



EAST BAY REGIONAL PARK DISTRICT

REQUEST FOR PROPOSAL

SENIOR-LEVEL MANAGER RECRUITMENT SERVICES FOR CHIEF OF PLANNING, CHIEF OF DESIGN AND CONSTRUCTION, AND HUMAN RESOURCES MANAGER

April 19, 2017

INVITATION

The East Bay Regional Park District (District) is requesting proposals from qualified executive search firms to serve as a consultant and to assist the District in hiring three key senior-level management positions within the organization. The positions are: Chief of Planning, Chief of Design and Construction, and Human Resources Manager. The consultant shall provide potential qualified candidates for the Chief of Planning, Chief of Design and Construction, and Human Resources Manager recruitments, which are at-will upper management positions. Ideally, the District would receive the candidate's acceptance for these key positions by Friday, September 8, 2017.

About the East Bay Regional District

The District was incorporated in 1934 as a California Special District and operates under Sections 5500-5595 of the Public Resources Code of the State of California. The District is a system of beautiful public parks and trails in Alameda and Contra Costa counties on the eastern side of San Francisco Bay and is the largest regional park district in the nation, currently owning more than 120,000 acres of land.

Typical activities enjoyed by the public at the District include hiking, cycling, boating, horseback riding, picnicking, jogging, camping and nature study. Visit www.ebparks.org for more information about the District. The District's annual operating budget for 2017 is \$200 million, and is governed by an elected seven-member Board of Directors. The District has approximately 802 permanent full-time employees, and 250 temporary /seasonal employees with the core mission:

To acquire, develop, manage, and maintain a high quality, diverse system of interconnected parklands which balances public usage and education programs with protection and preservation of our natural and cultural resources.

Board of Directors

Beverly Lane
President
Ward 6

Dennis Waespi
Vice-President
Ward 3

Ayn Wieskamp
Treasurer
Ward 5

Ellen Corbett
Secretary
Ward 4

Whitney Dotson
Ward 1

Dee Rosario
Ward 2

Colin Coffey
Ward 7

Robert E. Doyle
General Manager

PROJECT DESCRIPTION

Scope of Work

The tasks listed below generally describe the services to be provided by the consultant. The services listed are not all-inclusive, but rather represent those normally expected during performance of the project.

- A. Engagement: The Client agrees to engage the Consultant to perform the services described below which encompass the project described as an executive recruitment for three positions: Chief of Planning, Chief of Design and Construction, and Human Resources Manager (the Recruitments).
- B. Services: The Consultant agrees to perform certain services necessary for the completion of the recruitments which services shall include the following:
 - Provide candidate sourcing strategies
 - Develop the candidate profiles
 - Develop advertising campaigns
 - Create recruitments brochures and announcements for the Chief of Planning, Chief of Design and Construction, and Human Resources Manager positions
 - Recruit candidates
 - Conduct normal application reviews, screenings, and public record searches
 - Organize oral interviews
 - Conduct detailed reference checks
 - Provide recommendations to the committee
 - Provide complete administrative assistance

ANTICIPATED PROJECT SCHEDULE

The District's desired schedule for completion of the project is as follows:

Issue Request for Proposal	Wed., April 19, 2017
Proposal Submission Deadline	Wed., May 10, 2017
Interviews with Top-Qualified Recruitment Firms	Tues., May 16, 2017
Notification to Final Selected Firm	Wed., May 17, 2017
Award	Tues., June 6, 2017
Project Start	Mon., June 12, 2017
Project Completion at Candidate Acceptance	Fri., Sept. 8, 2017

SUBMISSION REQUIREMENTS

The letter of proposal must be in the sequence listed below and include:

1. Brief description of the years of experience in upper-level recruitment in the public sector, particularly for parks, recreation, and/or open space Chief of Planning, Chief of Design and Construction, and Human Resources Manager;
2. Experience and qualifications of the staff member(s) that will provide recruitment services;
3. Description of the recruitment approach; include details of methods of sourcing for candidates
4. Submission requirements for recruitments should include job titles and the number of Chief of Planning, Chief of Design and Construction, and Human Resources Manager recruitments worked in the Bay Area
5. Submit succinct answers to the questions in Attachment I – Questions to Executive Recruitment Firms
6. Provide an organization chart that shows the Consultant's employees and sub-consultants that the firm plans to assign to this project
7. Cost of services;
8. List of three references – Provide name, telephone number, and email address of references that can attest to the quality and effectiveness of the past projects of similar scope.
9. Insurance - Provide a statement of the firm's acceptance of the District's insurance and indemnification requirements, or any reservations the firm has with the requirements. Please see Attachment 2 – Contract For Service (Licensed Professional)

SELECTION PROCEDURE

The District would like to begin this process as soon as possible and request proposals by 12:00 noon, Wed., May 10, 2017.

The recruitment will be coordinated with the District Interim Human Resources Manager who will facilitate the recruitment processes and provide recommendations to the General Manager for final approval.

Full proposals must be received electronically by 12:00 noon, Wed, May 10, 2017 to SGonzales@ebparks.org. Please call to verify receipt of proposals, (510) 544-2151. All proposals shall become the sole property of the District. Proposals will be received at the following address:

Susan Gonzales, Interim Human Resources Manager
SGonzales@ebparks.org

Hard copy informative materials may be mailed and must be received at the District's main office by 12:00 noon, Wed., May 10, 2017. Hard copy material mailing address:

Susan Gonzales, Interim Human Resources Manager
Human Resources Services Department
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605
(510) 544-2151

Please submit all inquiries to Susan Gonzales, Interim Human Resources Manager at SGonzales@ebparks.org.

East Bay Regional Park District reserves the right to reject any or all proposals received and to request additional information as deemed necessary and appropriate.

GENERAL STIPULATION

The District is not responsible for any expenses which proposers may incur in preparing and submitting the proposal. The District will not be liable for any costs incurred by the proposers that are related to the RFP process; this includes production of the proposal, interviews/presentations, travel and accommodations. The District reserves the right to request or negotiate modifications to the proposals that are deemed appropriate. All proposals received from proposers in response to this RFP will become the property of the District and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the District. The District reserves the right to reject any and all proposals and to waive minor irregularities. The District also reserves the right to seek new proposals or re-advertise if responses have not been satisfactory or for any other reason.

PUBLIC RECORDS AND PROPRIETARY INFORMATION, INDEMNIFICATION

The District recognizes that proposers will occasionally believe that all or portions of their proposals are confidential or proprietary. This can present problems in participating in a public agency RFP process. All proposals, strategies, supporting information, rate schedules and other information and documents are presumptively public records under the California Public Records Act (Gov't Code section 6250 et seq.), subject to prompt disclosure upon request by any member of the public.

The District is not soliciting, does not wish to receive, and will not treat any information received under this proposal as proprietary or confidential information, unless specifically called for or expressly accepted by the District General Counsel in writing, and will be accepted and considered only when, in the sole discretion of the District it is necessary to serve the public purpose of the project. If the inclusion of confidential or proprietary information is determined to be necessary to the proposal, proposers must identify each and every specific item and each

and every page, and segregate the information into a separate envelope or electronic file labeled conspicuously as confidential, with a cover page describing the information and applicable law exempting the same from disclosure. Any material marked or claimed as confidential or proprietary may be returned to the proposer by the District or destroyed and may not be considered in the review of proposals if the claim does not appear justified or would inhibit the public purposes of the project proposed.

If the documents have been properly marked and expressly accepted as confidential and proprietary in writing by the District General Counsel, the District will make its best effort to advise the proposer of any Public Records Act request, should any be received, seeking documents claimed to be confidential or proprietary, to give the proposer an opportunity to take legal steps to protect such property from disclosure to third-party requester. The District expressly disclaims any duty and will not defend the confidentiality or proprietary nature of any information submitted. By submitting any confidential or proprietary information to the District, the proposer agrees to hold harmless and indemnify and defend the District and its officers, employees, and agents for any and all costs, including attorney's fees, incurred by the District or awarded to a Public Records Act requester relating to a request for release of proposer's data should the proposer ask the information to be handled as proprietary or confidential.

LIST OF ATTACHMENTS

ATTACHMENT 1: Questions for Executive Recruitment Firms

ATTACHMENT 2: Contract for Services (Licensed Professional)

Questions for Executive Recruitment Firms

1. District knowledge: Please describe your understanding of the East Bay Regional Park District. As a special district with a focused mission different from a typical city or county government agency, what changes, if any, would you make in your approach in identifying candidates?

2. Timeframe: The District's goal is to have the positions of Chief of Planning, Chief of Design and Construction, and Human Resource Manager acceptances by Friday, September 8, 2017, with a start date by Monday, October 2, 2017. How would you proceed to reach that target date for filling these positions? More specifically, what is your sourcing technique to find qualified candidates?

3. Recruitments: Detail your firm's candidate sourcing techniques to hire the District's Chief of Planning, Chief of Design and Construction, and Human Resource Manager. What makes your firm exceptional in reaching rising star candidates? Please identify two recent recruitments for similar positions.

4. Staffing: Please identify how many recruitments your firm, and particular, the recruiter(s) assigned to these recruitments, would be working on simultaneously with this project?

**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-I (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 any time. 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. 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
P. O. Box 5381
Oakland, CA 94605-0381

CONSULTANT:

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: _____

EXHIBIT A
Scope of services and compensation
PROJECT NAME