

September 1, 2016

To: Interested Construction Management Firms

RE: Request for Proposals (“RFP”) for **Construction Management Services for the SF Bay Trail: Pinole Shores to Bayfront Park Project**, Pinole, CA

The East Bay Regional Park District (“District”), Trails Development Department, intends to engage a firm to provide Construction Management services. The Trails Development Department is requesting written proposals from firms with pertinent expertise and experience in projects similar to that described below. The prime consultant responding to this RFP is required to be an Qualified Professional Engineering Services firm. **RFPs are due at the Trails Development Department office, 2950 Peralta Oaks Court, Oakland, CA 94605, no later than 3:00 p.m. (local time), September 23, 2016.** RFPs shall be addressed to the attention of Sean Dougan, Trails Development Program Manager.

The East Bay Regional Park District (Park District) proposes to construct a .5 mile of the San Francisco Bay Trail in Pinole. The project includes an extension of an existing Class I non-motorized paved trail and installation of a grade-separated bridge over the Union Pacific railroad tracks.

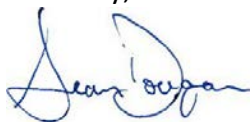
Interested firms may obtain copies of the RFP at the following website:
www.blueprintexpress.com/ebparks

A non-mandatory Pre-proposal site visit is scheduled for **10:00am, September 14th**, at Bayfront Park, 1 Tennent Ave, Pinole, CA 94564. The District encourages the participation of Local, Small, Minority, Women, and Disabled Veteran Business Enterprise firms.

Questions regarding this RFP are to be in writing and directed to Sean Dougan, no later than **September 16th**. If necessary, responses to questions will be issued via an addendum which will be posted on the District’s online planroom: www.blueprintexpress.com/ebparks

The District reserves the right to reject any and all proposals. The District looks forward to an enthusiastic response to this RFP.

Sincerely,



Sean M. Dougan
Trails Development Program Manager



REQUEST FOR PROPOSALS

CONSTRUCTION MANAGEMENT SERVICES
SEPTEMBER 1, 2016

EAST BAY REGIONAL PARK DISTRICT

San Francisco Bay Trail: Pinole Shores to Bayfront Park
Extension

PROPOSALS DUE: 2:00PM, SEPTEMBER 23, 2016

East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605



2950 PERALTA OAKS COURT • P.O. BOX 5381 • OAKLAND • CA • 94605-0381
T. 1 888 EBPARKS F. 510 569 4319 TDD. 510 633 0460 WWW.EBPARKS.ORG

East Bay
Regional Park District

I. INTRODUCTION

The East Bay Regional Park District (District) is soliciting proposals from Construction Management firms to provide professional services for the San Francisco Bay Trail: Pinole Shores to Bayfront Park project. The Scope of Services for Construction Management Services includes activities prior to award of a construction contract, contract administration, submittal processing, material testing, source inspection and project closeout.

II. PROJECT DESCRIPTION AND PROJECT STATUS

The East Bay Regional Park District (Park District) proposes to construct a section of the San Francisco Bay Trail in Pinole between Pinole Shores and Bayfront Park, a distance of approximately 0.5 mile. The proposed project would extend an existing Class I non-motorized, paved trail from a hillside bluff across from Hazel Lane in Pinole Shores east over the Union Pacific Railroad (UPRR) tracks to connect to an existing path in Bayfront Park. Construction of the proposed trail alignment would require earthwork, and installation of a grade-separated bridge over the Union Pacific railroad tracks. The alignment would travel between the UPRR and Burlington Northern and Santa Fe Railroad (BNSF) tracks for approximately 1,500 feet, then sweep downhill to the north and east on a 140-foot radius curve with an elevated structure of approximately 1,100 feet in length to cross over the UPRR tracks. The last segment of the trail would consist of a 72-foot radius curve, traversing wetlands and marsh lands of San Pablo Bay, to connect with the existing path in Bayfront Park. The overall width of the proposed trail would be 14 feet, consisting of a 10-foot paved trail with a 2-foot shoulder on each side. Construction of the proposed trail would require approximately 7,000 cubic yards (cy) of imported earthwork for the westerly section located on the hillside bluff. Plans are currently at the 65% design stage. The Engineer's Construction Estimate is \$7.1 million. The Park District has been awarded approximately \$4.1 million in Active Transportation (ATP) grant funds for this project, as well as \$1.3 million from the Recreational Trails Program. These funds require that all project documents and specifications comply with Caltrans Local Assistance Program guidelines. The balance of the project will be funded with local transportation grant funds and Park District Measure WW funds.

The following relevant documents are available for review at the Park District Headquarters:

- Plans (currently being reviewed by Caltrans) consisting of: SF Bay Trail: Pinole Shores to Bayfront Park 65% Trail Plans submittal dated 11/11/2015 and
- SF Bay Trail: Pinole Shores to Bayfront Park 65% Bridge Plans submittal dated 11/11/2015
- Certified Final Environmental Impact Report (EIR) dated December 2011 - State Clearinghouse #2010082043
- NEPA Categorical Exclusion Re-validation dated December 2015 and NEPA Technical Studies
- Union Pacific Railroad Company: Draft Pedestrian Overpass Agreement

Tentative Project Schedule: The general timeline for the construction phase of this project is listed below.

Date	Milestone
12/2016	Advertise Construction Contract
1/2017	On site pre-bid conference for construction contractors
1/2017	Open construction bids
1/2017	Complete review and evaluation of bids
2/2017	District Board awards construction contract
3/2017	Start Construction
220 Working days	Complete construction

III. SCOPE OF SERVICES

The selected consultant shall provide all construction management personnel submittal processing,, material testing, source inspection and administration services necessary for the project. The construction management services will start with services related to reviewing front end specifications and bid documents concurrent with CA State and Federal standards, pre-award and award of a construction contract, construction and project close out and project acceptance by the District. Specific services anticipated include but not limited to the following:

A. General

- 1) Provide a qualified construction manager (California registration required) who will serve as the Resident Engineer and will be held responsible for all work performed by the consultant during the duration of the project. The Resident Engineer shall have minimum 5 years relevant bridge construction management experience. The construction manager will be the District's primary point of contact with the consulting firm; the District's primary representative with the construction

- contractors and general public; and the party responsible for administering the construction contracts for the District.
- 2) Assignment of a Construction Inspector (California Registration required, who may or may not be the Resident Engineer) for the duration of the project. The Structures Representative shall have qualifying experience working on structures that involve Caltrans approval. The Resident Engineer will be the point of contact for handling structure issues related to the construction contract.
 - 3) Provide qualified staff to support the construction manager. Necessary qualified staff shall be available as needed to perform the services required by this RFP.
 - 4) Coordinate with the Design Engineer (URS/AECOM) and EBRPD.
 - 5) The selected consultant shall designate one full time qualified personnel to act as Construction Inspector to perform inspection and one full time qualified personnel as Resident Engineer to perform construction management, engineering, and contract administration. No substitutions of these individuals will be allowed unless approved by the District.

B. Services Related to Pre-Award of Construction Contract

- 1) If requested, perform biddability and constructability reviews of design documents. Reviews shall be performed to include, but not limited to, analyzing and recommending methods and procedures to be adopted to minimize risks and delays during construction, design improvement recommendations, cost savings, and pre-bid cost estimating.
- 2) Assist District in all aspects of construction bid phase, assuring compliance with all applicable local and state and federal contract requirements. Support District in conducting pre-bid conference, coordinating bid inquiries, review of bids, bid bonds, insurance certificates and all related submittals in the review of qualified bidders.
- 3) Coordination with Union Pacific Railroad – CM shall provide coordination with UPRR, including, but not limited to:
 - a. Comply with all applicable UPRR requirements stated in the Construction Contract Documents, Contractor’s Right-of-Entry Agreement, insurance guidelines, and the Project Construction and Maintenance Agreement.
 - b. Monitor contractor’s compliance with Construction Contract Documents, Contractor’s Right-of-Entry Agreement, and the Project Construction and Maintenance Agreement.
 - c. Perform a biddability review to determine that the contractor’s UPRR requirements / obligations are clearly communicated in the Construction Contract Documents. Verify that UPRR’s submittal review times are clearly stated in the Contract Documents.
 - d. Maintain current UPRR Contractor Safety Training Certificates for all CM staff that will enter UPRR right-of-way.
 - e. Invite UPRR Manager of Public Projects to the Pre-Construction Conference at least 30 days prior to construction start and allow him to present UPRR policies, procedures, concerns to the project team/contractor. Record and distribute meeting minutes.

- f. Coordinate/schedule all UPRR flagging at least 30 days in advance of construction start.
 - g. Coordinate location of all temporary fencing, construction equipment storage, and barrier placement within UPRR Property.
- 4) Support District in preparing contract award.
 - 5) Coordinate with Project Environmental Consultant (LSA) who will conduct pre-construction biological surveys and cultural resource monitoring.

C. Services During Construction

- 1) Assist in the coordination and access of all stakeholders during construction.
- 2) Coordination with Union Pacific Railroad – CM shall provide coordination with UPRR, including, but not limited to:
 - a. Process all contractor submittals, and subsequently forward complete submittal packages to UPRR for review/approval. Track review times for each submittal and notify UPRR of the deadlines for each submittal. Request status updates from UPRR bi-weekly.
 - b. Coordinate/schedule all UPRR flagging. Maintain records of when UPRR flaggers are on site.
 - c. Assist the District in reviewing UPRR invoices.
 - d. Participate in meetings and audits as required by UPRR.
 - e. Obtain UPRR concurrence for change orders related to the bridge and any improvements within UPRR right-of-way.
 - f. Obtain written acceptance of improvements from UPRR.
- 3) Prepare for, chair, and prepare minutes for all construction meetings. Meetings shall include, but not limited to, pre-construction conference, on-going job progress meetings with contractors, contractors' subcontractors and suppliers and District representatives as necessary to provide for smooth construction on schedule and within budget. Frequency of meetings shall be conducted in a manner to inform and involve District staff on issues and gain consent for timely issue resolution. Consultant shall strive to detect and resolve problems or issues before they delay construction or result in extra costs. Meeting minutes shall carry action items from meeting to meeting until they are resolved, and shall be published and distributed.
- 4) Perform review, analysis and approval of the contractor's schedule submittal and determine if in accordance with the construction documents. Monitor and document contractor's actual construction progress against the submitted schedule. Review updated and revised schedules as needed. Notify both the District and contractor when actual progress is behind schedule.
- 5) Understand requirements of all resource and regulatory agencies pursuant to permits acquired and required for project, managing/inspecting work performed by the construction contractors to implement those requirements and ensure compliance, coordination and reporting with all resource agencies.
- 6) Consultant to provide construction management, inspection, submittal processing, and contract administration functions. Consultant to monitor quality of all work performed by contractor, including by contractor' subconsultants. Services shall include but not be limited to, preparation of daily reports, weekly statement of

- working days and adherence to schedule and budget, collection of as-built information and statements of issue avoidance and resolution measures. All reports, calculations, measurements, test data and other documentation shall be prepared on forms specified by or acceptable to the District and Caltrans LAPM.
- 7) Spot check line and grade of subgrade, forms, etc.
 - 8) Review and approval of material submittals such as hot asphalt mix and portland cement concrete formulas, concrete color, and railing color selection.
 - 9) Perform all required materials testing not performed by Contractor. Provide inspection and quality assurance for work and testing performed by the Contractor. If needed, provide source inspection.
 - 10) Management of hazardous material activities, if any
 - 11) Provide attention to protection of utilities and UPRR facilities during construction.
 - 12) Monitor the work for compliance with environmental controls such as dust, water quality, noise, traffic, and UPRR requirements.
 - 13) Provide timely and efficient coordination between all contractors on site.
 - 14) Establish and implement procedures for expediting the processing, approval and documentation of shop drawings, product data, samples and other contractor submittals. Coordinate shop drawing reviews and Request for Information (RFI's), working with Design Engineer as necessary and to resolve problems that may arise during course of construction. Review false-work and shoring design and construction by Contractor.
 - 15) Receive and evaluate change order requests from the Contractor, District, and Design Engineer. Investigate requests to determine potential impacts on the project schedule and budget. Prepare an independent cost estimate of change order requests. Evaluate and negotiate change order requests with Contractor. Recommend approval or rejection of request. Recommendations for rejection shall include an assessment of the potential for a Contractor claim. Provide change order evaluations, negotiations, and recommendations documents (including preparation of Contract Change Orders) for approval by the District and UPRR (includes a minimum 4 week UPRR review period for all change orders). Maintain a record/log of all CCO's, pending and authorized.
 - 16) Implement a program of claims avoidance and claims management. Assist District in the review, evaluation, and documentation of claims.
 - 17) Prepare correspondence necessary to maintain control over Contractor.
 - 18) Manage payments to Contractor. Provide consistent and regular monitoring and oversight of cost estimates, controls during construction and payments to contractor. Prepare payment requests and all required documentation for reimbursement from different Federal, State and local funding sources.
 - 19) Prepare monthly reports to District, stating status of project scope, schedule and cost, including potential claims, and any issues of concern.
 - 20) Maintain construction document files that satisfy District and Caltrans LAPM's requirements.
 - 21) Support others in development of post award package per Caltrans LAPM
 - 22) Provide and maintain records of construction, using a system satisfactory to Park District. Records shall include but not limited to, photographs/video recordings, daily inspection reports, hard copy and CAD file as-built drawings, correspondence

with contractor and project stakeholders, permit compliance, Request for Information (RFI's), Contract Change Orders (CCO's), claims avoidance actions, potential claims, design changes, test results, costs, including costs associated with any disputed or extra work.

D. Post-Construction Services

- 1) Provide marked up construction record drawings (as-built drawings) for Design Engineer in the latest CAD format and hard copy.
- 2) Coordinate and prepare final progress payment.
- 3) Provide final inspection services and project closeout activities, prepare final construction project report to District and support District in preparing other documents as required.
- 4) If needed, assist District in resolving all contractor claims.
- 5) Transmit applicable operation and maintenance manuals and if needed, arrange for training of District personnel.
- 6) Turn all construction documents (hard copies and electronic files) over to District.
- 7) Support others in development of final reports and required documents for project closeout with Caltrans and FHWA.

IV. PROPOSAL SUBMISSION

Three (3) hard copies of the proposal must be submitted no later than 2:00PM, 09/23/2016. The District reserves the right to not accept late submissions. Proposals should be addressed as follows:

Sean Dougan, Trails Development Program Manager
East Bay Regional Park District
2950 Peralta Oaks Court
Oakland, CA 94605

In the event that it becomes necessary to revise any part of the RFP, written addenda will be issued.

Proposals (30 page limitation) submitted must include the following items:

- 1) A cover letter describing the firm's interest and commitment to perform construction management services for the project. The principal authorized by the firm to negotiate a contract with the District shall sign the cover letter.
- 2) State the qualifications and experience of the firm and key personnel who will be assigned on the project. (Resumes may be included as an appendix. Material included in the appendix is not subject to page limitation noted above.) Discuss the staff availability of key personnel. Emphasize the specific qualifications and experience in managing and inspecting the construction of vehicle or pedestrian bridges over railroads.

- 3) Consultant firm information:
 - a. Legal name of the firm; address, telephone and E-Mail
 - b. Date of establishment
 - c. Current size of firm and organization chart of firm, organization chart of team
 - d. Principal in Charge and Project Manager
- 4) Names, addresses and qualifications of subconsultant firms (including the laboratory sub-consultant) proposed for this project and a description of the types of tasks that each subconsultant is expected to do. No staffing substitutions of key staff shall be made without the District's approval.
- 5) Identify key issues and outline the team's approach to be used to complete the tasks outlined in the Scope of Services.
- 6) Descriptions of at least three (3) and not more than three (3) projects completed by your firm that seem most similar to this project. Provide client references from projects underway or completed (preferably local projects that can be visited). Information must include the following:
 - a. Client name and contact information
 - b. Project description and location
 - c. Total value of the services provided
 - d. Key personnel involved and their role
 - e. Subconsultants
- 7) Work breakdown by key staff or subconsultants.
- 8) Cost proposal: Provide a total cost proposal for all services outlined in this RFP including a breakdown of costs delineated by task. Include a schedule of hourly rates for proposed staff/subconsultants and amount of time each person will be devoted to each task. Define any reimbursable expenses. The terms of this contract will be time and materials based on specific rates of compensation. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, salary additives, indirect costs and net fee. Net fee should be specified as a dollar amount, not as a percentage. Mark ups on reimbursable expenses or subconsultants will not be permitted.
- 9) A copy of the Park District's standard Contract for Services is attached (Attachment A). Proposers shall confirm receipt of the District's Standard Contract for Services attached to this RFP and shall be prepared to accept the terms and conditions hereto. If a Proposer desires to take exception to the Agreement, the Proposer shall: 1) clearly identify each proposed change and 2) furnish reasons for change as well as specific recommendations for alternative language. Substantial exceptions to the Contract may be determined by the District, at its sole discretion, to be unacceptable.

V. CONSULTANT SELECTION

A Selection Committee, established by the District, will review proposals received by the above designated deadline, develop a shortlist of qualified consultants, and develop a final ranking of the most qualified proposals. Depending upon the relative quality of proposals, the District may invite short listed firms to interview with District. Proposals will be evaluated based on the criteria below and the relative weight of each criterion. The District plans to announce the top

ranked firm shortly after the deadline for submitting proposals, or if necessary, after interviews have been conducted. The District will enter into contract negotiations with the top ranked firm immediately thereafter. If negotiations are not successfully concluded, the District will, in turn, enter into negotiations with the next highest ranking firm.

A. EVALUATION CRITERIA

The Proposals will be evaluated and scored (maximum of 100 points) using the following criteria:

EVALUATION CRITERIA AND WEIGHTING

CRITERIA	MAXIMUM POINTS
Project understanding and approach	30
Qualifications of Team and key staff	20
Availability	10
Experience of the consultant with projects of a similar type and scale <ul style="list-style-type: none"> ▪ Comparable Experience ▪ Value Engineering ▪ Utility coordination ▪ Constructability review ▪ Federal Aid projects with Caltrans District 4 	30
Results of reference checks	10
TOTAL	100

- 1) Qualifications and specific experience of key project team members
- 2) Schedule and capacity to provide personnel expeditiously
- 3) Experience with similar types of projects
- 4) Project understanding and approach

B. TENTATIVE CONSULTANT SELECTION SCHEDULE

The following represents the tentative schedule for selection of the consultant.

Proposals due..... 09/23/2016
 Proposals evaluated by District review team 9/30/2016
 Interview short listed firms (If necessary) Week of 10/10/2016
 Contract approval by Board 10/18/2016

VI. PROJECT ADMINISTRATION

The selected consultant must enter into a written agreement with the District using District’s Contract for Services (Attachment A).

The District's Project Manager, Sean Dougan, will supervise the Construction Management firm and manage this project.

The selected consultant is expected to maintain key staff on the project as necessary. Consultant shall also provide all transportation and communication requirements for their own personnel. The consultant will be responsible for furnishing their own office space and furniture necessary to carry out their functions as the construction manager for the project.

VII. FEES

Consultant fees shall be negotiated and established on a time and material basis with a not to exceed amount, supported by an agreed schedule of rates and mark-ups.

Progress invoices will be paid on a monthly basis related to the progress of the work. District reserves the right to change the funding of this project.

VIII. REJECTION RIGHTS

All firms are hereby notified that the selection of a consultant for this project and any agreements for services resulting from this Request for Proposals is dependent upon the approval of the East Bay Regional Park District Board of Directors. The District reserves the right to reject any and all submittal or to re-solicit if it is deemed to be in the public interest.

IX. COST OF RESPONSE PREPARATION

The District will make no reimbursement for any cost incurred by a prospective consultant for the preparation of a response to this Request for Proposals. Submitted proposals become property of the District.

X. ADDITIONAL INFORMATION

If you have questions about this RFP, contact:

Sean Dougan, Trails Development Program Manager
East Bay Regional Park District
510-544-2611
sdougan@ebparks.org

ATTACHMENTS:

Attachment A: Sample "Contract for Services"
(total of ten pages)

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. 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.

1. 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
 2950 Peralta Oaks Court
 P. O. Box 5381
 Oakland, CA 94605-0381

CONSULTANT:

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 that 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: _____