in accordance with this Agreement (and the standards of performance set forth herein), in a good and workmanlike manner. Consultant does not warranty or guaranty the accuracy or correctness of any information provided by EBCE or by any third party, providing that Consultant's use of third party materials is well reasoned and that such third party sources are fully documented and made available to EBCE. Consultant does not make any representations or warranties as to a particular outcome or financial results arising from or associated with EBCE's or ECBE's use of the Services.

3.4 Forecasts and estimates provided pursuant to this Agreement are estimates only and will reflect Consultant's evaluation of publicly-available data and professional judgment regarding likely energy pricing and market values. Changes in market conditions, energy sourcing and infrastructure, scientific advances, and legal and regulatory frameworks may result in actual pricing and values that differ materially from Consultant's estimates and forecasts.

3.5 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. In the event a project manager or team member terminates their relationship with Consultant, Consultant will provide prompt notice to EBCE of that change in relationship and of any proposed replacement, subject to EBCE's right to 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. In the event a Subconsultant terminates their relationship with Consultant, Consultant will provide prompt notice to EBCE of that change in relationship and of any proposed replacement subject to EBCE's right to consent.

5.2 Consultant will be responsible and liable for the actions of all Subconsultants, including without limitation, maintaining insurance covering such Subconsultants in

compliance with the insurance obligations under Section 9, for such Subconsultants' compliance with the Conflict of Interests prohibitions in Section 10, the Confidentiality requirements under Section 11, and indemnifying EBCE for the Subconsultants' acts under Section 12.

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is \$125,000.

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

6.3 If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the 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 Definition. "Work Product" means all deliverables, designs, drawings, ideas, developments, works, discoveries, inventions, products, computer programs, source code, procedures, improvements, documents, information and materials created specifically for EBCE by Consultant, either alone or in collaboration with third parties, during Consultant's performance of Consultant's Work, or that is derived from EBCE intellectual property or Confidential Information. Nothing in this Section 7.2 gives EBCE an interest in or right to intellectual property in existence prior to the effective date of this Agreement or in any intellectual property rights of Consultant, except to the extent necessary to access and use the Work Product developed for EBCE, as provided in Section 7.3.

7.3 License. Consultant hereby grants EBCE a perpetual, worldwide, non-exclusive, non-assignable, fully paid-up license to any of Consultant's intellectual property necessary for EBCE's use of the Work Product provided to EBCE pursuant to this Agreement, including, but not limited to, all intellectual property necessary to manufacture (and have manufactured), sell, offer for sale, use and have used any deliverable or any product manufactured through the use of such deliverables. EBCE hereby grants Consultant a limited license to EBCE intellectual property to the extent necessary to perform Consultant's Work and only for the duration of this Agreement.

7.4 Return of EBCE Property. Consultant must promptly return to EBCE any EBCE physical or intellectual property including customer data when requested by EBCE, or at the termination or expiration of this Agreement. Consultant shall not remove any EBCE property from EBCE premises without written authorization from EBCE. EBCE property shall include, but not be limited to, all memoranda, notebooks, drawings, blueprints and Confidential Information provided to Consultant or another person or entity.

7.5 Ownership of Work Products. 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 delivery to EBCE by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement upon EBCE paying Consultant compensation pursuant to Section 6. 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.

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 If EBCE terminates this Agreement for material breach, 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 terminates this Agreement for any reason other than for material breach, EBCE will pay Consultant for all work performed through the date of written Notice of Termination at Consultant's applicable hourly rates. If EBCE authorizes Consultant to continue performing the Work through the date of termination, EBCE will pay Consultant for all work performed through the date of termination at Consultant's applicable hourly rates, provided 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 other than payment of amounts due with respect to services provided under this Agreement, Consultant, its Subconsultants and anyone working for EBCE under control of Consultant must deliver all Work Product to EBCE. Consultant may only retain copies of the Work Product by express written permission of EBCE. Notwithstanding the foregoing, Consultant shall not be obligated to return copies, extracts, or summaries of, or documents containing information taken from, Work Product, to the extent the same are stored on backup or archival copies of Consultant's records, as maintained in the ordinary course of Consultant's business.

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

10.4 EBCE acknowledges and agrees that Consultant advises and provides services to a variety of participants in the energy market, some of whom may be active in markets in which EBCE may currently or in the future participate and who may, at times, take positions adverse to or compete with EBCE. Consultant will not provide information that could be used to identify such other clients. Such advisory and other services shall not be deemed “conflicts of interest” under this Agreement. Consultant represents and warrants that it will not use information it receives from EBCE in any way in way to advance the interests of any of its other clients’ interests. Consultant further represents and warrants that it, is parent, subsidiary(ies) or affiliate companies are not in the market for, or intend to purchase or sell, the same or similar resources or products for which Consultant will be providing forecasts to EBCE.

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) other than Consultant’s legal advisors on an as-needed basis, 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 promptly notify EBCE and wait for direction from EBCE before disclosing the information, to the extent permissible under applicable law. Should Consultant receive a subpoena for such information, Consultant will promptly notify EBCE to allow EBCE time to petition for a protective order from the court. Should EBCE choose not to seek judicial protection, EBCE will so notify Consultant.

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 and Limitation of Liability

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 claimed or asserted by third parties that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant's or Subconsultant's negligent, willful, or reckless performance or failure to perform the Work under this Agreement. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs reasonably incurred in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any third-party claims for infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of third parties caused by EBCE's use of any Work Product or other items provided by Consultant or its Subconsultants under this Agreement, when used in the form provided by Consultant or its Subconsultants without being modified or combined with any goods, services, or intellectual property not provided by Consultant.

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.

12.6 NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

12.7 EXCEPT WITH RESPECT TO INDEMNITIES PROVIDED IN SECTION 12.1, IN NO EVENT SHALL CONSULTANT'S LIABILITY HEREUNDER, WHETHER BASED

ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, EXCEED THE HIGHER OF (i) THREE (3) TIMES THE AGGREGATE AMOUNT OF FEES RECEIVED BY CONSULTANT OVER THE PRECEDING 24 MONTHS or (ii) \$200,000; PROVIDED, HOWEVER, THAT THIS LIMITATION WILL NOT APPLY TO ANY DAMAGES CAUSED BY CONSULTANT'S WILLFUL MISCONDUCT, OR RECKLESSNESS. THE FOREGOING LIMITATION SHALL NOT LIMIT RECOVERIES UNDER ANY APPLICABLE INSURANCE POLICIES.

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: Tim Belden
Energy GPS Consulting, LLC
1215 SE 8th Ave., Suite F
Portland OR 97214
Email: contracting@energygps.com
Phone: 503-512-5194

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.

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:

Date:

Title:

Approved as to form:

By:
Title:
Date:

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 A
SCOPE OF WORK

- 1. Procurement Support Services associated with energy products, including Hydro, fixed price energy, RECs, and Resource Adequacy. Such services may include an analysis of forward price curves, liquidity, and timing for procurement solicitations.**

- 2. Storage proposal analysis**

- 3. Portfolio and risk management services including development of risk metrics**

EXHIBIT B
SCHEDULE

EXHIBIT C
CONSULTANT STAFFING

Energy GPS Consulting LLC

Timothy N. Belden, Principal

EXHIBIT D
SUBCONSULTANTS

Subcontractor:

Energy GPS LLC
1215 SE 8th Ave., STE #F
Portland, OR 97214

Jeffrey S. Richter, Principal

Alan Comnes, Sr. Director

Joel Turkheimer, Manager

Trey Dott, Associate

Andy Boomer, Associate

John Oh, Technologist

EXHIBIT E

COMPENSATION/BUDGET

Hourly rates set forth below will be used to charge for individual task orders:

	Power Procurement	Portfolio Management	Energy Risk Management	Energy Regulatory Analysis
Tim Belden	\$400.00	\$400.00	\$400.00	\$400.00
Jeff Richter	\$400.00	\$400.00	\$400.00	\$400.00
Alan Comnes	\$375.00	\$375.00	\$375.00	\$375.00
Joel Turkheimer	\$350.00	\$350.00	\$350.00	\$350.00
John Oh/Technologist	\$250.00	\$250.00	\$250.00	\$250.00
Trey Dott	\$250.00	\$250.00	\$250.00	\$250.00
Andy Boomer	\$250.00	\$250.00	\$250.00	\$250.00

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.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and Three Million Dollars (\$3,000,000) in aggregate.

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

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

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

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

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

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

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

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant must furnish EBCE with a certificate or certificates of insurance

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

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

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

