



## **EAST CONTRA COSTA FIRE PROTECTION DISTRICT**

### **REQUEST FOR QUALIFICATIONS (RFQ)**

#### **DEVELOPMENT IMPACT FEE STUDY, COMMUNITY FACILITIES DISTRICT FORMATION STUDY, AND USER FEE STUDY**

The East Contra Costa Fire Protection District ("ECCFPD" or "District") requests proposals from individuals or firms with extensive experience in conducting 1) development impact fee studies; 2) community facilities district ("CFD") formation studies; and 3) user fee studies; each with respect to fire prevention and fire and medical emergency support services.

Proposers may submit proposals for any or all of the studies required by the District. The District reserves the right to issue an award under this RFQ to a single or multiple individuals or firms, at its sole discretion. If the District determines that no proposer meets the requirements of this RFQ, the District, at its sole discretion, reserves the right to reject all applications. The District may award all of services described herein, or a portion thereof, at its sole discretion.

#### **I. DISTRICT BACKGROUND**

The District is located in the far East San Francisco Bay Area region, servicing the easterly portion of Contra Costa County, California. ECCFPD was formed in 2002 through the consolidation of three separate fire districts. The District serves a population of approximately 115,000 residents within the Cities of Brentwood and Oakley and the unincorporated communities of Discovery Bay, Byron, Bethel Island, Knightsen and Marsh Creek/Morgan Territory. ECCFPD service boundaries cover approximately 250 square miles of suburban and rural environment including Delta waterways. Staffing consists of a Fire Chief, one Business Services Manager, two Administrative Assistants and 32 fire-suppression personnel (including four Battalion Chiefs). The District responds to approximately 7,000 calls annually, providing fire suppression, and medical and fire emergency response services. Advanced life support and paramedic services are provided within the District by American Medical Response under a regional ambulance contract. The District currently has under review the fire prevention, inspection and investigation services. Current District resources include 3 active fire stations, a Cal Fire station (funded by the District during non-fire season) and various fire-fighting apparatuses. The District is led by a five-member elected Board of Directors.

In addition to the three currently-staffed stations, the District owns several decommissioned fire stations that are not compatible with 24-hour use. The City of Oakley currently is constructing a new fire station for future dedication to the District.

The District is financially-sustainable with a three-station (plus one Cal Fire station) staffing model. However, the level of service that can be offered under such a model does not meet the needs of

the community, as evidenced in a 2016 report produced by Citygate Associates (available on the District's website at <https://www.eccfpd.org/eccfpd-master-plan-lafco-reports>). The Board of Directors adopted a Strategic Plan in December, 2018 that sets forth its approach to improve the level of services offered by the District over the next five years (available on the District's website at <https://www.eccfpd.org/eccfpd-strategic-planning>). ECCFPD's operations and capital needs are supported almost exclusively by property tax revenues. ECCFPD's operating budget proposes approximately \$16.2 Million in expenditures for 2018-19. Contra Costa County, the cities of Brentwood and Oakley and ECCFPD's predecessor districts have adopted a patchwork of impact fees and CFDs, and the District has adopted some limited fees for services, that create inconsistent, unreliable and insufficient additional revenues, most of which are outside of the District's control.

## **II. PROJECT SCOPE OF WORK**

The ECCFPD is requesting proposals from qualified firms ("Proposers") to conduct three studies: 1) a development impact fee study; 2) a formation study for CFDs; and 3) a user fee study. Proposers may submit proposals to perform any or all of the studies and should assume that once an analysis of the District's current financial situation and/or current cost study is complete, such analysis will be made available to the Consultant(s) conducting subsequent studies. Contracts for performance of each study will include options to provide additional follow-up services on an on-call basis, exercisable at the District's sole discretion. A more complete Scope of Services has been attached to this RFQ as Attachment 1.

### **a. Development Impact Fee Study**

The scope of work for the development impact fee study includes assessing and recommending a program of impact fees for fire prevention and emergency support services to be enacted by agencies in ECCFPD's service area that meet the requirements of the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as "AB 1600") as well as Proposition 218 and other laws and regulations. Specifically, the study should include detailed and legally defensible justification and analysis, including nexus studies demonstrating the financial connection between the need for each proposed fee and build-out of the District. The study also should include an assessment of the impact fees already in place within the District's jurisdiction, recommendations for adjustments to such fees and a basis upon which to efficiently utilize existing impact fee revenues.

### **b. Community Facilities District Formation Study**

The scope of work for the CFD formation study includes assessment of the feasibility of forming one or more new community facilities districts to support fire and emergency services within the District's service area, consistent with the requirements of the Mello-Roos Community Facilities Act (Gov. Code §§ 53311 et seq.), Proposition 218 and other applicable laws, as well as: preparation of a fiscal impact analysis, rate and method of apportionment, and boundary map to support the formation of one or more such CFDs within the District's service area to support fire prevention and emergency support services. In addition to recommendations on the creation of one or more new CFDs, the Consultant will assess the CFDs already in place within the District's jurisdiction and identify opportunities to efficiently utilize existing CFD revenues.

**c. User Fee Study**

The scope of work for the user fee study includes conducting a study to support an update of the District's user fees for fire prevention and emergency response services that meets the requirements of the California Constitution and other applicable laws. The Consultant also will assess the District's current cost-recovery fee schedule and make recommendations on a comprehensive program of user fees for fire prevention and emergency medical response services consistent with the requirements of Article XIII C the California Constitution, and other applicable laws and regulations. The study should include an analysis of the District's costs of providing services, including allocation of overhead costs, comparison of costs and recovery levels for similar services provided by similar agencies; and recommendations regarding changes to existing fees and/or implementing new fees.

**III. PROPOSALS**

**a. Proposal Submission Instructions**

Proposers must deliver one original, four (4) additional printed copies, and an electronic copy (saved to a flash drive) of their proposals no later than **12 p.m. (Pacific Time) on February 22, 2019** to:

Regina Rubier, Business Services Manager  
East Contra Costa Fire Protection District  
150 City Park Way  
Brentwood, CA 94513

**Contact Information:** (925) 634-3400  
**rrubier@eccfpd.org**

The ECCFPD will not pay for any costs incurred in preparation and submission of proposals or in anticipation of a contract.

During the evaluation process, the ECCFPD reserves the right to request additional information or clarification from Proposers, and to waive informalities and irregularities. At the discretion of the ECCFPD, firms submitting proposals may be requested to make oral presentations as part of the evaluation process. The ECCFPD is under no obligation to return proposals.

Submission of a proposal shall constitute a firm offer to the ECCFPD for 90 days from the date proposals are due to the ECCFPD. By submitting the proposal, Proposer acknowledges that it has carefully read and fully understands this RFQ (including the Attachments) and agrees to its terms. A Proposer may withdraw its proposal at any time before the submittal deadline by delivering a written request for withdrawal signed by, or on behalf of, the Proposer.

**b. Subcontracting**

ECCFPD will accept proposals from individual firms or consultant teams. Any proposal submitted on behalf of multiple consultants must designate a "lead" consultant/firm to enter into a contract with the District. The lead consultant will be solely responsible for contractual performance and management of all subcontract relationships. Any secondary consultant/firm(s) would be a subcontractor to the lead consultant.

All proposals must disclose and describe the use of any subcontractors (except those performing copying and/or printing services) and include the specific scope of services proposed to be performed under subcontract(s). ECCFPD reserves the right to reject any proposed subcontractors as part of the RFQ and contract negotiation process.

**c. Agreement Form**

ECCFPD utilizes standard contract provisions for all professional and technical services agreements. Except as specified in the proposal, submission of a proposal constitutes acceptance of the agreement format and provisions as included as Attachment 2.

**d. Contact Information: Requests for Clarifications**

All requests for clarifications, questions, or other communications about this RFQ must be made in writing via e-mail, or U.S. Mail, for receipt no later than **5 p.m. (Pacific Time) on February 6, 2019**. Address all communications to the person listed below. To ensure that requests for clarifications and questions are received and answered in a timely manner, e-mail correspondence is preferred.

Responses will be summarized and posted at [https://www.eccfpd.org/doing-business-with-eccfpd \(Website\)](https://www.eccfpd.org/doing-business-with-eccfpd) without identifying the original source of the question. Any addenda will be published on the Website, and are effective upon publication.

Firms should rely only on written statements issued by:  
 Regina Rubier, Business Services Manager  
 East Contra Costa Fire Protection District  
 150 City Park Way Street  
 Brentwood, CA 94513  
 Phone: (925) 634-3400  
 Email: rrubier@eccfpd.org

**e. RFQ Schedule: The RFQ schedule will be as follows:**

RFQ Issued	Monday, January 28, 2019
Deadline For Submitting Written Questions	Wednesday, February 6, 2019 5 p.m. (Pacific Time)
Deadline for Receipt of Proposals	Friday, February 22, 2019, Noon (Pacific Time)
Interviews (if scheduled)	Week of February 25, 2019
Board of Directors Approval/Contract Award	March 13, 2019

The RFQ schedule is subject to revisions by the District in its sole discretion.

**f. Proposal Content**

In order to be considered for selection for award of contract, the Proposer must demonstrate the ability to perform the scope of services. Proposals shall include separate information on relevant experience, key staff members and their qualifications for each study for which the Proposer is submitting a proposal. Proposers submitting proposals for multiple studies may include a single cover letter.

Each proposal must include:

1. Proposal Cover Letter

- a. Introduction of the proposed Consultant team indicating the Proposer's agreement to be bound to its proposal for 90 days.
- b. Name, title and original signature of the person(s) authorized to bind the Proposer and execute an agreement, and verification of the person or firm's ability to act as an independent consultant.
- c. Information concerning whether the Proposer is prepared to provide all of the required studies or, if not, which studies the Proposer would provide.
- d. Confirmation that the Proposer is prepared to sign the standard agreement included in sample form as Attachment 2 if a contract is awarded, or identification of any exceptions, changes, revisions requested relative to any element of the standard agreement.
- e. Information on the "lead" consultant/firm and any proposed sub-consultant firms including: firm name, contact name, business address, telephone number, e-mail address, type of entity (individual, partnership or corporation), and years in business.
- f. Verification of Proposer's ability to act as an independent consultant. If there is a relationship to work performed for other entities which may present a conflict of interest, or the appearance of such a conflict, it should be fully disclosed as it relates to the proposed scope of services.

2. Team Qualifications and Experience (for each study for which the Proposer is submitting a proposal)

- a. Information on proposed firm(s) and on key personnel including: names, proposed roles on this project, and relevant experience demonstrating that the firms' personnel are qualified to perform the services set forth in Attachment 1, Scope of Services. Complete resumes for the project lead and other key project staff and/or consultants must be attached.
- b. Contact names and phone numbers for at least three (3) public agency references for which the Proposer has performed a similar engagement within the previous five years and one (1) work sample from a comparable project. Please include a brief description of the project, key consultant personnel involved, the project cost and time expended, and the date of completion. Please also include a summary of the outcome.

3. Recommended Order of Work

- a. Proposed order of work for the performance of all three studies, including a description of how work for one study could be used in the performance of the other study(ies), regardless of whether Proposer is proposing for one, two or all three studies.

4. Approach to Scope of Services (for each study for which the Proposer is submitting a proposal)
  - a. A well-conceived work plan describing the proposer's approach to the Scope of Services, for both the Base Services and Optional Services. The work plan should include:
    - i. a description of all major tasks, subtasks and deliverables;
    - ii. identification of responsible parties for each task;
    - iii. timelines for each deliverable and how successful completion of each deliverable will be measured; and
    - iv. a description and timing of critical meetings with staff, the Board of Directors and/or the public (including the number of meetings and audience for each meeting).
  - b. A summary of the information Proposer anticipates needing from the District to complete the study.
  - c. Any recommended changes to Attachment 1, Scope of Services (with the understanding that the District will accept or reject proposed changes to the Scope of Services at its sole discretion).
5. Cost Proposal (for each study for which the Proposer is submitting a proposal)
  - a. Unless otherwise stated, proposed fees are to be inclusive of all labor, profit, administrative and overhead fees, travel, and other indirect costs, including the cost of obtaining insurance, etc. as required in the Agreement.
  - b. Base Services: A detailed cost proposal broken out by each major task for the Base Services described in the work plan, including an estimate for the number of hours that will be required of Proposer's personnel and any subcontractors to accomplish the work, hourly rate schedules for all personnel (including subcontractors) who may be involved in the work, anticipated direct costs and an estimated total not-to-exceed budget.
  - c. Rates for the Optional Services: A detailed cost proposal broken out by each major task for the Optional Services described in the work plan, including an estimate for the number of hours that will be required of Proposer's personnel and any subcontractors to accomplish the work, hourly rate schedules for all personnel (including subcontractors) who may be involved in the work, and anticipated direct costs.
  - d. Cost savings or increases associated with any changes to the Scope of Services suggested by the Proposer, suggested staging of work (e.g., use of financial analysis developed for an earlier or concurrent study) and/or selection of the Proposer to perform multiple studies.
  - e. Fixed-fee and other alternative billing structures may be proposed.

- f. Proposers must describe their customary billing procedures, including any terms of payments with any discounts allowed.

**g. Confidentiality**

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications or any other written communication between the ECCFPD and Proposer shall be available to the public.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the ECCFPD withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. By submitting a proposal with portions marked "confidential," a Proposer represents it has determined such portions qualify for exemption from disclosure under the California Public Records Act. Proposer may not designate its entire proposal nor its cost proposal(s) confidential.

By requesting that the ECCFPD withhold from disclosure information identified as confidential, Proposer agrees that if the ECCFPD complies with the Proposer's request, Proposer will assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the ECCFPD from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Proposer information), and pay any and all cost and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue or maintain any legal action against the ECCFPD or its directors, officers, employees or agents concerning the withholding from disclosure of Proposer information.

If Proposer does not request that the ECCFPD withhold from disclosure information identified by the Proposer as confidential, the ECCFPD will have no obligation to withhold the information from disclosure and may release the information sought without any liability to the ECCFPD.

**h. Review and Selection Process**

The ECCFPD reserves the right to select contractor(s) based on its sole discretion. Proposals for each study will be evaluated in response to this RFQ and based on the needs of the ECCFPD in accordance with the following criteria:

- i. Approach to Scope of Services 0 - 25 points

The Proposer's overall approach to successfully providing services will be assessed for its feasibility, responsiveness to the Scope of Services, effectiveness and thoroughness. Proposals will be evaluated on the following:

1. Demonstration of understanding of Scope of Services;
2. Demonstration of understanding of contractual requirements and inclusion of a managerial plan to ensure high quality work and successful outcomes;
3. Proposer's staffing approach and overall organizational structure;

4. Proposer's ability to schedule and efficiently perform the work;
5. Quality and completeness of the proposal;
6. Degree to which the Proposer's proposed project and its activities have been well planned and clearly described;
7. Degree to which the proposal demonstrates an understanding of ECCFPD's needs.

ii. Qualifications and Experience of Firm, Key Personnel and Management Team 0 - 45 points

1. Proposer's qualifications and relevant experience, including the experience of the firm and staff to be assigned to the project;
2. Measurable success with projects/engagements of similar scope and complexity, including as demonstrated by references from other clients;
3. Proposer's prior record of performance with the ECCFPD or other public agencies; and
4. Proposer's knowledge and familiarity with development impact fees/CFDs/user fees in Contra Costa County, as well as with fees/taxes for fire and emergency services

iii. Cost Proposal 0 - 30 points

1. The reasonableness and cost-effectiveness of the Cost Proposal, including the Proposer's not-to-exceed amount for the Base Services and the Proposer's hourly rate for Optional Services, or the proposed alternative fee structure.
2. Alignment of the Cost Proposal with the proposed Approach to the Scope of Services.
3. Efficiencies associated with proposed use of analyses in multiple studies.

**i. Interviews**

One or more Proposers may be invited to participate in an interview process. ECCFPD requests that Proposers make themselves available if asked to participate in an interview. If an interview is requested, the Proposer will be responsible for all costs related to the interview (travel, meals, lodging, etc.). Interviews, if necessary, are scheduled to be held the week of February 25, 2019 at 150 City Park Way Street, Brentwood CA 94513.

**j. Revised Proposals, Discussions, Negotiations, Best And Final Offers**

ECCFPD may request revised proposals, enter into discussions and/or negotiations with the top ranked Proposers for each study and/or request "best and final offers." If ECCFPD is unable to reach an agreement with the top ranked Proposer for a study, ECCFPD may, at its sole discretion,



enter into negotiations with the next highest ranked Proposer until it reaches an agreement with a Proposer, or reject all proposals. ECCFPD may also award contract(s) without conducting any negotiations, discussions or interviews.

**k. Contract Award**

The Fire Chief and/or committee of the Board will make a recommendation for award of contract(s) to the full ECCFPD Board of Directors. All proposers will be notified of the recommended award(s) in writing (which notice may be via email).

This RFQ does not commit the ECCFPD to award a contract. The ECCFPD reserves the right to waive informalities and irregularities in the Proposals received or in the procedures outlined herein, to accept or reject any or all Proposals, or to modify or cancel the RFQ in part or in its entirety.

**l. Budget and Compensation**

Following execution of a contract with the successful Proposer, the ECCFPD and the Consultant will finalize the work plans and associated costs before Consultant commences work on same.

## **Attachment 1 SCOPE OF SERVICES**

The East Contra Costa Fire Protection District seeks the services of one or more consultants to provide (I) a development impact fee study, (II) a community facilities district formation study, and (III) a user fee study for the District.

### **General Responsibilities**

The following responsibilities are applicable to each study:

- 1) Consultant will be responsible for overall management of cost and project schedule, including providing sufficient notice to the District for scheduling of any needed resources.
- 2) Consultant must designate a Project Manager, acceptable to the District, who will be responsible for initiating and implementing the work and maintaining effective communications among Consultant, the District and other involved agencies and organizations.
- 3) Consultant must provide regular progress reports, on a mutually-determined schedule and in a format acceptable to the District. Such progress reports shall include:
  - (a) Accomplishments during the reporting period, issues encountered or anticipated, and activities scheduled for the next period. Such report must clearly indicate any District resource needs in the near and far-term to assure project schedule is maintained.
  - (b) Comparison of adopted schedule to project progress. Such report must clearly indicate any risk to the project schedule.
  - (c) Comparison of actual costs to budget including percentage of budget used and percentage of project complete. Such report must clearly indicate any risk to the project budget.
- 4) In addition to regular progress reports, Consultant must immediately alert District staff regarding new, unanticipated risks to the schedule or budget.

## **I. Development Impact Fee Study**

The scope of work for the development impact fee study includes assessing and recommending a program of impact fees for fire prevention and emergency support services to be enacted by agencies in ECCFPD's service area that meet the requirements of the Mitigation Fee Act (California Government Code Section 66000 et seq., also known as "AB 1600") as well as Proposition 218 and other laws and regulations. Specifically, the study should include detailed and legally defensible justification and analysis, including nexus studies demonstrating the financial connection between the need for each proposed fee and build-out of the District. The study also should include an assessment of the impact fees already in place within the District's jurisdiction, recommendations for adjustments to such fees and a basis upon which to efficiently utilize existing impact fee revenues.

The Consultant may suggest unique areas or separate zones, where appropriate and necessary, to identify opportunities for additional revenue to accommodate District-wide growth. This project will consist of the preparation of a development impact fee study, and include the provision of related on-call services for two years, including updates to the fee program.

Fees shall be calculated to provide for facilities, equipment, and infrastructure needed to support fire prevention and emergency services for growth based on forecasts of new development over a twenty (20) year period.

The impact fee analysis shall be compared to at least three similar fire protection districts/departments in at least Contra Costa, Alameda, and San Joaquin counties to ensure reasonableness, consistency and feasibility. Pursuant to Government Code Section 66000, et seq., the study shall include sufficient information and analysis upon which the District may base the findings that there is a reasonable and legally defensible relationship (benefit and burden) between the type of development projects planned for the District and the need for new or expanded facilities.

The District anticipates that project tasks will include, but not necessarily be limited to, those items noted below. If the Consultant recommends that additional tasks are warranted, they must be clearly identified in Consultant's proposal.

### **A. Base Services**

- 1) Conduct Kick Off meeting with District staff to refine the project scope, purpose, uses and goals of the District's development impact fee study to ensure that the study will be both accurate and appropriate to the District's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- 2) Meet with staff and conduct interviews as needed to gain an understanding of the District's processes and operations.
- 3) Identify and clarify existing and applicable city, county, and District standards (including references to the General Plan(s), Master Plan(s), Specific Plan(s) and Municipal Code(s) within the District's service area).
- 4) Interview District staff regarding acceptable levels of service for specific facilities and functions, and the related fees for public safety services.
- 5) Conduct a comprehensive review of existing impact fees within the District's service area available for fire prevention facilities and services, including impact

- fees imposed by the City of Oakley, City of Brentwood, and Contra Costa County, with the goal of establishing a consistent and objectively based fee structure that meets the needs of the District and its service area.
- 6) Describe assumptions and bases for assumptions regarding existing levels of service in the District compared to existing standards, including a description of existing facilities and the existing number of equivalent development units (EDU) or residents served.
  - 7) For the purpose of determining the level of service, the study shall include assumptions and bases for assumptions, regarding specific facilities to be constructed and the number of EDU's or new developments to be served.
  - 8) Describe assumptions and bases for assumptions regarding the type of development projects planned within the District's jurisdiction and the impact new developments would have upon the level of service for existing facilities. The varying impacts of new development should be broken down by use and include, for example, Single Family, Multi-Family, Commercial Office, and Industrial/Institutional categories.
  - 9) Describe whether new development in the District will require additional facilities. If additional facilities will be required, include a description of the standards by which it was determined that additional facilities would be required and a description of the additional facilities required.
  - 10) Describe the impact upon the level of service for the new development in the District after the additional facilities are constructed. Describe how the new development would benefit from the additional facilities.
  - 11) Prepare an estimated cost of providing additional facilities pursuant to Government Code Section 66005(a). Describe the basis upon which the total estimated cost of providing additional facilities would be allocated to each EDU in the District.
  - 12) Prepared a listing of projects eligible for funding from existing and new impact fees.
  - 13) Alert the District of other matters that come to the attention of the consultant in the course of this evaluation that in consultant's professional opinion the District should consider.
  - 14) Prepare a report of findings which shall include, but not be limited to, the following:
    - i. Description of the overall methodology;
    - ii. Supporting justification;
    - iii. Recommended development impact fees;
    - iv. Analysis and calculations that provide each legal nexus between the recommended fee and the impact created by the new development;
    - v. The relationship between the fee's use and the type of project on which it would be imposed;
    - vi. The need for any additional facilities and the type of project on which the fee would be imposed, the amount of the fee, and the cost of the facility (or portion of the facility) attributable to new development;
    - vii. The purpose of the proposed new fee;
    - viii. How the fee would be used;
    - ix. A summary of key results and findings, and explanation of the methodology used and documentation compliance with the "reasonable relationship" requirements of AB1600; and
    - x. Any additional matters that District staff should be made aware of.
  - 15) Participate in presentations to District staff and the District Board of Directors or other interested parties as deemed necessary by District. Collect and document comments and concerns from staff and the Board members and incorporate those comments as directed. Assist with development of staff reports,

resolutions/ordinances and related presentations.

- 16) Prepare a final study and provide up to twelve (12) bound copies, one (1) unbound copy, one (1) digital file copy in PDF format and one (1) editable digital file copy to the District.

**B. Optional Services**

The District may also require the Consultant to provide additional services on an on-call basis for a period of two years. There is no guaranteed compensation for this portion of the scope of work. Tasks may include, but may not be limited to:

- 1) Consulting with District staff on an as-needed basis on minor matters relating to implementation and utilization of the study;
- 2) Assisting the District in defending fees in the event of an audit or other challenge;
- 3) Updating the fees, where applicable.

## **II. Community Facilities District Study**

The scope of work for the CFD formation study includes assessment of the feasibility of forming one or more new community facilities districts to support fire and emergency services within the District's service area, consistent with the requirements of the Mello-Roos Community Facilities Act (Gov. Code §§ 53311 et seq.), Proposition 218 and other applicable laws, as well as: preparation of a fiscal impact analysis, rate and method of apportionment, and boundary map to support the formation of one or more such CFDs within the District's service area to support fire prevention and emergency support services. In addition to recommendations on the creation of one or more new CFDs, the Consultant will assess the CFDs already in place within the District's jurisdiction and identify opportunities to efficiently utilize existing CFD revenues.

In proposing one or more new CFDs, the Consultant may suggest unique areas or separate zones, where appropriate and necessary, to identify opportunities for additional revenue to accommodate district-wide growth. This project will include on-call services relating to the formation and administration of the CFD(s) for a period of two years if required by the District.

The District will provide Consultant with certain basic data on prior and existing development, as well as work with Consultant to determine the amount of new development anticipated to reach build-out and create demand for new and expanded services and facilities. In general, these assumptions are based on factors that include but are not limited to population projections, land use designations, land area data, construction projections and other special fees already in place. District staff will rely on Consultant to prepare a fiscal analysis that detail the services and maintenance activities to be funded and on what time frame, determine the fiscal shortfall created by new development, propose classifications of property, and develop a rate and method of apportionment for the CFD(s). Taxes shall be calculated to provide for facilities, equipment, and infrastructure needed to support fire prevention and emergency services for growth based on forecasts of new development of a twenty (20) year period.

The District anticipates that project tasks will include, but not necessarily be limited to, those items noted below. If the Consultant recommends that additional tasks are warranted, they must be clearly identified in Consultant's proposal.

### **A. Base Services**

- 1) Conduct Kick Off meeting with District staff to refine the project scope, purpose, uses and goals of the District's Community Facilities District Study to ensure that the study will be both accurate and appropriate to the District's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- 2) Meet with District staff, and staff of other affected agencies, as necessary, to conduct interviews, to gain an understanding of the District's processes and operations.
- 3) Prepare a Fiscal Impact Analysis to determine the additional cost burden created by new development. The report will detail the services and maintenance activities to be funded, the associated time frame, and the fiscal shortfall created by new development. Consultant will review the current District budget, projected revenues from new development and anticipated costs for fire prevention and emergency response services, and other related budget areas.
- 4) Meet with District staff to present the Fiscal Impact Analysis, including the anticipated fiscal impacts related to new development and the costs of providing

fire prevention and emergency response services, and receive feedback. Revise the Fiscal Impact Analysis based on the comments received and present a final report to the District.

- 5) Prepare a rate and method of apportionment for the special tax that shall provide the following:
  - i. Description of the maintenance and operations for services/facilities and the administrative overhead to be subject to the special tax, including cost estimates;
  - ii. Calculation of a special tax rate which captures all or as many costs as possible including administration costs, which complies with all applicable laws, and which includes an escalator to help cover increased costs due to inflation (into perpetuity);
  - iii. A special tax methodology which allows future developments to be annexed into the District;
  - iv. Allocation of the special tax to fairly spread costs between all affected parcels.
- 6) Meet with District staff and the District Board of Directors or other interested parties as deemed necessary by District to present and receive feedback on the rate and method of apportionment. Revise the rate and method of apportionment based on the comments received and present a final report to the District.
- 7) Determine an appropriate special tax classification for each parcel located in the CFD, including exempt parcels.
- 8) Present the final report and rate and method of apportionment to District staff and the District Board of Directors or other interested parties as deemed necessary by staff. Collect and document comments and concerns incorporate those comments in a revised final draft as directed. Assist with development of staff reports and related presentations.

Consultant shall prepare a final study and provide up to twelve (12) bound copies, one (1) unbound copy, one (1) digital file copy in PDF format and one (1) editable digital file copy to the District.

## **B. Optional Services**

The District may also require the Consultant to provide additional services on an on-call basis for a period of two years. There is no guaranteed compensation for this portion of the scope of work. Tasks may include, but may not be limited to:

- 1) CFD Formation and Tax Election Meetings
  - Attendance at additional meetings with stakeholders, District staff, and the Board during the CFD formation process. Preparation of presentation materials and handouts for the meetings, as requested. Presentation of the information, preparation of meeting minutes which summarize the key decisions and input received and facilitation of a follow-up meeting with District staff on how best to address these concerns.
  - Preparation and review of documents relating to CFD formation, including Resolution of Intention, Resolution of Formation, and related items as deemed necessary.
- 2) Administration of CFD
  - Consultant will be available following CFD formation to assist staff on an as-needed basis on matters related to CFD annexation of future development, levy of the special tax and filing of required reports.

### **III. User Fee Study**

The scope of work for the user fee study includes conducting a study to support an update of the District's user fees for fire prevention and emergency response services that meets the requirements of the California Constitution and other applicable laws. The Consultant also will assess the District's current cost-recovery fee schedule and make recommendations on a comprehensive program of user fees for fire prevention and emergency medical response services consistent with the requirements of Article XIII C the California Constitution, and other applicable laws and regulations. The study should include an analysis of the District's costs of providing services, including allocation of overhead costs, comparison of costs and recovery levels for similar services provided by similar agencies; and recommendations regarding changes to existing fees and/or implementing new fees.

More specifically, the project will include developing a cost of service methodology for determining the full cost to the District of providing each service, including overhead, direct and indirect costs; examining fees imposed and cost recovery levels for comparable providers of similar services, and recommending updates to the fee schedule, including new fees and adjustments to existing fees. The District will provide Consultant with certain base data including existing and planned services, the District's operating and capital budgets, as well as the District's current fee schedules.

The Consultant must examine at least three similar fire protection agencies in at least Contra Costa, Alameda and San Joaquin counties to ensure reasonableness, consistency and feasibility. Pursuant to the California Constitution, the study must include sufficient information and analysis upon which the District may base the findings that the fees do not exceed the reasonable cost of program administration and/or providing the service.

The District anticipates that Project tasks will include, but not necessarily be limited to, those items noted below. If the Consultant recommends that additional tasks are warranted, they must be clearly identified in Consultant's proposal.

#### **A. Base Services**

- 1) Establish a methodology for the evaluation of fees to provide fire prevention and emergency response services. Work and meet with District staff to refine the project scope, purpose, uses and goals of the fee study to ensure that the study will be both accurate and appropriate to the District's needs. Review project schedule and answer any questions pertaining to the successful development of the study.
- 2) Conduct a review of the District's existing fees, rates, and charges. Meet with staff and conduct interviews as needed to gain an understanding of the District's processes and operations.
- 3) Identify the total cost of providing each service at all activity levels and in a manner that is consistent with all applicable laws, statutes, rules and regulations governing the collection of fees by public entities. Costs should include appropriate general and administrative overhead allocations to District activities and related rates for use in calculating the District's billable hourly rates.
- 4) Compare service costs with existing cost recovery levels. This should include services for which the District is currently charging for services as well as those for which the District could but does not currently charge, in light of the practices of similar and/or neighboring fire departments/districts.
- 5) Prepare a report that identifies each service, its full cost, and current and



recommended cost recovery levels. The report should identify pertinent parameters, including but not limited to, direct, indirect, and overhead costs for each service; and provide a model for adjusting these fees and rates for the District's current and future needs.

- 6) Recommend appropriate fees and charges based on the analysis, together with the appropriate subsidy percentage for those fees where full cost recovery may be unrealistic.
- 7) Prepare a report that identifies the current fees and recommended fees. The report must also identify percentage change, cost recovery percentage, and fee comparison with at least three other similarly-situated California fire departments/districts.
- 8) Identify best practices for assuring collection of correct fees.
- 9) Report on other matters that come to the Consultant's attention that the Consultant believes, in its professional opinion, the District should consider.
- 10) Present all findings to District staff and make necessary adjustments as requested.
- 11) Prepare and deliver presentations to the District's Board of Directors to facilitate understanding of the plan and its implications for the District; provide necessary adjustments as requested.
- 12) Provide the District with the following material upon completion of the fee study:
  - i. An electronic copy of the final study, including related methodology, schedules and cost documentation in a format that can be edited and updated (MS Word and MS Excel where applicable) by District staff to accommodate changes in the organization or changes in costs.
  - ii. The final fee study report: five (5) bound copies, one (1) unbound copy and a single electronic PDF file of the entire report.

**B. Optional Services**

The District may also require the Consultant to provide additional services on an on-call basis for a period of two years. There is no guaranteed compensation for this portion of the scope of work. Tasks may include, but may not be limited to:

- 1) Consulting with District staff on an as-needed basis on minor matters relating to implementation and utilization of the study.
- 2) Assist the District in defending the fees in the event of an audit or other challenge.
- 3) Updates to the fees, where applicable.

**Attachment 2**

***SAMPLE PROFESSIONAL SERVICES  
AGREEMENT***

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

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EXHIBIT A – SCOPE OF SERVICES

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APPENDIX 1 – REQUEST FOR QUALIFICATIONS

APPENDIX 2 – CONSULTANT'S PROPOSAL

This AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") effective as of \_\_\_\_\_, 2019 ("Effective Date"), is by and among the East Contra Costa Fire Protection District, an independent special district ("ECCFPD") and \_\_\_\_\_ ("Consultant").

WHEREAS, ECCFPD desires to obtain the services described in the Request for Qualifications dated \_\_\_\_\_; and

WHEREAS, Consultant is willing and able to perform the services, and has submitted a proposal dated \_\_\_\_\_;

NOW THEREFORE, the Parties agree as follows:

**Section 1. Contract Documents: Term of Agreement.**

1.1 This Agreement consists of the following Contract Documents, each of which is on file in the office of the ECCFPD and all of which are incorporated herein and made a part hereof by reference thereto:

1. This Agreement
2. Exhibit A – Scope of Services
3. Exhibit B – Insurance Requirements
4. Appendix 1 – Request for Qualifications dated \_\_\_\_\_, including all Attachments and Addenda (if any).
5. Appendix 2 – Consultant's Proposal dated \_\_\_\_\_, as accepted by the District.

In the event of conflict between or among the terms of the Agreement documents, the order of precedence shall be the order of documents listed above, with the first-listed document having the highest precedence and the last-listed document having the lowest precedence.

1.2 This Agreement will commence upon the Effective Date of the Agreement as determined by the Parties, and terminate two years after the District's acceptance of the Base Services. The Consultant must furnish ECCFPD with all the materials, equipment and services called for under this Agreement, and perform all other work, if any, described in the Contract Specifications.

1.3 ECCFPD reserves the right, in its sole discretion, to require the Consultant to perform the Optional Services stated in Exhibit A on an on-call basis for an additional term of two years after the District's acceptance of the Base Services, pursuant to the terms of Section 5, Compensation.

1.4 It is understood that the term of the Agreement is subject to the ECCFPD's right to terminate the Agreement in accordance with Section 19 of this Agreement.

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

2.1 Consultant agrees to provide consulting services as fully described in Exhibit A ("Scope of Services"), including, without limitation, the Base Services, and Optional Services, which is made a part of this Agreement. The District will assign Optional Services work, if any, by task order.

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 \_\_\_\_\_.

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.

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.

2.5 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.

2.6 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 or designee.

**Section 4. Familiarity with Services.**

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.

**Section 5. Compensation and Payment.**

5.1 Subject to any limitations set forth in this Agreement, ECCFPD agrees to pay Consultant an amount not-to-exceed \$\_\_\_\_\_ for all Base Services, and an amount not-to-exceed \$\_\_\_\_\_ for all Optional Services, for an aggregate amount not-to-exceed \$\_\_\_\_\_ pursuant to the rates set forth in Appendix 2, unless additional compensation is approved in advance and in writing by ECCFPD Board of Directors. Compensation for Optional Services tasks, if required, will be set by task order.

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 in Appendix 2 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) The 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 training materials and record, 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 five years following the final payment under this Agreement.

10.2 Consultant shall, upon reasonable prior written request, make available to ECCFPD or the State Auditor 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 or the State Auditor 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, and shall be responsible for any fines or expenses that may be assessed to the District as a result of Consultant's failure to comply with the same.

**Section 13. Nondiscrimination.**

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Consultant shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

**Section 14. Conflicts of Interest.**

14.1 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.

14.2 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.

**Section 15. Confidential Information; Release of Information.**

15.1 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.

15.2 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.

15.3 Consultant shall reimburse, defend, 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.

15.4 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 16. Indemnification.**

16.1 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.

16.2 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.

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

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

16.5 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.

16.6 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.

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

#### **Section 17. Insurance.**

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance coverages listed in Exhibit B ("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 B ("Sub-Consultant Insurance"), as required of them in Exhibit B.

#### **Section 18. 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 19. Termination of Agreement.**

19.1 ECCFPD may terminate this Agreement for convenience by providing thirty (30) days' prior written notice to Consultant. In the event such notice is given, Consultant will cease immediately all work in progress.

19.2 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.

19.3 Upon termination of this Agreement 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 costs incurred in violation of the terms of this Agreement. ECCFPD may also deduct costs 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.

19.4 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 20. Notices.**

20.1 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  
150 City Park Way Street  
Brentwood, CA 94513  
Attention: Fire Chief  
Telephone: (925) 634-3400  
Facsimile: (925) 634-1423

To Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: ( )  
Facsimile: ( )

20.2 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.

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

**Section 21. General Provisions.**

21.1 Authority to Execute. Each party represents and warrants that all necessary action has

## Attachment 2

been taken by such party to authorize the undersigned to execute this Agreement and to bind it to the performance of its obligations hereunder.

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

21.3 Entire Agreement. This Agreement, including Exhibits A and B and Appendices 1 and 2, 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.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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**

\_\_\_\_\_  
Fire Chief

APPROVED AS TO FORM:

\_\_\_\_\_  
ECCFPD General Counsel

**CONSULTANT<sup>1</sup>:**

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
NAME

\_\_\_\_\_  
TITLE

<sup>1</sup>*Note: If Consultant is a corporation, this Agreement must be executed by two Corporate Officers, consisting of:*

- (1) the President, Vice President or Chair of the Board, and*
- (2) the Secretary, Assistant Secretary, Chief Financial Officer, Assistant CFO, Treasurer, or Assistant Treasurer.*

*In the alternative, this Agreement may be executed by a single Officer or a person other than an Officer provided that evidence satisfactory to the ECCFPD is provided demonstrating that such individual is authorized to bind the Corporation (e.g. a copy of a certified resolution from the Corporation's Board or a copy of the Corporation's bylaws)*

**EXHIBIT A**

**SCOPE OF SERVICES**

***[TO BE ATTACHED FROM RFQ ONCE CONSULTANT(S) SELECTED]***

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### 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.

## Attachment 2

The existence of the required insurance coverage under this Agreement will 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 consultants for work on the project will include language that names Consultant as an additional insured of the contractor.

### xv. Sub-consultant Insurance.

Consultant must require each sub-consultant to obtain the same types and levels of insurance and comply with all other requirements in Exhibit A. In addition, the Consultant must 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.