

East Bay Regional Park District

R E Q U E S T F O R P R O P O S A L

For

Actuarial Services

Contact:

Deborah Spaulding, Assistant Finance Officer
East Bay Regional Park District
Oakland, CA

dspaulding@ebparks.org

Proposals Due:
February 28, 2018 no later than 5:00 pm



Healthy Parks Healthy People

REQUEST FOR PROPOSAL FOR ACTUARIAL SERVICES

A. Statement of Purpose

East Bay Regional Park District (the Park District) is inviting qualified firms to submit proposals for actuarial services. The Park District is seeking a five-year contract, with the option of one additional two-year extension with Board of Directors approval, to provide actuarial services related to its retiree medical plans (OPEB) and defined benefit pension plans.

The actuary services provider should have extensive experience with providing actuarial services to local government defined benefit retirement plans and OPEB plans in the State of California. The advisor will need to understand the existing structure of the Park District, including financial and operational goals. The advisor must understand current state and federal trends related to pensions, retirement and retiree medical and be able to provide projections to guide and advise the Park District in its long-term strategies. The Park District is seeking an actuarial firm that can act as technical advisor regarding plan design, actuarial assumptions and methods. A full listing of requirements is provided in Section F.

B. Park District Background

The Park District was incorporated in 1934 as a California Special District and operates under Sections 5500-5595 of the Public Resource Code of the State of California. It is a legally separate and fiscally independent entity from other government agencies, with capacity and authority to issue its own debt. The Park District's purpose is to acquire, develop, and maintain parks, recreation and open space lands within Alameda and Contra Costa counties.

The Park District manages a system of beautiful parklands and trails, including over 121,000 acres in 73 parks, and over 1,250 miles of trails. It is governed by a seven-member Board of Directors, elected by voters in their respective wards and serving a four-year term. The District has over 820 budgeted full-time equivalent positions (FTEs) and a head-count of over 1,000 employees.

The Park District's 2017 Operating Budget was \$231.0 million, and over 90% of General Fund revenue is generated from property taxes. Other significant sources of operating revenue include the Two County LLD (\$4.0 million annually), Measure CC Special Tax (\$3.1 million annually), and East Contra Costa County LLD (\$700,000 annually). The Park District's Adopted 2017 Budget and 2016 Comprehensive Annual Financial Reports (CAFR) are available on the website: <http://www.ebparks.org/about/budget>.

The Park District has obtained the Distinguished Budget Award from the Government Finance Officers Association (GFOA) every year, since 2005 and has obtained the Certificate of Excellence in Financial Reporting award for its CAFR every year since 2000. The Park District has a AAA rating from Standard & Poors, and is one of only nine parks and recreation districts rated Aaa by Moody's nationally.

The Park District maintains conservative fiscal practices, including maintaining a reserve target of 32% of annual revenues. The Park District funds its pension and OPEB liabilities at the actuarially determined required contribution level. Its pension funded status is above 70% for all of its plans. Long-term projections from the Park District's actuary show that District pension costs will be doubling over the next ten years, however, the District has established a Section 115 Pension Trust to set aside funding preemptively to control for this escalating cost. Under the current funding scenario, the Park District is on track to achieve 90% funding of pension liabilities within 20 years.

C. Plans for which Actuarial Services are Required

OPEB

The Park District's EBRPD Retirement Plan provides medical insurance benefits to eligible retirees and their eligible dependents based on union agreements and Park District policy. There are benefits for pre-Medicare and post-Medicare status.

In 2007 the Park District began contributing to an OPEB trust to fund certain retiree medical insurance benefits. In 2012 the Park District joined the California Employers' Retiree Benefit Trust (CERBT), an agent multiple-employer defined benefit healthcare plan trust administered by CalPERS. Fiduciary responsibility is assumed by the plan administrator, CalPERS. The Park District's policy is to contribute to the Trust each pay period, for the purpose of funding its required contribution over a period of time. The current amount necessary to fund future benefits is based upon the June 30, 2015 actuarial valuation in accordance with GASB Statement No. 45, Accounting and Financial Reporting for Postemployment Benefits Other than Pensions.

Full details regarding the Park District's OPEB Trust can be found in the Park District's 2016 Comprehensive Annual Financial Report (CAFR) beginning on page 79.

http://www.ebparks.org/Assets/_Nav_Categories/About_Us/Budget+Finance/2016/EBRPD+CAFR+2016+FINAL.pdf

PENSION PLANS

The Park District has four defined benefit retirement plans:

1. The East Bay Regional Park District General Employees Plan
2. The East Bay Regional Park District Sworn Safety Plan
3. The CalPERS Miscellaneous Plan
4. The CalPERS Safety Plan.

The plans provide retirement and disability benefits, annual cost of living adjustments and death benefits to plan members and their beneficiaries.

East Bay Regional Park District Retirement Plans

The two East Bay Regional Park District Plans are single-employer defined benefit pension plans that provide retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. The EBRPD Plans are administered by Transamerica Retirement Services. Benefit provisions are established by Resolution of the Board of Directors. The EBRPD Sworn Safety Plan has been closed since January 1, 2000 and the General Employee plan has been closed since January 1, 2001. All new and eligible employees hired after these dates are enrolled in CalPERS Public Employees Retirement System. Membership in the EBRPD Plans is as follows:

EBRPD “Transamerica” Plan as of Jan 1, 2017	General Plan	Sworn Safety Plan
Active employees	4	0
Retirees / beneficiaries currently receiving benefits	98	7
COLA only retirees	79	17
Vested terminated employees	7	1
Disability retirements	2	4
Total participants	195	29

The Plan’s annual required contributions are based on an actuarially determined amount that is estimated to finance costs of benefits earned by Plan members during the year, with additional amounts to finance any unfunded accrued liability. Full details regarding the District’s EBRPD Retirement Plans can be found in the District’s 2016 Comprehensive Annual Financial Report (CAFR) beginning on page 83.

http://www.ebparks.org/Assets/_Nav_Categories/About_Us/Budget+Finance/2016/EBRPD+CAFR+2016+FINAL.pdf

CalPERS Retirement Plans

The majority of current Park District employees are part of the California Public Employee Retirement System (CalPERS). CalPERS provides retirement and disability benefits, annual cost-of-living adjustments and death benefits to plan members and beneficiaries. CalPERS acts as a common investment and administrative agent for participating public entities within the State of California.

The Miscellaneous Plan is an agent multiple-employer defined benefit pension plan which act as a common investment and administrative agent for its participating member employers. Miscellaneous Plan has two tiers: Classic for employees hired prior to January 1, 2013; and, PEPRAs, for employees hired after January 1, 2013. The District’s Safety Plan is a cost-sharing multiple-employer defined benefit pension plan administered by CalPERS – a “risk pool” for agencies having fewer than 100 active members. The Safety Plan has several retirement benefit tiers: Classic tier for all safety employees hired prior to March 31, 2012. Police Tier II and Fire Tier II for employees hired prior to January 1, 2013. Police and Fire PEPRAs is for employees hired on or after January 1, 2013.

The table on the following page shows the number of employees covered by the benefit terms of the two CalPERS Retirement Plans as of December 31, 2016.

CalPERS members as of Dec 31, 2016	Miscellaneous Plan	Safety Plan
Active	573	57
Inactive receiving benefits	257	53
Inactive, not receiving benefits	199	45
TOTAL	1,029	155

Full details regarding the District’s CalPERS Retirement Plans can be found in the Park District’s 2016 Comprehensive Annual Financial Report (CAFR) beginning on page 87. http://www.ebparks.org/Assets/_Nav_Categories/About_Us/Budget+Finance/2016/EBRD+CAFR+2016+FINAL.pdf

D. RFP Calendar

TASK	DATE
RFP Issued	January 29, 2018
Questions due via email to dspaulding@ebparks.org	February 12, 2018
If proposing, submit email stating interest to dspaulding@ebparks.org	February 12, 2018
Responses to questions emailed to all known proposers	February 16, 2018
Proposal Submission Deadline – proposals should be emailed to dspaulding@ebparks.org	February 28, 2018 5pm
Respondents’ Interviews	Week of March 12, 2018
Finance Committee Authorization of Contract	March 28, 2018
Board Meeting for Approval of Contract	April 17, 2018
Contract Finalization	April 30, 2018

E. RFP Questions

Questions concerning this RFP and the selection process shall be submitted on or before February 12th by email to Deborah Spaulding at dspaulding@ebparks.org. Questions will not be taken or answered verbally. No other District source within is authorized to give information concerning the RFP document. All interested proposers should submit an email stating their interest by February 12th. Responses to questions will be emailed to known proposers on February 16th.

Proposals should be submitted to the Park District via email to dspaulding@ebparks.org no later than Wednesday, February 28, 2018 at 5pm.

F. Requirements

To be considered for selection, proposing Actuary must meet at least the following terms and conditions:

- Supervising actuary must meet the American Academy of Actuaries Qualifications and be a Fellow of the Society of Actuaries (FSA) or an Associate of the Society of Actuaries (ASA) and hold all other licenses and registrations required by applicable federal and state laws. All required licenses and registrations must be current and in good standing.
- Must have a minimum of five California-based local government projects demonstrating experience with providing services described in Scope of Services, within one year of the date of this RFP. The lead staff proposed to be assigned to the District must have had a similar role in at least one of the prior projects.
- Supervising actuary must have experience presenting to governing bodies, such as the Board of Directors, to discuss actuarial theory, basis for assumptions and other actuarial matters.
- Must declare that no undue influence or pressure, including coercion, confidential financial arrangement, or financial inducement, is used against or in concert with any officer or employee of the District in connection with the award of the contract. No officer or employee of the District will receive compensation, directly or indirectly, from the respondent, or from any officer, employee or agent of the vendor, in connection with the award of the contract which will be executed as a result of this RFP. Violation of this section shall be a material breach of the contract entitling the District to any and all remedies by law or in equity.
- Must declare no professional or personal financial interest, which could be a possible conflict of interest in representing the District. The District also requires the firm to further disclose arrangements to derive additional compensation from various investment and reinvestment products, if applicable. The District may reject a Proposal from any firm that, in the District's opinion, would be in a conflict of interest if the firm is awarded a contract.

G. Proposal Format and Contents

Firm's proposal shall be submitted in several parts as set forth below. The firm's proposal in response to this RFP will be incorporated into the final agreement between the Park District and the selected firm. The submitted proposals should include each of the following sections:

1. **Transmittal Letter – 1 page maximum.** Letter should address the firm's interest and commitment to providing actuarial services to the Park District.
2. **Firm Profile – 1 page maximum.** Provide an overview of your firm, including a succinct description of capabilities, size and range of services offered. What are your firm and core team's particular strengths. What is the underlying philosophy of your firm?
3. **Relevant Experience – 1 page maximum.** Describe your experience with at least two similar projects (government agencies located in California) within the last year. Both projects should have involved the proposed project team.
4. **Project Deliverables – 2 page maximum.** Describe your firm's approach, including the process steps and timing for providing the requested deliverables as detailed in the Scope of Services (Section H).
5. **References - 1 page maximum.** Provide a minimum of three references from current clients similar to the Park District in plan size and sophistication. For each reference, please include name, address, email address, and telephone numbers of individuals qualified to provide information from management / technical viewpoints. How long have you provided services to this client and in what context? Please list any clients who have terminated your relationship during the past three years and their reason for doing so.
6. **Detailed and Itemized Pricing – 1 page maximum.** Present your compensation approach and fee proposal for the scope of work. Please document any key assumptions made in developing the fee proposal and any other contingencies the Park District should be aware of. Proposals should include all costs to be charged to the Park District under the proposed contract. For special project work, indicate your hourly rates.
7. **Project Team Staffing – 1 page maximum.** Identify the person who will serve as the primary point of contact with the Park District. Provide information about other key personnel who will be actively involved in working with the Park District, including name, level, role, responsibility, experience and length of tenure with your firm and experience with public agencies. Include résumés of key personnel as an attachment. If awarded the contract, no staffing substitutions shall be made without the District's approval.
8. **Affirmations – 1 page maximum.** Affirm that your firm meets the "District Requirements" as stated in Section F, or indicate in which areas the firm cannot comply. Include the statement confirming "no undue influence" and "no professional or personal financial interest which could be a conflict." Affirm that your firm will be able to meet the conditions specified in the District's Professional Services Contract (Appendix A) or provide your proposed modifications to the contract.

H. SCOPE OF SERVICES REQUIRED

The following services are required by the Park District:

1. Provide annual actuarial valuation, including calculation of plan liabilities, value of plan assets, Funded status and annual required contribution of the East Bay Regional Park District General Employee Plan and Sworn Safety Plan, including GASB 67, GASB 68 and future applicable GASB statements.
 - Valuation required bi-annually: 1/1/19, 1/1/21 (most recent statement completed as of 1/1/2017).
 - GASB adjustments dated as of 12/31 every year, needed by end of March the following year.
2. Provide annual actuarial valuation of the Park District's Retiree Medical Program Other Post Employment Benefits (OPEB) Plan, including GASB 45, GASB 75 reporting and future applicable GASB statements.
 - GASB 45 valuation required bi-annually 6/30/19, 6/30/21 needed by end of the following March. Most recent valuation completed 6/30/2017.
 - GASB 75 reporting required annually, beginning 2018 fiscal year – need 12/31 valuation by end of the following March.
3. Provide annual independent review of the CalPERS Miscellaneous and Sworn Safety Plan.
 - Bi-annual review required using CalPERS valuations beginning 6/30/17.
4. Presentations to the Park District's Finance Committee on average twice per year.
5. Additional consulting, as needed, on an hourly basis, for projects such as: asset allocation modeling, cash flow predictions, review of assumptions versus actuals and assistance with GASB implementations.

I. EVALUATION OF PROPOSALS

Award of the contract resulting from this RFP will be based upon the most responsive firm whose offer will be the most advantageous to the Park District in terms of experience and qualifications of firm and assigned personnel; cost; understanding of the Park District; ability to provide services outlined in Scope of Services; and, other factors as specified elsewhere in this RFP. The Park District reserves the right to:

- Reject any or all bids and discontinue this RFP process without obligation or liability to any potential Vendor.
- Accept other than the lowest priced offer.

Appendix:

- A. Park District's Standard Professional Services Contract

CONTRACT FOR SERVICES
(Licensed Professionals)

THIS AGREEMENT, made and entered into on this _____ day of _____, between the East Bay Regional Park District (“District”) and _____, hereinafter referred to as “Consultant”.

RECITALS

- A. District desires to engage the services of Consultant to provide various services herein described; and
- B. Consultant desires to perform such services for District;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Term.

The term of this Agreement shall commence _____ and shall end on _____. The General Manager or his/her designee may extend the term of this Agreement by providing written notice to Consultant. Time is of the essence in the performance of this Agreement.

2. Scope of the Contract.

During the term of this Agreement, Consultant shall provide all labor, materials, tools equipment and services as documented in Exhibit A – Scope of Work attached hereto and made a part hereof.

3. Standard of Care.

- a. Standard of Care. Consultant agrees to perform the work in a professional manner and shall conform to the high standards of care and skill generally recognized as being employed by professionals in the same discipline as Consultant in the State of California. Consultant warrants and represents that all of the personnel, employees, and subconsultants performing the work under this Agreement shall have sufficient skill and experience to perform the services assigned to them and that its employees and subconsultants have all licenses, permits, and qualifications required to perform the services under this Agreement.
- b. Subconsultants. Consultant is as responsible for the performance of its subconsultants as it would be if it had rendered these services itself. Consultant shall not subcontract any portion of the performance contemplated and provided for in this Agreement, other than to the subconsultants noted in Consultant’s proposal, without prior written approval of

the District. In the event that District, in its sole discretion, desires the reassignment of any persons performing work under this Agreement, Consultant shall, upon receiving notice from the District, immediately reassign such person or persons.

- c. Materials. Any construction materials and manufactured items called for by Consultant's documents shall be currently available and suitable for their intended use to achieve design intent.

4. Representatives.

The representative of Consultant who will make any presentations, attend any public hearings, supervise all service, and be the first point of contact in providing all services under this Agreement shall be _____. The representative of District who will monitor this Agreement and be responsible for its interpretation and/or modification shall be _____.

5. District-Provided Studies or Surveys.

Consultant shall make a recommendation to the District regarding the completeness or sufficiency of any survey or specialized study provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included in the Consultant's Scope of Work. Consultant may rely on the information provided by District but only to the extent such reliance is consistent with Consultant's obligations under this Agreement.

6. Acceptance.

The District's review, approval or acceptance of Consultant's work shall not relieve Consultant from responsibility for error and omissions in Consultant's work. Consultant shall, at no cost to District, satisfactorily correct any and all errors, omissions, deficiencies, or conflicts in the documents prepared by Consultant promptly upon discovery or notice. The obligations of Consultant to correct defective or nonconforming work shall not limit any other obligations of Consultant.

7. Time of Performance.

Consultant acknowledges that all time limits stated in this Agreement are of the utmost importance to District. Consultant's work shall be scheduled and performed to meet agreed-upon deadlines, as set forth in the Project Schedule in Exhibit A-1 (unless not necessary and covered in Exhibit A). Consultant shall provide and maintain Project staffing levels as necessary to perform the services under this Agreement within the time provided in the Project Schedule. The total time scheduled for full completion of Consultant's services shall not exceed the durations shown in the Project Schedule, unless mutually agreed upon in writing by Consultant and District.

8. Payment.

District shall compensate Consultant for services performed by Consultant as set forth in the rate schedule documented in Exhibit B attached hereto and made a part hereof. All reimbursable expenses incurred by Consultant as part of this Agreement will be reimbursed at actual cost and in no event shall expenses be advanced by District to Consultant. Such compensation shall be full payment to Consultant (including expenses) for performance of said services; provided, however, that in no event shall the sum of total compensation paid Consultant and reimbursable expense exceed \$_____ without prior written authorization by District.

Consultant shall submit his/her compensable hours and reimbursable expenses monthly, and District shall make payments on the approved reimbursable expenses within thirty (30) days, provided that in no event shall the amount paid Consultant exceed that percentage of the maximum total compensation and expenses payable under this Agreement (\$_____) which percentage equals the percentage of Consultant's work complete at the time. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided in this Agreement, unless this Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

9. Termination of Agreement for Convenience.

District may terminate the whole or any part of this Agreement for convenience and without cause at anytime. In such event, District shall give written notice of such termination. In the event of termination under this section, Consultant shall have the right to expend reasonable additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Consultant shall present to District, a complete report of said proposed job closure and its costs, and District may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by District, together with any other charges outstanding at the time of termination, shall be payable by District within thirty (30) days following submission of a final statement by Consultant.

10. Consultant as Independent Contractor.

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Consultant shall be, and is, an independent contractor, and is not an agent or employee of District. Consultant has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him/her in the performance of his/her services hereunder. Consultant shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his/her own acts and those of his/her subordinates, sub-consultants, agents and employees.

11. Brokers: Compliance with Federal, State and Municipal Statutes.

Consultant warrants that he/she has not employed nor retained any broker, agent, company or person other than bona fide, full-time employees of Consultant working solely for Consultant, to solicit or secure this Agreement, and that he/she has not paid nor agreed to pay any broker, agent, company, nor persons other than bona fide employees any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of this Agreement. Consultant shall indemnify, defend, protect and hold harmless District, its directors, officers and employees from such claims.

12. Compliance with Laws.

Consultant shall comply with all federal, state and local laws and regulations applicable to his/her work hereunder. Consultant shall use its professional judgment and expertise to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project. Where applicable, Consultant shall comply with all mitigation measures identified in the Project's environmental review documents.

13. Grant Funding.

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity or public grant program, Consultant and any subconsultants shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.

14. Nondiscrimination.

During the performance of this Agreement, Consultant and Consultant's sub-consultants will not discriminate against any employee or qualified applicant for employment on the basis of any legally protected classification including sex, race, creed, color, ancestry, religion, national origin or sexual orientation. The Consultant will take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to sex, race, creed, color ancestry, religion, national origin or sexual orientation or any other legally protected classifications. This equal treatment shall apply but not be limited to the following: upgrade, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeships.

15. Labor Code/Prevailing Wages.

To the extent applicable, Consultant and Consultant's subconsultants shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation, and payment of prevailing wages as determined by the Director of California Department of Industrial Relations.

Consultant shall post a copy of the prevailing rate of per diem wages at each job site. Consultant shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or any subconsultant. Consultant shall defend, indemnify and hold harmless the District for any costs, claims and expenses arising from the failure of Consultant or Consultant's subconsultants to pay applicable prevailing wage rates.

16. Indemnification.

To the fullest extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, Consultant shall indemnify, hold harmless, defend (with counsel reasonably acceptable to District) and protect District, its officers, directors, agents, employees, and invitees from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including without limitation expert and attorneys' fees and costs of investigation, whether or not involving a third party claim, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its employees, subconsultants, or agents in the performance of services under this Agreement. Consultant shall have the duty to defend the District if there is any possible obligation to indemnify the District, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault. The District's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligations under this section. The provisions of this section shall survive the termination or expiration of this Agreement.

With respect to third party claims against Consultant, Consultant waives any and all rights of any express or implied indemnity against the District.

17. Insurance.

- a. Consultant shall procure and keep in force during the term of this Agreement, at Consultant's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company and which are acceptable to District. Consultant shall, fifteen (15) days prior to the commencement of this Agreement and prior to the termination of any policy, supply District with a certificate, on the District's certificate of insurance form, showing that such insurance is in force.
 - (1) Workers' Compensation as required by law and Employer's Liability with limits of \$500,000 per occurrence (if employees are to be hired).
 - (2) Commercial General Liability ("CGL") (bodily injury and property damage) on an occurrence basis in an amount not less than \$1 million per occurrence and at least \$2 million in the aggregate, including premises and operations (including off-site operations), blanket contractual liability, broad form property damage, products and completed operations, owner's and Consultant's protective liability, (and if one or more of the following is applicable) personal injury, coverage for explosion, collapse and underground hazards, non-owned watercraft protection and indemnity, U.S.

longshore and harbor workers coverage, pollution liability, liquor liability, and saddle animal liability.

- (3) Automobile Liability (bodily injury and property damage) in an amount not less than \$1 million per occurrence extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under Agreement.
 - (4) Professional Liability Insurance (errors and omissions), including contractual liability, in an amount not less than \$1 million per occurrence and \$2 million in the aggregate. Such coverage may be written on a claims-made basis.
- b. Each of the above policies must contain a provision that the policy shall not be cancelled or the terms or conditions thereof materially changed without thirty (30) days' prior written notice to District. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Consultant to furnish the required insurance during the term of this Agreement.
 - c. Upon written request by District, the insurer or his/her agent will furnish a copy of any policy cited above, certified to be a true and complete copy of the original.
 - d. The policies listed under a(1) above shall contain a waiver of subrogation in favor of the District.
 - e. The policies listed under a(2) and a(3) above shall name the District as an additional insured with respect to the operations performed under this Agreement.
 - f. The coverage afforded on behalf of District under a(2), a(3) and a(4) above shall be primary insurance and any other insurance available to District under any other policies shall be excess over the insurance outlined above.
 - g. Upon written request of District, annual loss reports will be supplied to District. The loss report will include a list of all incidents/claims submitted against the insurance company and the estimated reserved and paid value of the claims.
 - h. District reserves the right to require reasonable increases in the limits of coverage from time to time during the term of this Agreement.
 - i. Policies should be written on an occurrence basis. Only by special permission of District may a claims-made form be used. The retroactive date on any policy written on a claims-made basis shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy, provided that the extended reporting or discovery period shall not be less than thirty-six (36) months following expiration of such policy.
 - j. Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for

Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Consultant shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement.

- k. Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein.
- l. In case of the breach of any provision of this section, District may, in addition to any other remedies it may have, at District's option, take out and maintain, at the expense of Consultant, such types of insurance in the name of the Consultant as District may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Consultant under this Agreement or may demand Consultant to promptly reimburse the District.

18. Default.

In the event that Consultant defaults in any obligation of Consultant under this Agreement, or Consultant defaults in the performance of any of the terms and conditions of this Agreement, and Consultant does not cure its failure to perform to the satisfaction of the District within ten (10) days (or such time authorized by the District in writing) after written notice by the District, District may, at its option, declare this Agreement to be in default and, at any time thereafter, may do any one or more of the following:

- a. Enforce performance of the Agreement by Consultant.
- b. Terminate Consultant's services under this Agreement.
- c. Perform the obligations of the Consultant, whereupon Consultant shall reimburse District for any amounts paid or expenses incurred by District, or pay District any expenses and/or damages incurred by District in the performance of such obligations, District's increased cost in performing the work, together with interest at the maximum rate of interest allowed by law on demand by District. District at its option may deduct any sum due to District from sums to be paid by District to Consultant.
- d. The above remedies are in addition to any other remedies at law or equity District may have. Consultant shall pay or reimburse District for all of District's costs and expenses, including reasonable attorneys' fees incurred in enforcing its rights hereunder.

19. Consultants Books and Records/Audit.

Consultant and Consultant's subconsultants, if any, shall maintain any and all ledgers, books of account, invoices, vouchers, and any other records or documents pertaining to charges for services, expenditures and disbursements to District under this Agreement for a minimum of three (3) years, or such longer period required by law, from the date of final payment to Consultant by District. Any records or documents required to be maintained under this section shall be made available to District for inspection and copying upon request. In accordance with

California Government Code Section 8546.7, if the Not to Exceed Amount exceeds ten thousand dollars (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

20. Assignment.

Consultant shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any persons or entities whatsoever without the prior written consent of District and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

21. Advice of Counsel/Attorneys' Fees.

If either party prevails against the other in a legal action concerning any aspect of this Agreement, such successful party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action from the losing party.

Both parties have had a full and complete opportunity to have the Agreement reviewed by legal counsel, and no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

22. Notices.

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, and shall be personally delivered or sent by prepaid U.S. certified or registered postage, return receipt requested, addressed to the recipient as follows:

DISTRICT: East Bay Regional Park District
 Attention: _____
 2950 Peralta Oaks Court
 Oakland, CA 94605
 Phone: _____
 Email: _____

CONSULTANT: _____
 Attention: _____
 Address: _____

 Phone: _____
 Email: _____

Either party may change its address by giving notice to the other in the manner provided herein.

23. Ownership of Work.

All reports, data, maps, models, charts, studies, surveys, photographs, plans, specifications, or any other documents in electronic or any other form (collectively “documents and materials”), that Consultant prepares or obtains pursuant to this Agreement shall be the property of the District to be used, reused or disposed of by the District in its sole discretion without the permission of Consultant. In the event of early termination of this Agreement and notwithstanding any dispute regarding payments, the District retains its ownership of the documents and materials and retains the right to receive and use any documents or materials pursuant to this Agreement.

24. Digital Files.

In addition to any other format required in the Scope of Work, Consultant shall provide copies of all deliverables on compact disk in a digital format. Files shall be compatible with software used by the District.

25. Confidential Information.

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other documents or data either created by or provided to Consultant in connection with the performance of this Agreement shall be treated as confidential by Consultant. Such materials shall not, without the prior written consent of District, be used by Consultant for any purposes other than the performance of the services. Such materials shall not be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is generally known, or has become known, to the related industry shall be deemed confidential.

26. Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. In the event that either party brings any action the trial of such action shall be venued exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

27. No Waiver.

The waiver of any breach of a term or requirement of this Agreement does not constitute a waiver of any other breach of that term or requirement or any other term or requirement of this Agreement.

28. Conflicts of Interest.

Consultant declares that Consultant has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services hereunder. Consultant further declares that in the performance of this

Agreement no subconsultant or person having such interest shall be employed. No officers or employee of the District with responsibility for review, approval of or carrying out of the work to be performed shall be hired by Consultant during the term of this Agreement.

29. Entire Agreement.

This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior, contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of all the parties. In the event that the terms or conditions of any Exhibits to this Agreement conflict, directly or indirectly, with this Agreement, the provisions of this Agreement shall control.

30. Severability.

The unenforceability, invalidity or illegality of any provision shall not render the other provisions unenforceable, invalid or illegal.

31. Counterparts.

This Agreement may be executed in counterparts, and/or by fax, and/or by scan and email, and all so executed shall constitute one agreement which shall be binding upon all parties hereto, notwithstanding that the signatures of all parties do not appear on the same page. A facsimile signature and/or scanned and emailed signature shall be binding upon any party as though it were an original.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized as of the day, month, and year first hereinabove written.

EAST BAY REGIONAL PARK DISTRICT

CONSULTANT

By: _____

By: _____

Date: _____

Date: _____