



## Consent Item 10

**TO:** East Bay Community Energy Board of Directors

**FROM:** Jessie Denver, Senior Distributed Energy Resources Manager,  
Transportation Electrification and Community Energy Resilience

**SUBJECT:** Agreement with EcoMotion for Engineering and Project Development Services

**DATE:** May 19, 2021

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### Recommendation

Adopt a Resolution authorizing EBCE's CEO to execute a Consulting Services Agreement ("Agreement") with EcoMotion, a California S corporation, ("EcoMotion"), to provide Engineering and Project Development Services that will facilitate deployment of solar photovoltaic and battery energy storage systems at critical municipal facilities, for a total amount not to exceed \$400,000, through December 31, 2024.

### Background and Discussion

To enhance community energy resilience, EBCE has been working with its local government partners to develop solar + storage systems at critical municipal facilities. Over the last 1.5 years, JPA members (e.g., cities and the county) have identified over 300 municipal facilities designated to serve the community in times of emergency (e.g., extended grid outages, major events like earthquakes) and provided those details to EBCE for system-sizing analysis.

Due to municipal procurement requirements, EBCE has taken the results of the system sizing analysis and compiled a portfolio of projects for each local government entity, that will be cost effective over the lifetime of the solar + storage systems. EBCE also identified the need to include stand-alone solar systems at some non-critical municipal facilities and completed a technical and economic assessment at each site to narrow the list of facilities to include in each local government's cost-effective project portfolio.

The primary goal of this EBCE-led initiative is to efficiently and successfully deploy stand-alone solar and solar + storage systems at each of the project sites. EBCE plans to phase this work across 100-200 facilities over the next two to three years in collaboration with its local government partners. Near term, EBCE is focused on developing a deployment model to confirm and hone this phased approach with the goal of accelerating deployment of solar and solar + storage systems at municipal facilities.

### **Engineering and Project Development Professional Services**

In April 2021, EBCE issued a Request for Proposals for professional engineering and project development services related to the program described above. The two vendors selected through this competitive solicitation process are EcoMotion and ARUP. Under the Agreement, EcoMotion will conduct engineering assessments to evaluate the roof condition and structural integrity of municipal facilities; identify any necessary electrical upgrade requirements and estimate associated costs; assist EBCE in the development of an RFP solicitation for the procurement of stand-alone solar and solar + storage systems, expected to occur in Fall 2021; and provide project and construction management oversight. EcoMotion itself will not deploy, own, operate, or manage solar and solar + storage systems at municipal facilities.

Staff is seeking authorization through Resolution for the CEO to execute a Consulting Services Agreement with EcoMotion.

### **Fiscal Impact**

This Agreement will be funded with \$400,000 from the previously approved Local Development Budget.

### **Attachments**

- A. Resolution Authorizing the CEO to Execute a Consulting Services Agreement with EcoMotion, Inc
- B. Consulting Services Agreement with EcoMotion

**RESOLUTION NO. \_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS**

**OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO EXECUTE A CONSULTING SERVICES AGREEMENT WITH ECOMOTION TO CONDUCT SERVICES NECESSARY TO ASSIST WITH COMPLETION OF ENGINEERING AND PROJECT DEVELOPMENT TASKS AND DELIVERABLES TO SUPPORT PROCUREMENT AND CONSTRUCTION OF CRITICAL MUNICIPAL FACILITY SOLAR AND SOLAR + STORAGE TO ENHANCE COMMUNITY ENERGY RESILIENCE**

**WHEREAS** The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

**WHEREAS** On July 18, 2018, the Board approved the Local Development Business Plan (“LDBP”) and budget. The LDBP identifies a series of local development early actions, outlines a series of policy principles, and defines a set of metrics to measure the impact on Alameda County; and

**WHEREAS** EBCE has worked to complete a solar and battery energy storage feasibility assessment on critical municipal facilities designated to serve the community in time of emergency to enhance resiliency in Alameda County; and

**WHEREAS** EBCE issued a competitive Request for Proposal solicitation in April 2021 to select vendors to provide engineering and project development services that will support solar and battery energy storage system deployment; and

**WHEREAS** EcoMotion (“EcoMotion”) is a firm with extensive experience conducting solar and battery energy storage engineering and project development services and was one of two vendors selected by EBCE to provide the services.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The CEO is hereby authorized to execute a Consulting Services Agreement with EcoMotion in substantially the form attached, which shall be effective through December 31, 2024 and shall not exceed \$400,000 in total compensation, to provide engineering and project development services that will facilitate deployment of solar and battery energy storage systems at municipal

facilities. The CEO is further authorized to execute any clarifying or clerical changes to the Agreement, which must be approved by General Counsel.

ADOPTED AND APPROVED this 19th day of May, 2021.

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Dan Kalb, Chair

ATTEST:

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Adrian Bankhead, Assistant Clerk of the Board

**Consulting Services Agreement for  
Services by and Between East Bay Community Energy Authority and  
EcoMotion Incorporated**

This Consulting Services Agreement (“Agreement”) is made this 19<sup>th</sup> day of May, 2021 (“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 EcoMotion Incorporated an S Corporation incorporated in 2001 with the California Secretary of State (“Consultant”) for the purpose of providing professional services to EBCE that result in the deployment of solar and solar + storage systems at critical municipal facilities to enhance community energy resilience.

**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 December 31, 2024, 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 \$396,755.

**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 \$317,404 for this Agreement. Invoices must be submitted to EBCE by the 20<sup>th</sup> 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](mailto: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](mailto: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 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: JP Ross  
East Bay Community Energy  
1999 Harrison Street, Suite 800  
Oakland, CA 94612  
Email: [jross@ebce.org](mailto:jross@ebce.org)  
Phone: (510) 570-5912

Consultant

Attn: Ted Flanigan, President  
EcoMotion Incorporated  
216 W Kenneth Road  
Glendale, California 91202  
Email: [TFlanigan@EcoMotion.us](mailto:TFlanigan@EcoMotion.us)  
Phone: (949) 292 - 7314

**14.8 Assignment.**

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

**14.9 Integrated Agreement.**

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

**14.10 Amendments.**

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

**14.11 Government Claims Act.**

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

**14.12 Severability.**

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

**14.13 Counterparts.**

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

**14.14 No Party Deemed Drafter.**

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

## Section 15. Authorized Signatories

### 15.1 Proper Countersignatures

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

*[signatures on following page]*

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

ECOMOTION INCORPORATED  
A California S Corporation

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_ [MG1]

EAST BAY COMMUNITY ENERGY  
AUTHORITY  
A Joint Powers Authority

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
EBCE Counsel

**LIST OF EXHIBITS**

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: SCHEDULE

EXHIBIT C: CONSULTANT STAFFING

EXHIBIT D: SUBCONSULTANTS

EXHIBIT E: COMPENSATION/BUDGET

EXHIBIT F: INSURANCE REQUIREMENTS



**Exhibit A****SCOPE OF WORK**

EcoMotion will work closely with EBCE to provide engineering and project development services to support procurement and construction of Solar and Solar + Storage systems at 150-200 critical municipal facilities in EBCE's service area. The overall project will consist of the following phases and is outlined in detail in the Key Activities description below.

<b>Step 1a – Engineering Assessment</b>	For specified sites, working with EBCE personnel and input from City facilities staff to: <ul style="list-style-type: none"> <li>• Evaluate roof condition, assess facility structural integrity, and identify and point of connection for Solar and Solar + Storage systems per EBCE's proposed specifications</li> <li>• Per EBCE system specifications, identify any shading or other mechanical limitations of the proposed design</li> <li>• If roof, structural or electrical capacity upgrades are necessary at the site, provide a cost estimate of the improvement required</li> </ul>
<b>Step 1b – RFP design</b>	Assist EBCE in the development of specifications for an RFP solicitation to contract a Solar and Solar + Storage vendor(s) for deployment and operations of proposed systems and evaluation of vendor(s).
<b>Step 2 – Project and Construction Management</b>	Provide oversight during project construction, commissioning, and initial operations.

**Key Activities****Step 1a:**

- Conduct walkdown at each municipal facility to document/take measurements of site attributes as necessary to confirm EBCE Solar and Solar + Storage system sizing and configuration options.
- Evaluate structural integrity and requisite load-bearing capabilities of any structures in or on which Solar and Solar + Storage equipment would be installed, along with

informed cost estimation of any required structural improvements to enable system deployment.

- Evaluate potential interconnection options. This includes identification and preliminary cost estimation for any required electrical equipment, and potential upgrade costs.
- Determine Solar and Solar + Storage system sizing and associated validation of required space and capability to connect to facility electrical panel, along with identification and pricing of any required site electrical or other upgrades to support Solar and Solar + Storage system equipment.

**Step 1b:**

- Assist EBCE in providing specifications required to draft an RFP solicitation to select vendor(s) to deploy Solar and Solar + Storage systems at municipal facilities to enhance community energy resilience
- Assist in evaluation of bidders, contractors and subcontractor qualifications including evaluation of proposed equipment, pricing, and development timelines.
- Determine oversight activities for Step 2

**Step 2:**

- Project manage the development and construction of Solar and Solar + Storage systems including oversight of selected vendor(s) final design approval, permitting and interconnection activities. Liaise with EBCE staff, facility managers, vendor(s) on equipment delivery and timelines.
- Review engineering, procurement, and construction (“EPC”) designs at 50% and 90% design phases for civil, electrical, and local permitting viability
- Oversee EPC in delivery of projects to specification
- Review EPC milestones and advise on acceptance rejection
- Provide feedback and guidance on any change order requests
- Conduct periodic oversight activities as determined in Step 2 to ensure projects are deployed and function as specified
- Review commission plan and commissioning reports
- Work with EBCE staff, selected vendor(s), and municipal facility staff as necessary in the resolution of any technical problems that arise during project deployment

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**

As directed by EBCE

**Exhibit C**

**CONSULTANT STAFFING**

Ted Flanigan, President

Michael Ware, Senior Solar Consultant

Jibade Sandiford, Solar Project Manager

Andrew Waddell, Solar Project Manager

Alizeh Siddiqui, Project Manager

**Exhibit D**

**SUBCONSULTANTS**

1. Point Energy Innovations

Peter Rumsey, Chief Designer

Alexis Karolides, Principal

Joe Wenisch, Principal

Adrienne Johnson, Associate

Avril Lasseur, Associate

Galen Wu, Project Engineer

Stephen Chapes, Project Engineer

2. KPFF Engineering

Staff engineers supervised by Blake Dilsworth

3. Blues Roofing

Staff roofing experts supervised by Tim Blue and Mike Greer

**Exhibit E****COMPENSATION/BUDGET**

Compensation under this Agreement will be on an hourly basis, as follows;

<b>EcoMotion</b>	Project Director	Ted Flanigan	Eco-PD	\$245
	Senior Solar Specialist	Michael Ware	Eco-SSS	\$165
	Solar Program Managers	Jibade Sandiford, Andrew Waddell	Eco-SPM	\$135
	Program Manager	Alizeh Siddiqui	Eco_PM	\$105
<b>Point Energy</b>	Chief Designer	Peter Rumsey	CD	\$370
	Principal	Alexis Karolides, Joe Wenisch	P	\$290
	Associate	Adrienne Johnson, Avril Levasseur	A	\$220
	Project Engineer	Galen Wu, Stephen Chapes	PE	\$185
<b>KPFF</b>	Structural Engineering	Average rate	PD	\$135
	Roofing	Average rate	SSS	\$135
<b>BLUES</b>	Consultancy	Average rate	SSS	\$135

The maximum compensation under this Agreement is \$396,755.

**Exhibit F**

**INSURANCE REQUIREMENTS**

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

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

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.

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

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

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

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

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

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

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

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

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



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

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

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