



2950 PERALTA OAKS COURT P.O. BOX 5381 OAKLAND CALIFORNIA 94605-0381 T: 1-888-EBPARKS F: 510-569-4319 TRS RELAY: 711 WWW.EBPARKS.ORG

Dear Prospective Consultant:

East Bay Regional Park District (EBRPD) invites your firm to submit a proposal for the preparation of design and engineering package, the development of a CEQA document, and the procurement of all required regulatory permits for the construction of the San Francisco Bay Trail (Bay Trail) at Point Molate. The Bay Trail will eventually circumnavigate the San Francisco Bay. Currently 340 miles have been completed.

The study will focus on the development of a 1.1 mile section of non-motorized Class I trail connecting the Bay Trail from the Richmond-San Rafael Bridge to the Point Molate Beach Park on the San Pablo Peninsula. Detailed requirements for the study are contained in the enclosed request for proposals.

An additional option includes the design and engineering package, and procurement of permits for an additional 1.4 miles of Class I trail through the City of Richmond's Point Molate Beach Park. CEQA for this stretch of Bay Trail was completed with the Point Molate Resort and Casino project in 2011.

A site visit for prospective consultants was held on July 7th, at 11am at the Point Molate Beach Park, and the deadline for proposal submittals has been extended.

**Proposals are now due no later than 5pm on July 31st, 2015.**

EBRPD looks forward to your participation in this selection process. Please feel free to call if you have any questions.

Sincerely,

Suzanne Wilson  
Trails Coordinator  
510-544-2609

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## **San Francisco Bay Trail at Point Molate**

### **Design, Engineering, CEQA, and Permits for the San Francisco Bay Trail at Point Molate**

#### **Background**

The San Francisco Bay Trail (Bay Trail) is a 500-mile shoreline walking and bicycling path that will one day encircle the Bay. With over 340 miles complete, the Trail provides scenic recreation for hikers, joggers, bicyclists, skaters and wheelchair riders. It offers a setting for wildlife viewing and environmental education, and serves as an important commute alternative for bicyclists.

The Bay Trail, as identified in East Bay Regional Park District's (EBRPD) Master Plan Update (2013) includes a portion of trail that traverses the shoreline of the San Pablo Peninsula to Point Molate. The Park District conducted an alignment study for a Class I bike path in 2013-14 and, as a result, secured a trail easement along much of the old Richmond Belt Railroad tracks from the Chevron Corporation, who owns the shoreline property. Recently, the Bay Area Toll Authority (BATA) approved the installation of a bike and pedestrian path on the Richmond - San Rafael Bridge, which will touch down at the southern end of the San Pablo Peninsula, and will be part of the Bay Trail. The Bay Trail at Point Molate project will connect to the aforementioned section of the Bay Trail and extend north along the shoreline, through Chevron's property, to the Point Molate Beach Park managed by the City of Richmond, giving the public access to the shoreline and the ability to connect to the Park via foot or bicycle. The Bay Trail at Point Molate offers recreation and wildlife viewing opportunities long desired by local community members and Bay Area citizens alike.

#### **Project Description**

East Bay Regional Park District (EBRPD) is interested in the procurement of plans, specifications, and engineers estimate (PS&E), appropriate CEQA documentation and all required regulatory permits, for the Bay Trail extending from the Richmond-San Rafael Bridge to the City of Richmond's Point Molate Beach Park, approximately 1.1 mile.

The engineering drawings will consider and address any topographic features, right of way concerns, or wetlands issues that could constrain the trail alignment.

Additional properties may need to be acquired for better and more cost effective design solutions. If so, those properties should be identified.

#### **Work Objectives**

The consultant shall demonstrate they are knowledgeable and experienced in obtaining regulatory permits, developing CEQA documents, designing and engineering a Class I trail as defined in by CalTrans in chapter

1000 of the Highway Design Manual, and EBRPD standards. This includes, but not limited to, work necessary to:

- Prepare documents to support the approval of a CEQA document
- Address regulatory and permit requirements, including mitigation and monitoring
- Develop PS&E of a Class I Bicycle Path as defined by CalTrans
- Address constructability and cost effectiveness of proposed design
- Determine right of way requirements
- Finalize design features and prepare a bid set

## **General Scope**

Consultant will perform basic design services in the following areas:

- Provide technical support to the District's Project Manager and coordination with necessary agencies.
- Conduct surveys to support design
- Prepare preliminary and final design plans
- Include conform areas, pavement spot elevations, construction staging and access areas, and existing utilities
- Provide for the design of retaining walls, erosion control planting
- Identify special status plant species requiring permits for removal within disturbed areas of the project
- Prepare Geotechnical Report.
- Complete appropriate level CEQA document and file Notice of Determination upon Board certification
- Secure all regulatory and construction permits.

## **Additional Alternative Includes:**

- Tasks 1, 2, and 4, and 5 for an additional 1.4 section of Bay Trail through the City of Richmond's land, including the Point Molate Beach Park. In general, the trail should follow the shoreline where feasible. However, at Point Molate Beach Park the trail may follow the historic Belt Line rail corridor immediately west of the parking lot, rather than be situated close to the shoreline where there are picnic tables. This alignment was covered in the FEIR for the Point Molate Resort and Casino, and can be found at <http://www.ci.richmond.ca.us/index.aspx?nid=1863>. Please see summary in the project description for Alternative E.

## **Assumptions**

- a. Approval from permitting agencies may include, but is not limited to, the following:
  - San Francisco Bay Conservation and Development Commission (BCDC)
  - U.S. Army Corps of Engineers
  - California Department of Fish and Wildlife
  - Regional Water Quality Control Board
  - U.S. Fish and Wildlife Service
  - City/County encroachment permits
- b. The plans will be prepared using AutoCAD Civil 3D 2015 or later.

- c. Park District will provide the consultant with hard copies of previous studies, available electronic data as well as access to any available related design drawings and plans.
- d. Park District will make timely decisions on questions or issues brought forward by the consultant throughout this process.
- e. Park District will acquire all rights-of-way and easements, if needed.
- f. Based on utility location conflict plans prepared by Consultant, utility agreements and utility construction permits will be prepared, negotiated by Consultant and approved by the Park District.
- g. The Park District will execute appropriate agreements with agencies.
- h. Park District will furnish Consultant with EBRPD AutoCAD title block and EBRPD boiler plate contract and general conditions in MS Word

## **Detailed Scope of Services**

### **TASK 1: Preliminary Coordination**

#### **A. Data Collection and Review**

Consultant shall obtain and review available data and identify any additional information necessary to complete the engineering, design, and environmental efforts from Park District, agencies, utilities, or organizations for the remaining 1.1 miles of Bay Trail. Such information shall include, at minimum, the following:

- Aerial mapping and base maps
- As-built plans
- Utility information
- Right of way information, including mapping
- Pertinent historical correspondence

#### **B. Surveying and Base Mapping**

The Consultant shall provide additional topographical survey information as needed and identify any additional data required for final design.

**Deliverables:** Survey maps

#### **C. Geotechnical Field Investigation**

The Consultant shall perform engineering analysis in order to provide adequate definition of potentially adverse geologic/geotechnical conditions accompanied by discussions regarding available mitigation options, as needed.

**Deliverables:** Geotechnical Report

#### **D. Right of Way and Utility Identification**

Consultant is responsible for identifying any and all utility within the easement. Included in this task is the determination of location and depth of any high risk utilities. Any needed temporary construction easements shall be identified and mapped. If needed, Consultant shall arrange for title reports.

**Deliverables:** Utility Map

## **TASK 2: Design and Engineering**

### **A. 35% Design Package**

Consultant shall prepare 35% PS&E, as appropriate, to demonstrate the design concept and prepare complete construction quantities and cost estimate. Consultant shall prepare an alternatives analysis at this stage for a short section of trail as shown in Attachment B, which is roughly 700 feet of the total project distance. The Park District's easement on the Chevron property veers from the former railroad alignment and climbs up a steep hillside to avoid traversing across private property. The analysis will compare 35% plans for an alignment within that easement, and for an alternative alignment following closer to the railroad tracks. Upon completion of this task Consultant will recommend any further right of way acquisition if the design within the existing easement is infeasible, cost prohibitive and/or has significant impacts on the environment. Consultant shall begin the CEQA process as part of the alternative analysis (see Task 3). Park District may attempt to secure further right of way for this stretch at this time based on the analysis.

#### **Deliverables:**

- ✓ 35% Plans
- ✓ 35% Specs
- ✓ 35% Construction Cost Estimate
- ✓ Alternatives Analysis
- ✓ Recommendation for any further right of way acquisition

### **B. 65% Design Package**

Consultant shall prepare 65% PS&E, as appropriate, to demonstrate the design concept and prepare a complete construction quantities and cost estimate.

#### **Deliverables:**

- ✓ 65% Plans
- ✓ 65% Specs
- ✓ 65% Construction Cost Estimate

### **C. Final Design Package (Plans, Specifications, and Estimate)**

Consultant shall prepare a bid set including draft special provisions, a preliminary estimate of construction cost, existing utility plans, and any other plans deemed necessary to complete the bid set. Consultant shall prepare a Design report addressing, but not limited to, design standards, drainage, demolition, storm water quality/pollution control (including a SWPPP), access, and constructability. Structure plans will be prepared to the unchecked details stage.

- Submit plans and estimates at 95%, and Final levels of design.
- Submit complete specifications package at 95%, and Final level of design.
- Review Park District comments in design review meetings with Park District after each submittal.
- Provide formal written responses to Park District review comments.
- Prepare a Construction Work Schedule

Bid Set will include, but is not limited to the following requirements:

- a) Title Sheet: The Title Sheet and Location Map identify the project and show the location of the project within Contra Costa County.

- b) Typical Cross-Sections: This sheet shows Typical Cross-Sections for pathway based on the approved standard sections. Cross-sections shall include the designed pavement structural sections.
- c) Horizontal Alignment (Layout Plans): These plans show the horizontal layout of the pathway improvements on a topographic base.
- d) Profiles: These plans will show the path profile along the control line based on existing field conditions.
- e) Construction Details: These sheets will be used to illustrate in greater detail items which cannot adequately be shown on the layouts.
- f) Drainage Plans: Drainage Plan sheets will be prepared on duplicate skeletons of the layout plan sheets. Existing facilities will appear as dropouts in the background. Subsurface drainage and surface drainage will be shown on the same drainage plan sheets.
- g) Drainage Details: These sheets will be used to show details of drainage items.
- h) Existing Utility Plans: These plans show existing utility lines such as sanitary sewer, water, electrical (underground and overhead), gas, and telephone. They do not include existing drainage lines which are shown in the backgrounds for the drainage plans.

**Deliverables:**

- ✓ 100% Plans - 2 full size sets and CADD files on CD
- ✓ 100% Specifications
- ✓ 100% Construction Cost Estimate
- ✓ Survey and Alignment Data Files

### **TASK 3: CEQA and Permitting**

The scope is to include completion and preparation of environmental documentation in compliance with CEQA and technical studies. This work is to be initiated prior to the completion of 35% plans and specs.

#### **A. Environmental Document**

Consultant shall determine the appropriate level of CEQA needed for development of a Class I trail within the existing Park District easement, or within the right of way recommended by Consultant in coordination with the Park District.

#### **B. Conduct Site Visits**

As necessary, the wildlife biologist shall conduct a reconnaissance field study to document suitable habitat conditions for special-status wildlife species that have the potential to occur within the project area. The wildlife biologist will assess existing conditions and determine if the habitats within and adjacent to the project area have the potential to be occupied by these species. The results of the reconnaissance will be used to determine any appropriate measures for avoiding or minimizing impacts on special-status wildlife species.

**Deliverable:** California Natural Diversity Database List

#### **C. Prepare Resource Mapping**

All sensitive biological resources will be mapped and indicated on a GIS-compatible topographic map or aerial photograph of the site at a minimum scale of 1" = 200' of the project site. Additional mapping may include but is not limited to:

- a) Wetland Delineation: A Wetlands Delineation Study for the project was prepared by LSA several years ago under contract to the District. That study will be provided to the Consultant. Further data collection and studies may be needed for this phase of the project.
- b) Complete Biological Assessment: If federally listed species are determined to be present at the project site or have the potential to be impacted by the project, a Biological Assessment will be prepared.
- c) Prepare Area of Potential Effects Map: Prepare an Area of Potential Effects map (APE) for cultural resources that includes staging areas, right-of-way acquisition, and temporary construction easements. The Map should be plotted on an aerial photograph or other base at a scale of approximately 1"=200' or greater. A maximum size of 11" x 17" is preferred, using multiple sheets as necessary for inclusion in required reports.

**Deliverable:** Supplemental Wetland delineation map (if needed), Biological Assessment, APE Map, additional resource mapping if necessary

#### **d) Prepare Technical Studies**

Consultant shall prepare technical studies relating to the alignment that may include, but is not limited to:

- a) Noise Study: Consultant shall prepare a technical memorandum addressing the impacts of construction traffic and construction noise. The evaluation should discuss the level and significance of potential impacts and explain the basis for conclusions. If necessary, consultant should recommend measures that can be incorporated into the project so negative or adverse impacts are avoided.
- b) Water Quality Technical Memorandum: Consultant shall prepare a technical memorandum describing existing water resources and project features that will protect such resources. This report should also discuss whether there will be a net increase of impervious surfaces from the project and to what extent this will affect water resources.
- c) Visual Technical Memorandum: Consultant shall prepare a technical memorandum addressing the visual impact of the project including visual simulations of how the project will look from any vantage point, including, but not limited to, the opposite shoreline(S), on the water itself, and the Richmond-San-Rafael Bridge. The evaluation should address whether the project will result in a noticeable change in the physical characteristics of the existing environment and whether the project will complement or contrast with the visual character desired by the community. The evaluation should discuss the level of visual changes and explain the basis for such conclusions. If necessary, consultant should recommend features that can be added to the project so negative or adverse impacts are avoided.
- d) Conduct Cultural Resources Technical Studies: Consultant shall identify any and all cultural resources. If cultural resources are identified consultant is responsible for determining mitigation measures.

- e) Location Hydraulic Study: Consultant shall prepare a hydraulic study, a Floodplain Evaluation Report may be necessary (or a Summary of Floodplain Encroachment Report).
- f) Initial Hazardous Waste Assessment: Consultant shall prepare a phase I assessment for potential hazardous waste involvement.

**Deliverable:** Technical Memorandums

#### e) **Certify CEQA Document**

Using the data, comments, and research document pursuant to the California Environmental Quality Act a Notice of Determination (NOD) will be prepared for filing with the state clearinghouse. This task includes filing the NOD after Park District reviews, comments and approves the final draft, and the Park District Board certifies the document. The fee for filing is a reimbursable expense.

**Deliverables:** Draft and Final CEQA document, filed Notice of Determination

#### f) **Environmental Permitting**

Park District will rely on Consultant to lead efforts in securing any permits required from resource and regulatory agencies. Under this task an Administrative Draft shall be prepared for EBRPD review, and final Biological Assessment to be submitted to the U.S. Fish & Wildlife Service. Consultant shall prepare and submit any required resource agency permit applications for processing. Permit fees are considered a reimbursable expense to the Consultant.

**Deliverables:** Draft and Final Environmental Permit applications, Environmental permits from resource and regulatory agencies.

### **TASK 4: Management/Coordination**

#### **A. Project Development Team Meetings**

Consultant shall participate in Project Development Team (PDT) meetings with Park District, other design team members, and other agencies/organizations as may be necessary. In doing so, Consultant will represent the interests of Park District with others. Up to six Project Development Team meetings will be held as necessary at the District office or City of Richmond throughout the term of the project. The purpose of these meetings will be to discuss work objectives, design issues, the work schedule and progress, terms of agreement, and other related issues, in order to resolve project related issues and maintain the progress of the Project. As part of this task, Consultant shall assist in preparation of agenda, meeting summary and action items.

**Deliverable:** Meeting Summary

### **TASK 5: Construction Support**

#### **A. Support Services During Construction (SSDC)**

Services during Construction Bid Process include, but are not limited to: Attend pre-bid conference, provide clarifications to RFI, and assist Park District to prepare addenda.

Services during Construction include, but are not limited to: Attend pre-construction meeting, review



submittals, attend a minimum of six field meetings, provide clarifications to RFI and prepare final record drawings.

## **Site Visit/Pre-proposal Meeting**

A site visit/pre-proposal meeting for prospective Consultants is planned for **July 7, 2015 at 11a.m. at Point Molate Beach Park on Western Drive**; Attendance on this site visit is not a requirement for a consultant to be selected for this project. Map to site enclosed.

## **Form and Content of Proposals**

Six (6) copies of the proposal must be received **by 5pm on July 29, 2015** to East Bay Regional Park District, Attention: Suzanne Wilson, 2950 Peralta Oaks Court, Oakland, CA 94605.

CONTENT: To simplify the review process and obtain the maximum degree of comparability, we request a proposal organized in the following manner.

- 1. Transmittal Letter**
- 2. Table of Contents**
- 3. Overview and Summary:** This section should clearly convey the Consultant's understanding of the nature of the work and the approach to be taken.
- 4. Detailed Work Program:** This section should include a full description in outline form of the work program elements to be followed, a detailed description of the expected background research and final product contents by task, allocation of resources to each component of project study, any phasing of work output, product deliverable, and reporting schedule, including final report. The work description should be broken down into a sufficient level of detail to show a clear understanding of the work proposed.
  - Specific tasks and general budget allocation
  - Schedule
- 5. Staffing:** This section should describe the Consultant's approach to the management of work. The management program should include a description of how the project will be staffed including the names and qualifications of key personnel and any sub-contractors who will work on the project, and the names of and amount of work key personnel and sub-contractors will be responsible for. (Resumes for all personnel should be included in an Appendix.) Staffing assignments should be specific enough to demonstrate understanding of the skills required and commitment of proper resources. No staffing substitutions shall be made without the Park District's approval.
- 6. Similar Projects:** Provide a short description of previous projects, which demonstrate your qualifications for this project. Provide client references from projects (underway or

completed, preferably projects which can be visited for review) for which your firm has performed services similar to those described in this RFP.

7. **Cost Proposal:** This section should provide a full description of the expected costs for the work described in this RFP. This information should allow the determination of the expenditure distribution between various components of the project, and the work breakdown by key personnel or sub-consultants. Please provide staff hours and billing rates. Proposals should include a fee schedule for professional services and be based on billing time.
8. Proposals must bear the signature of a Principal of the firm.

### **Proposal Evaluation Factors**

The Consultant will be selected on the basis of understanding of the project, technical approach, and allocation of resources, experience of the project team, and professional background and expertise in the area of park/trail design.

### **Consultant Selection Timetable**

	<b><u>Date</u></b>
Re-Release RFP	Jul 1 <sup>st</sup> , 2015
Site Visit	July 7 <sup>th</sup> , 2015
Closing Date for Receipt of Proposals	July 31 <sup>st</sup> , 2015
Consultant Interviews	week of August 24 <sup>th</sup> or 31 <sup>st</sup> , 2015
Consultant Selection	week of August 31 <sup>st</sup> , 2015

### **Evaluation Criteria**

Proposals will be evaluated by a selection panel using the following criteria:

#### Approach (20 points)

- Understanding of project's complexities, challenges, and goals
- Awareness of potential problems and providing possible solutions
- Capability to work with a technical team that includes multiple agencies and private groups
- Understanding of the services required and a specific outline of how the work will be performed
- Allocation of staff time, including the project's Principal
- Understanding of public interest in the project and project area

Experience (15 points)

- Similar past, or recently completed, projects that substantiate experience.
- Prior experience and ability to work with public agency staff, private partners, and local advocacy groups to address various interests and develop a successful design and project.

Qualifications and Organization (10 points)

- Professional background and qualification of team members
- Current workload
- Resources
- Capacity and flexibility to meet schedules, including any unexpected work
- Ability to perform under time constraints
- Capabilities that distinguish you from other firms

Other Factors (5 points)

- Presentation completeness and delivery
- Responsiveness of RFP

**Selection Process**

A consultant selection committee will assess and rate all eligible written proposals based on the criteria listed above. The proposals will be reviewed and the top rated firms will be notified by 5pm August 12, 2015. Consultant interviews are tentatively scheduled for the week of August 17, 2015.

Based on the results of the consultant interviews, a contract will be negotiated with the highest rated prospective consultant. If an agreement cannot be reached with this consultant, negotiations with other prospective consultant, in order of their respective final ratings, will then be conducted until an agreement can be reached.

**Work Schedule**

<b>Milestone</b>	<b>Dependent/Duration</b>	<b>Approximate Timeline</b>
Notice to Proceed	Upon Board of Directors approval of selected consultant contract	Late September, 2015
Data Collection	6 weeks after receipt of 'Notice To Proceed'	November, 2015
35% Design Package and Alternatives Analysis	10 weeks after Data Collection	January, 2016
65% PS&E and DEIR	8 weeks after receipt of 35% PS&E review comments from the Park District, partners, and regulatory agencies	March, 2016

Final PS&E	8 weeks after receipt 65% PS&E review comments from the Park District, partners, and regulatory agencies	May 2016
CEQA - File Notice of Completion	Should progress simultaneously with design package.	June 2016
Submit Regulatory Permits	Applications should be submitted upon filing of NOD.	June 2016
Construction Support	After Board of Directors' approval, and for the duration of construction contract	2017

**Compensation**

Compensation for consulting services shall be based on the Consultant's current fee schedule of professional services (including expenses).

**Rejection Rights**

All firms are hereby notified that the selection of the 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 Districts Board of Directors. The Park District reserves the right to reject any and all submittals or to re-solicit if it is deemed to be in the public interest.

**Cost of Response Preparation**

The Park District will make no reimbursement for any cost incurred by a prospective Consultant for the preparation of a response to this Request for Proposals.

**Attachment A;** Map of the 1.1 mile of Bay Trail within Park District's Easement

**Attachment B,** Map of alternative analysis area

**Attachment C,** Sample EBRPD Contract for Services

# Exhibit A: Map of the 1.1 mile of Bay Trail within Park District's Easement



Exhibit B: Map of alternative analysis area



## Exhibit C: Sample Contract for Services

### CONTRACT FOR SERVICES

(Licensed Professionals)

THIS AGREEMENT, made and entered into on this \_\_\_\_\_, 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 [REDACTED]. The representative of District who will monitor this Agreement and be responsible for its interpretation and/or modification shall be [REDACTED].

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 \$ [REDACTED] 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 (\$ [REDACTED]) 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.
- 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: [REDACTED]  
2950 Peralta Oaks Court  
P. O. Box 5381  
Oakland, CA 94605-0381

CONSULTANT: [Insert Contact Information]

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: \_\_\_\_\_