



# EAST CONTRA COSTA FIRE PROTECTION DISTRICT

## Board of Directors Regular Meeting

**Monday April 4, 2011 – 6:30 P.M.**  
Meeting Location: 3231 Main Street, Oakley

| <b>BOARD OF DIRECTORS</b> |                             |              |
|---------------------------|-----------------------------|--------------|
| Pat Anderson              | Erick Stonebarger-President | Jim Frazier  |
| Steve Barr                | Kevin Romick-Vice President | Robert Kenny |
| Robert A. Brockman        | Joel R. Bryant              |              |

### AGENDA

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**Preceded by a Special Closed Session Meeting at 6:00 P.M., 3231 Main Street, Oakley**

**6:00 PM – Call to Order and Adjourn to Closed Session on the following matters:**

1. CONFERENCE WITH LABOR NEGOTIATOR  
*pursuant to Government Code Section 54957.6*  
Agency designated representative: Board President and Vice President  
Employee Organizations: International Association of Fire Fighters, Local 1230,  
East County Fire Fighters Association (Reserves), Unrepresented Management.
2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
*pursuant to Gov. Code section 54956.9 (b): one potential case*

**RECONVENE TO OPEN SESSION – 3231 Main Street, Oakley**  
Report from closed session (if any)

**6:30 P.M.**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

#### **PUBLIC COMMENTS**

At this time the public may address the District Board on subject matters pertaining to District business listed on the Consent Calendar, Closed Session, Future Agenda Items, or items *not* listed on the agenda. Remarks may be limited to 3-minutes subject to the discretion of the Board President and with the concurrence of the Board of Directors. Please complete and submit a "Public Comment Speaker Card" with the District Clerk.

## **CONSENT CALENDAR**

Consent Calendar items are considered routine in nature and will be enacted by the Board in one motion. If discussion or public comment is required, any Board Member may request the item be removed from the Consent Calendar and considered separately.

**C.1** Approve minutes from March 7, 2011, Special Board of Directors Meeting.

## **PUBLIC HEARINGS**

Members of the public wishing to address the Board on a listed item shall complete and submit a "Public Comment Speaker Card" with the District Clerk.

**None**

## **DISCUSSION ITEMS**

**D.1** 2011-2012 Budget Scenarios

**D.2** Receive Update on Status of Fire Suppression Assessment Engineer's Report

**D.3** Professional Services Agreement for Additional Public Outreach and Education Services

## **INFORMATIONAL STAFF REPORTS**

1. Status of vacant Director's seat

2. Bethel Island Fire Station 95

3. Service calls for March 2011

## **DIRECTORS' COMMENTS**

## **INFORMATIONAL REPORTS AND REQUESTS FOR FUTURE AGENDA ITEMS FROM BOARD MEMBERS**

This portion of the agenda shall provide an opportunity for Board Members to report on activities, committee or event attendance pertaining to District business or to request a future item to be placed on the agenda.

**ADJOURN TO THE NEXT REGULAR BOARD MEETING SCHEDULED: May 2, 2011**

### **POSTING STATEMENT**

A copy of this agenda was posted April 1, 2011, at the East Contra Costa Fire Protection District Administrative Office, 134 Oak Street, Brentwood, CA 94513. Pursuant to CA Government Code §54957.5, disclosable public records and writings related to an agenda item distributed to all or a majority of the Board of Directors less than 72 hours prior to this meeting is available for public inspection at the East Contra Costa Fire Protection District Administrative Office, 134 Oak Street, Brentwood, CA 94513.

### **NOTICE**

In compliance with the Americans with Disabilities Act, any individuals requesting special accommodation to attend and/or participate in District Board meetings may contact the District Administrative Office at (925) 634-3400. Notification 48 hours prior to the meeting will enable the District to make reasonable accommodations.



# EAST CONTRA COSTA FIRE PROTECTION DISTRICT

Meeting Minutes  
Special Meeting/Workshop

**Monday March 7, 2011 – 5:30 P.M.**

| <b>BOARD OF DIRECTORS</b> |                             |              |
|---------------------------|-----------------------------|--------------|
| Pat Anderson              | Erick Stonebarger-President | Jim Frazier  |
| Steve Barr                | Kevin Romick-Vice President | Robert Kenny |
| Robert A. Brockman        | Joel R. Bryant              |              |

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**Call to Order and Begin Workshop Session:** (5:30 PM) - 3231 Main Street, Oakley

**PLEDGE OF ALLEGIANCE** – Led by Chief Henderson

**ROLL CALL** (5:36 pm) - **Directors Present: Anderson, Barr, Brockman, Bryant, Frazier, Kenny, Romick, Stonebarger**

**PUBLIC COMMENTS** (5:38pm)

**WORKSHOP: Fire Suppression Benefit Assessment** (5:40pm)

1. Consensus from the Board of Directors provided direction to incorporate the following services into the Engineer's Report for potential assessment funding:
  - Elimination of deficit
  - 3<sup>rd</sup> Firefighter staffing model per station
  - 2 Fire Stations staffed with advanced life support capabilities
  - Equipment replacement funding
2. The Board of Directors requested a Request for Proposals be prepared to solicit enhanced Public Outreach and Education Services in addition to basic services provided per existing agreement.
3. Election and balloting schedule will be further discussed at the April 4<sup>th</sup> Board of Directors meeting upon review of the Engineer's Report.

**CONSENT CALENDAR** (8:55pm)

**C.1** Approve minutes from February 7, 2011, Regular Board of Directors Meeting.

**Motion by Anderson to approve Consent Calendar item C.1 seconded by Frazier.**

**Vote: Motion carried 8:0**

**Ayes: Anderson, Barr, Brockman, Bryant, Frazier, Kenny, Romick, Stonebarger**

**PUBLIC HEARINGS**

None

**DISCUSSION ITEMS**

None

**INFORMATIONAL STAFF REPORTS (8:56pm)**

Update on vacant Board of Director's seat – Chief Henderson

**DIRECTORS' COMMENTS (8:56pm)**

Director Brockman commended the District on their services provided during a structure fire he observed on 02/28/2011.

**INFORMATIONAL REPORTS AND REQUESTS FOR FUTURE AGENDA ITEMS FROM BOARD MEMBERS (8:58pm)**

**ADJOURN TO THE NEXT REGULAR BOARD MEETING SCHEDULED: April 4, 2011 (9:00pm)**

**Motion by Frazier to adjourn to the next Regular Board of Directors meeting as scheduled, seconded by Romick.**

**Vote: Motion carried 8:0**

**Ayes: Anderson, Barr, Brockman, Bryant, Frazier, Kenny, Romick, Stonebarger**

## BOARD OF DIRECTORS AGENDA ITEM NO. D-1

**Meeting Date:** April 4, 2011

**Subject/Title:** 2011-2012 Budget Scenarios

**Submitted by:** Chief Henderson

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### **RECOMMENDATION FOR ACTION**

Receive update for Fiscal Year 2011-2012 budget preparation.

### **PREVIOUS ACTION**

None

### **SUBJECT BACKGROUND**

As the District starts preparing the Fiscal Year 2011-2012 Operating Budget due to unknown factors at this time there are several scenarios and staffing models. This informational report addresses three scenarios and staffing models. The District has some known factors and costs for the coming year and utilizes the known factors in each of these scenarios.

#### Fund Balance:

The District is projected to start the next fiscal year with a fund balance of \$3,341,380.

#### Revenue:

Revenue projections for property tax next fiscal year are to remain the same as this year. The estimated total revenue, including the RDA pass through and CFD Funds, is \$8,491,564.

If the District moves forward with a Benefit Assessment the assessment could provide up to \$4,000,000 of new annual revenue to the District.

#### Retirement:

The District will see an increase of 24.75% in fire suppression employee retirement rates. These increases are a combination of contribution rates and the de-pooling of the retirement plan. The District is fully funding the required contribution costs. It should be noted that District employees are paying 11 to 15 percent of the employee's costs. The total estimate of the increase in retirement costs is \$516,735.

#### Employee Group Insurance:

The District will see an 18.6% increase in health care premiums and a reduction of 10.5% in dental premiums. The total net estimate of these cost changes is an increase of \$93,583. The District pays 87% of the health care costs and the employees pay 13% of the cost.

In this year's budget, the District started funding its Other Post-Employment Benefit (OPEB) and will continue to work towards the Board's goal of 85 percent funded.

#### Current Staffing Model:

The 2010-2011 staffing model is 6 stations; 4 stations staffed with 3 Firefighters and 2 stations staffed with 2 Firefighters, with a total of 48 Suppression Personnel, Administrative Staff of 5

and the Cal-Fire contract. To maintain the current service model for the next fiscal year, expenditures are estimated at \$11,208,199. To provide this service model, the District would need to use \$2,716,635 of its Fund Balance.

Enhanced Staffing Model:

If the District moves forward with the Benefit Assessment, and it is approved by the District's property owners, a staffing model could be provided as; 6 stations, all staffed with 3 Firefighters, with a total of 54 Suppression Personnel, Administrative Staff of 7 and the Cal-Fire contract. This enhanced staffing model expenditures are estimated at \$12,045,558, leaving \$446,006 available for other uses or adding to the Fund Balance.

Balanced Budget Staffing Model:

If new revenue is not supported and the Board wants a balanced budget, significant cuts would have to be taken. This service model would only support 3 stations staffed with 3 Firefighters, with a total of 29 Suppression Personnel and an Administrative Staff of 5. This staffing model would match the projected revenue of \$8,491,564.

This service level would cancel the Cal-Fire contract, increase response times, increase the insurance rating, and rely on Auto/Mutual aide to provide day-to-day emergency responses.

## BOARD OF DIRECTORS AGENDA ITEM NO. D-2

**Meeting Date:** April 4, 2011

**Subject/Title:** Update on Status of Fire Suppression Assessment Engineer's Report

**Submitted by:** Chief Henderson

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### RECOMMENDATION FOR ACTION

Receive an update on status of Fire Suppression Assessment Engineer's Report.

### PREVIOUS ACTION

On February 7, 2011, by Resolution 2011-02, the Board approved an agreement for Assessment Engineering, Assessment Balloting, Educational Outreach and Professional Consulting Services for Fire Revenue Enhancement with SCI Consulting Group ("SCI")

At the March 7, 2011 Board meeting, a workshop was held to provide direction for potential services to be funded by the Fire Suppression Assessment.

### SUBJECT BACKGROUND

Since the Board's March meeting, SCI and staff have been working to complete the Fire Suppression Engineer's Report. Progress has been made, with anticipated completion within the next few weeks. Once the Engineer's report is complete, the Board will have the option to call for a special meeting, or at the May regular meeting, review and approve the report.

Notwithstanding delays, the Engineer's Report for the Fire Suppression Assessment is still on track for the potential to have additional revenue make the 2011-2012 tax roll. The following outlines the anticipated Fire Suppression Assessment process/timeline.

#### Fire Suppression Assessment Schedule:

|   |          |
|---|----------|
| Board approval of Engineer's Report and calling of the election | May 2*   |
| Mail Ballots  | June 16  |
| Public Hearing: closing balloting period                        | August 1 |
| Certify election results at Special Board Meeting               | August 8 |

\* this is the latest possible date to meet the 2011-2012 tax roll, though a special meeting may be held at an earlier date

## BOARD OF DIRECTORS AGENDA ITEM NO. D-3

**Meeting Date:** April 4, 2011

**Subject/Title:** Professional Services Agreement for Public Outreach and Education Services.

**Submitted by:** Chief Henderson

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### RECOMMENDATION FOR ACTION

Consideration of a resolution approving and authorizing the Fire Chief to execute a Professional Services Agreement with Tramutola LLC for Public Outreach and Education services.

### PREVIOUS ACTION

On February 7, 2011, by Resolution 2011-02, the Board approved an agreement for Assessment Engineering, Assessment Balloting, Educational Outreach and Professional Consulting Services for Fire Revenue Enhancement with SCI Consulting Group, including basic Public Outreach services by Tramutola LLC, as a sub-consultant.

At the March 7, 2011 Board meeting, staff was directed to prepare Requests for Proposals for additional Educational Outreach services.

### SUBJECT BACKGROUND

Public outreach is intended to educate District property owners and voters of the purpose of a Benefit Assessment, including the current financial situation and challenges, assessment amount and future use of assessment funds. Pursuant to State law, District officials and employees may educate voters on the proposed assessment question, including providing impartial information about the ballot measure and attending community meetings

Currently, the District has entered into an agreement to receive basic educational outreach services from Tramutola, as a sub-consultant of the Benefit Assessment Firm, SCI Consulting Group. The scope of services includes formulating an outreach plan, assisting in setting up a website, train/guide District personnel and assist making fact sheets and hand-out materials in the amount of \$25,000.

As directed by the Board, a Request for Proposals was prepared to solicit additional educational outreach services; two responsive proposals were received, each identifying optional levels of service with associated rates.

### Tramutola LLC

- Option1 \$25,000
  - One direct mailer to property owners including development, design, creation and mailing.
- Option 2 \$50,000
  - Two direct mailers to property owners including development, design, creation and mailing.



## **Ehrlich Campaigns**

- Option 1: \$42,500
  - One direct mailer to property owners including design, copy, production and mailing. \$24,500
  - Educational outreach including creation of outreach calendar, FAQ fact sheets, talking points and website copy, public meeting attendance, press assistance and stakeholder identification. \$18,000
- Option 2: \$66,500
  - Two direct mailers to property owners including design, copy, production and mailing. \$41,000
  - Educational outreach including serving as District spokesman, creation of outreach calendar, FAQ fact sheets, talking points, website copy and informational e-mail, public meeting attendance, press assistance and stakeholder identification. \$25,500
- Option 3: \$75,000 + \$3,000/month retainer
  - Two direct mailers to property owners and one direct mailer to the Discovery Bay community including design, copy, production and mailing.
  - Educational outreach including creation of outreach calendar, FAQ fact sheets, talking points and website copy, public meeting attendance, press assistance and stakeholder identification.

Since Tramutola is currently under contract and has begun to provide basic services, to maintain continuity of message and consultant management efficiency, staff is recommending continuing any additional educational outreach services with this same firm. Contract amount would be determined upon the Board's decision of choosing one of the two levels of service proposed as outlined above.

Attachments:  
Resolution  
Agreement

**EAST CONTRA COSTA FIRE PROTECTION DISTRICT  
BOARD OF DIRECTORS RESOLUTION NO.**

**A RESOLUTION OF THE EAST CONTRA COSTA FIRE PROTECTION DISTRICT BOARD OF DIRECTORS APPROVING AND AUTHORIZING THE FIRE CHIEF TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH TRAMUTOLA LLC FOR PUBLIC OUTREACH AND EDUCATION SERVICES.**

**WHEREAS**, at the January 10, 2011 Board meeting, direction was provided to move forward with a proposed Fire Suppression Benefit Assessment; and

**WHEREAS**, on February 7<sup>th</sup>, 2011, the Board approved an agreement for Assessment Engineering, Assessment Balloting, Educational Outreach and Professional Consulting Services for Fire Revenue Enhancement with SCI Consulting Group, including basic public outreach services by Tramutola LLC, as a sub-consultant; and

**WHEREAS**, District staff solicited proposals for additional public outreach services and received two responsive proposals ranging in cost from \$25,000 to \$75,000 with amounts dependent upon optional levels of included services; and

**WHEREAS**, Tramutola is currently under contract and has begun to provide basic services, to maintain continuity of message and consultant management efficiency, staff is recommending continuing any additional educational outreach services with this same firm.

**NOW, THEREFORE BE IT RESOLVED** that the East Contra Costa Fire Protection District does hereby:

1. Approve a Professional Services Agreement for Public Outreach and Education Services with Tramutola LLC in the amount of \$\_\_\_\_\_.
2. Authorize the Fire Chief to execute said Agreement and other such documents as may be necessary to implement the outreach services.

**PASSED, APPROVED AND ADOPTED** by the Board of Directors of the East Contra Costa Fire Protection District at a regular meeting held on the 4th day of April, 2011 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
NAME  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
NAME  
District Clerk

**EAST CONTRA COSTA FIRE PROTECTION DISTRICT**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**WITH**  
**TRAMUTOLA LLC**

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EXHIBIT A - SCOPE OF SERVICES  
EXHIBIT B - INSURANCE

This AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") effective as of \_\_\_\_\_, 2011 ("Effective Date"), is by and among the East Contra Costa Fire Protection District, an independent special district ("ECCFPD") and Tramutola LLC ("Consultant").

**Section 1. Term of Agreement.**

Subject to the provisions of Section 20 ("Termination of Agreement"), the term of this Agreement will be for a period commencing on the Effective Date and will expire upon the completion of Consultant's services which is anticipated to be June 30, 2012.

**Section 2. Scope and Performance of Services.**

2.1 Consultant agrees to provide consulting services as fully described in Exhibit A ("Scope of Services"), which is made a part of this Agreement.

2.2 Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, vehicles, transportation, office space and facilities, calculation, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary or proper to perform and complete the services required of Consultant under this Agreement.

2.3 Consultant's designated representative(s) who is authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement is Bonnie Moss, Executive Vice President and Senior Consultant.

2.4 Should Consultant utilize additional employees or Sub-Consultants, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and sub-consultants to perform the services required under this Agreement. Consultant shall notify ECCFPD and obtain ECCFPD's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.

2.5 The ECCFPD officer responsible for the administration of this Agreement is the Fire Chief. The Fire Chief may, in writing, from time to time delegate another person to exercise any portion of the Fire Chief's authority in this Agreement. Such written delegation shall refer to the specific provision of the Agreement that provides the authority being delegated, and the delegation shall not extend beyond that authority. Consultant is responsible for ensuring that the Fire Chief is kept informed of the progress of Consultant's performance of services and must refer any decision to be made by ECCFPD to the Fire Chief or the person to whom the Fire Chief has delegated the authority to make that decision. Unless otherwise specified in this Agreement, any approval required under this Agreement means the approval of the Fire Chief or the person to whom the Fire Chief has delegated in writing the authority to provide that approval.

2.6 Consultant must obtain the Fire Chief's prior written approval before utilizing any sub-consultants to perform any services under this Agreement. This written approval must include the identity of the sub-consultant and the terms of compensation. Consultant shall incorporate the indemnity and insurance clauses of this Agreement into each sub-consultant agreement.

2.7 Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

**Section 3. Additional Services and Changes in Services.**

3.1 Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in this Agreement or listed in the Scope of Services, unless such additional services are authorized in advance and in writing by ECCFPD Board of Directors.

3.2 If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the Fire Chief with written notification describing the proposed additional services, the reasons such services are needed and were not anticipated prior to execution of this Agreement, and a detailed proposal regarding the cost of the additional services.

3.3 ECCFPD may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing and shall be reflected in an amendment to this Agreement executed by Consultant and the ECCFPD's Board of Directors.

**Section 4. Familiarity with Services and Site.**

4.1 By executing this Agreement, Consultant warrants that Consultant:

- (a) has thoroughly investigated and considered the Scope of Services to be performed;
- (b) has carefully considered how the services should be performed;
- (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
- (d) possesses all licenses, if any, required under local, state or federal law to perform the services contemplated by this Agreement and will maintain all required licenses during the performance of this Agreement.

4.2 If services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of its services, Consultant will immediately inform ECCFPD of such fact and will not proceed except at Consultant's own risk until written instructions are received from ECCFPD.

**Section 5. Compensation and Payment.**

5.1 Subject to any limitations set forth in this Agreement, ECCFPD agrees to pay Consultant the amount of \_\_\_\_\_, for the term of the Agreement as specified in Exhibit A. The total compensation may not exceed \_\_\_\_\_, unless additional compensation is approved in advance and in writing by ECCFPD Board of Directors.

5.2 Prior to the 10<sup>th</sup> day of each month during the term of this Agreement, Consultant shall furnish ECCFPD with an original invoice for all services performed during the preceding month in accordance with the fees and services set forth in Exhibit A. The invoice shall describe the services provided during the month covered by the billings.

5.3 ECCFPD will independently review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are reasonably disputed, the invoice will be approved and paid. In the event any

charges or expenses are reasonably disputed by ECCFPD, the original invoice will be returned by ECCFPD to Consultant for correction and resubmission.

5.4 Except as to any charges for work performed by Consultant that are reasonably disputed by ECCFPD, ECCFPD will cause Consultant to be paid within 45 days of receipt of Consultant's invoice.

5.5 Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant.

5.6 ECCFPD will have no obligation to pay Consultant for any services negligently performed or necessary to correct any negligent work or services.

**Section 6. Required Documentation Prior to Performance.**

6.1 Neither Consultant nor Consultant's sub-consultants will perform any services under this Agreement until:

(a) Consultant and the sub-consultant, if any, performing the services furnishes proof of insurance as required in Exhibit B; and

(b) Fire Chief gives Consultant a written notice to proceed.

**Section 7. Time of Performance; Excusable Delays; Extensions.**

7.1 Consultant will adhere to all schedules and deadlines set forth in this Agreement. Time is of the essence.

7.2 Consultant will not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of terrorism, acts of federal, state or local governments, acts of ECCFPD, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.

**Section 8. Cooperation by ECCFPD.**

ECCFPD will provide to Consultant all public information, data, reports, records, plans and maps existing and available to ECCFPD necessary for Consultant to perform the Scope of Services.

**Section 9. Project Documents.**

9.1 All original maps, models, designs, plans, drawings, photographs, studies, surveys, reports, data, notes, computer programs, files and other documents (collectively, "Project Documents") prepared, developed, or discovered by Consultant or Consultant's sub-consultants in the course of providing services under this Agreement will become the sole property of ECCFPD and may be used, reused or otherwise disposed of by ECCFPD without the permission of Consultant or the sub-consultant. Consultant will take such steps as are reasonably necessary to perfect or protect the ownership interest of ECCFPD in such Project Documents. Upon completion, expiration or termination of this Agreement, Consultant shall turn over to ECCFPD all such original Project Documents in its possession; provided, however, that Consultant may retain copies of Project Documents. ECCFPD acknowledges and agrees that use of Consultant's or any sub-consultant's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at ECCFPD's own risk.

9.2 Consultant will not, without the ECCFPD's prior written approval, release any Project Documents prepared under this Agreement by Consultant or its sub-consultants to any other person or entity except as necessary for the performance of the Consultants' and its sub-consultants' services under this

Agreement. Consultant and its sub-consultants shall not release any press releases or other publicity related to the project, including graphic display information, unless otherwise approved in writing by ECCFPD.

**Section 10. Consultant's Books and Records.**

10.1 Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's or sub-consultants' performance of services under this Agreement. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to ECCFPD under this Agreement. Any and all such documents or records must be maintained in accordance with generally accepted accounting principles and must be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant or sub-consultant under this Agreement. Consultant shall maintain any and all such documents or records for three years following the final payment under this Agreement.

10.2 Consultant shall, upon reasonable prior written request, make available to ECCFPD for inspection, audit and copying at any time during regular business hours any and all records or documents required to be maintained by this section. Consultant shall provide copies of such documents or records directly to ECCFPD for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, Consultant shall make such documents and records available at Consultant's address indicated for receipt of notices in this Agreement.

10.3 Where ECCFPD has reason to believe that any of the documents or records required to be maintained by this section may be lost or discarded due to dissolution or termination of Consultant's business, ECCFPD may, by written request, require that custody of such documents or records be given to a person or entity mutually agreed upon and that such person shall thereafter maintain the documents and records at Consultant's expense. Access to such documents and records shall be granted to ECCFPD, as well as to its successors-in-interest and authorized representatives.

**Section 11. Status of Consultant.**

11.1 Consultant is and will at all times remain a wholly independent contractor and not an officer or employee of ECCFPD. Consultant has no authority to bind ECCFPD in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against ECCFPD, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by ECCFPD.

11.2 The personnel performing the services under this Agreement on behalf of Consultant will at all times be under Consultant's exclusive direction and control. Neither ECCFPD, nor any elected or appointed boards, officers, officials, employees or agents of ECCFPD, will have control over the conduct of Consultant or any of Consultant's officers, employees, agents or sub-consultants, except as provided in this Agreement. Consultant warrants that it will not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, agents or sub-consultants are in any manner officials, officers, employees or agents of ECCFPD.

11.3 Neither Consultant, nor any of Consultant's officers, employees, agents or sub-consultants, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to ECCFPD's employees. Consultant expressly waives any claim to any such rights or benefits.

**Section 12. Compliance with Applicable Laws.**

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement.



**Section 13. Nondiscrimination.**

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

**Section 14. Unauthorized Aliens.**

Consultant agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C. § 1101 et seq., "FINA"), as amended, and further agrees not to employ unauthorized aliens as defined in FINA. Should Consultant employ any unauthorized aliens for the performance of any work or services covered by this Agreement, and should any liability or sanctions be imposed against ECCFPD for the use of unauthorized aliens, Consultant agrees to reimburse ECCFPD for the amount of all such liabilities or sanctions imposed, together with any and all related costs, including attorneys' fees, incurred by ECCFPD.

**Section 15. Conflicts of Interest.**

15.1 Consultant and its officers, employees, associates and sub-consultants, will comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this agreement, including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant and its officers, employees, associates and sub-consultants, shall not, without the prior written approval of the Fire Chief, perform work for another person or entity for whom Consultant is not performing work at the time this Agreement is executed that would require Consultant or one of its officers, employees, associates or sub-consultants to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

15.2 ECCFPD understands and acknowledges that Consultant and its sub-consultants are, as of the Effective Date, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant represents that, except as otherwise disclosed to ECCFPD, it is unaware of any stated position of ECCFPD relative to these projects. Any future position of ECCFPD on these projects will not be considered a conflict of interest for purposes of this section.

15.3 Consultant acknowledges and agrees that neither Consultant nor its sub-consultants, nor any officer, principal or employee of its firm or of any sub-consultant may bid on the construction contracts, nor have any financial interest in any of the contracts for construction of the Project.

**Section 16. Confidential Information; Release of Information.**

16.1 All information gained or work product produced by Consultant in performance of this Agreement will be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than ECCFPD without prior written authorization from the Fire Chief, except as may be required by law.

16.2 Consultant, its officers, employees, or agents, shall not, without prior written authorization from the Fire Chief or unless requested by the General Counsel of ECCFPD, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order will not be considered "voluntary" provided Consultant gives ECCFPD notice of such court order or subpoena.

16.3 Consultant shall reimburse and indemnify ECCFPD for any damages, costs and fees, including attorneys fees, incurred by ECCFPD caused by Consultant or Consultant's sub-consultants release of any information or work product (including Project Documents) in violation of this Agreement.

16.4 Consultant shall promptly notify ECCFPD should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the services performed under this Agreement. ECCFPD retains the right, but has no obligation, to represent Consultant or be present at any such deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with ECCFPD and to provide ECCFPD with the opportunity to review any response to discovery requests provided by Consultant. However, ECCFPD will not have the authority to control, direct, or rewrite such responses.

**Section 17. Indemnification.**

17.1 Consultant shall indemnify, defend, protect and hold harmless ECCFPD its officials, officers, and employees from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively, "Claims"), which ECCFPD may suffer or incur or to which ECCFPD may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by and to the extent of the negligent, reckless or willfully wrongful acts or omissions of Consultant, its officers, employees, agents or sub-consultants committed in performing any services under this Agreement.

17.2 If any action or proceeding is brought against ECCFPD by reason of any of the matters against which Consultant has agreed to indemnify ECCFPD as provided above, Consultant, upon notice from ECCFPD, shall defend ECCFPD at Consultant's expense by counsel reasonably acceptable to ECCFPD. ECCFPD need not have first paid for any of the matters to which ECCFPD is entitled to indemnification in order to be indemnified.

17.3 For the purposes of this section, "ECCFPD" includes ECCFPD's officers, officials, agents, employees and volunteers.

17.4 The insurance required to be maintained by Consultant under this Agreement is intended to ensure Consultant's obligations under this section, but the limits of such insurance do not limit the liability of Consultant.

17.5 The provisions of this section do not apply to Claims to the extent occurring as a result of the ECCFPD's negligence or willful acts or omissions.

17.6 In the event of any Claim made against ECCFPD, ECCFPD may, in its sole discretion, reserve, retain or apply any funds due to Consultant under this Agreement for the purpose of resolving such Claim.

17.7 The provisions of this section will survive the expiration or earlier termination of this Agreement.

**Section 18. Insurance.**

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit E ("Insurance"), which is made a part of this Agreement. All insurance policies are subject to approval by ECCFPD as to form and content. These requirements may be amended or waived in writing by the Fire Chief, in consultation with General Counsel and Risk Management. Consultant also shall require each of its sub-consultants to obtain and maintain during the

term of this Agreement the insurance coverages listed in Exhibit E ("Sub-Consultant Insurance") required of them in Exhibit E.

**Section 19. Assignment.**

The expertise and experience of Consultant are material considerations for this Agreement. ECCFPD has an interest in the qualifications of and capability of the persons and entities that will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant may not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of ECCFPD. Any attempted assignment will be null and void, and will constitute a material breach of this Agreement entitling ECCFPD to any and all remedies at law or in equity, including summary termination of this Agreement.

**Section 20. Termination of Agreement.**

20.1 Either party may terminate this Agreement without cause by providing thirty (30) days prior written notice to the other party. In the event such notice is given, Consultant will cease immediately all work in progress.

20.2 Either party may terminate this Agreement for cause after first providing the other party with written notice of the basis for the default and the failure of the other party to cure the default within thirty (30) days following receipt of the notice.

20.3 Upon termination of this Agreement by Consultant without cause or by ECCFPD for cause, Consultant shall return to ECCFPD all property belonging to ECCFPD which is in Consultant's possession. Consultant shall promptly deliver to ECCFPD a final invoice for all services performed and expenses incurred by Consultant as of the date of termination, which invoice shall be processed and paid as provided in Section 5, except that ECCFPD may deduct the difference between the amount of this contract and the amount incurred by ECCFPD to retain a new consultant, if any, to complete Consultant's services. Compensation for work in progress will be prorated based on the percentage of work completed as of the date of termination.

20.4 Consultant acknowledges ECCFPD's rights to terminate this Agreement as provided in this section, and hereby waives any and all claims for damages that might otherwise arise from ECCFPD's termination of this Agreement.

**Section 21. Notices.**

21.1 All written notices required or permitted to be given under this Agreement will be deemed made when received by the other party at its respective address as follows:

To ECCFPD:                    East Contra Costa Fire Protection District  
   134 Oak Street  
   Brentwood, CA 94513  
   Attention: Fire Chief  
   Telephone: (925) 634-3400  
   Facsimile: (925) 634-1423

To Consultant: Tramutola LLC  
191 Ridgeway Avenue  
Oakland, CA 94611  
Attn: Bonnie Moss  
Telephone: (510) 658-7003  
Facsimile: (510) 658-7302

21.2 Notice will be deemed effective on the date personally delivered or transmitted by facsimile. If the notice is mailed, notice will be deemed given three days after deposit of the same in the custody of the United States Postal Service, postage prepaid, for first class delivery, or upon delivery if using a major courier service with tracking capabilities.

21.3 Any party may change its notice information by giving notice to the other party in compliance with this section.

**Section 22. General Provisions.**

22.1 Authority to Execute. Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder.

22.2 Binding Effect. This Agreement is binding upon the heirs, executors, administrators, successors and assigns of the parties.

22.3 Entire Agreement. This Agreement, including Exhibits A and B is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed in this Agreement and supersedes all other agreements or understandings, whether oral or written, between Consultant and ECCFPD prior to the execution of this Agreement.

22.4 Modification of Agreement. No amendment or modification of this Agreement will be valid unless made in writing and approved by Consultant and by the ECCFPD. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver will be void.

22.5 Facsimile Signatures. Amendments to this Agreement will be considered executed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will have the same effect as an original signature.

22.6 Waiver. Waiver by either party to this Agreement of any term, condition, or covenant of this Agreement will not constitute a waiver of any other term, condition, or covenant. Waiver by either party of any breach of the provisions of this Agreement will not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by ECCFPD of any services by Consultant will not constitute a waiver of any of the provisions of this Agreement.

22.7 Interpretation. This Agreement will be interpreted, construed and governed according to the laws of the State of California. Each party has had the opportunity to review this Agreement with legal counsel. The Agreement will be construed simply, as a whole, and in accordance with its fair meaning. It will not be interpreted strictly for or against either party.

22.8 Severability. If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will not be affected and the Agreement will be read and construed without the invalid, void or unenforceable provision.

22.9 Venue. In the event of litigation between the parties, venue in will be in the Contra Costa County Superior Court.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective as of the day and year first above written.

EAST CONTRA COSTA FIRE PROTECTION DISTRICT

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Hugh Henderson, Fire Chief

APPROVED AS TO FORM:

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Jim Karpiak, ECCFPD General Counsel

CONSULTANT:

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NAME

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

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OPTION1 \$25,000

- One direct mailer to property owners including development, design, creation and mailing.

**-OR-**

OPTION 2 \$50,000

- Two direct mailers to property owners including development, design, creation and mailing.

Details of included services as outlined in proposal dated March 25, 2011

## **EXHIBIT "B"**

### **INSURANCE REQUIREMENTS**

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#### **A. General Requirements.**

Before commencing the performance of services under this Agreement, and at all other times this Agreement is effective, Consultant must procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

Type of Insurance Limits (combined single)

Commercial General Liability: \$2,000,000

Business Automobile Liability \$1,000,000

Workers' Compensation and Employer's Liability \$1,000,000.

Professional Liability \$1,000,000

##### **i. Commercial General Liability Insurance.**

This policy must meet or exceed the requirements of ISO-CGL Form No. CG 00 01 11 85 or 88. The amount of insurance set forth above must be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. The insurance must be on an "occurrence" not a "claims made" basis.

##### **ii. Business Automobile Insurance.**

Automobile coverage must be written on ISO Business Auto Coverage Form CA 00 01 06 92, including symbol I (Any Auto) and Endorsement CA 0025, or equivalent forms subject to the written approval of ECCFPD. Coverage amount is single limit for bodily injury and property damage.

##### **iii. Workers Compensation.**

Consultant must have a State of California approved policy form providing the statutory benefits required by law with employer's liability limits of no less than \$1,000,000 per accident for all covered losses, or Consultant must provide evidence of an approved self-insurance program.

##### **iv. Professional Liability**

Errors and omission liability appropriate to Consultant's profession with limits of not less than \$1,000,000 per claim.

##### **v. Additional Insureds.**

Each Commercial General Liability Insurance policy and Business Auto Insurance policy must provide that the ECCFPD, its officials, officers, agents employees and volunteers are "additional insureds" under the terms of the policy, and must provide that an act or omission of one the insureds will not reduce or avoid coverage to the other insureds.

**vi. Deductibles and Self-Insured Retention.**

Any deductibles or self-insured retentions applicable to the insurance policies required under this Agreement must be declared to and approved by ECCFPD. In no event may any required insurance policy have a deductible, self-insured retention or other similar policy provision in excess of \$50,000 without prior written approval by ECCFPD in its sole discretion. At the option of ECCFPD, either the insurer will reduce or eliminate such deductibles or self-insured retentions with respect to the ECCFPD's additional insureds or Consultant will procure a bond guaranteeing payment of any losses, damages, expenses, costs or settlements up to the amount of such deductibles or self-insured retentions.

**vii. Primary Insurance.**

Each of the insurance policies maintained by Consultant under this Agreement must state that such insurance will be deemed "primary" so that any insurance that may be carried by ECCFPD will be deemed excess to that of Consultant. This endorsement must be reflected on ISO Form No. CG 20 10 11 85 or 88, or equivalent form as determined by ECCFPD.

**viii. Certificates of Insurance and Endorsements.**

Prior to commencing any services under this Agreement, Consultant must file with the ECCFPD certificates of insurance and endorsements evidencing the existence of all insurance required by this Agreement, along with such other evidence of insurance or copies of policies as may reasonably be required by ECCFPD. These certificates of insurance and endorsements must be in a form reasonably approved by the ECCFPD Counsel. Consultant must maintain current certificates and endorsements on file with ECCFPD during the term of this Agreement reflecting the existence of all required insurance. Each of the certificates must expressly provide that no material change in the policy, or termination thereof, will be effective except upon 30 days prior written notice to ECCFPD by certified mail, return receipt requested. The delivery to ECCFPD of any certificates of insurance or endorsements that do not comply with the requirements of this Agreement will not waive the ECCFPD's right to require compliance. The ECCFPD reserves the right to require complete, certified copies of all required insurance policies, at any time.

**ix. Insurance Rating.**

All insurance required to be maintained by Consultant under this Agreement must be issued by companies licensed by or admitted to conduct insurance business in the State of California by the California Department of Insurance and must have a rating of A or better and Class VII or better by the latest edition of A.M. Best's Key Rating Guide.

**x. Aggregate Limits.**

The aggregate limits for each insurance policy required under this Agreement must apply separately and solely to the services performed under this Agreement. If the required policies do not have an endorsement providing that the aggregate limit applies separately to the services being performed, or if defense costs are included in the aggregate limit, then the required aggregate limits must be increased to an amount satisfactory to ECCFPD.

**xi. Waiver of Subrogation Rights.**

Consultant and each insurer providing any insurance required by this Agreement must waive all rights of subrogation against ECCFPD, its officials, officers, employees, agents and volunteers, and each insurer must issue a certificate to the ECCFPD evidencing this waiver of subrogation rights.



**xii. Failure to Maintain Required Insurance.**

If Consultant or any sub-consultant, for any reason, fails to obtain and maintain the insurance required by this Agreement, following written notice to Consultant and Consultant's or sub-consultants failure to remedy, ECCFPD may obtain such coverage at Consultant's expense and deduct the cost of such insurance from payments due to Consultant under this Agreement or may terminate the Agreement.

**xiii. Effect of Coverage.**

The existence of the required insurance coverage under this Agreement shall not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Any insurance proceeds available to ECCFPD in excess of the limits and coverage required by this Agreement, and which is applicable to a given loss, must be made available to ECCFPD to compensate it for such losses

**xiv. Additional Insured in Trade Contracts.**

ECCFPD will require that all trade contracts issued to the multi-prime contractors for work on the project will include language that names Consultant as an additional insured of the contractor.

**xv. Sub-consultant Insurance.**

Consultant shall require each sub-consultant to obtain the same types and levels of insurance and comply with all other requirements in Exhibit C. In addition, the Consultant shall require each sub-consultant providing design or similar professional services to obtain Professional Liability Insurance with a minimum limit of \$1,000,000. The Professional Liability Insurance must be endorsed to be applicable to claims based upon, arising out of or related to services performed under the agreement between the Consultant and the sub-consultant.