

**EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS**

**ASSESSMENT DISTRICT ENGINEERING & PROFESSIONAL ADMINISTRATION
SERVICES AND FORMATION OF COMMUNITY FACILITIES DISTRICT(S)** under the
Mello Roos Community Facilities Act of 1982.
for the period April 1, 2024 through March 31, 2027.

ISSUE DATE: December 22, 2023

CONTACT: Deborah Spaulding, Assistant Finance Officer
dspaulding@ebparks.org
510-544-2401

PROPOSAL DUE DATE: January 11, 2024, 5:00 p.m.

SUBMITTAL PROCESS: Email to: dspaulding@ebparks.org

PROPOSAL CONTENT:

SECTION A General Information

- Introduction
- East Bay Regional Park District Overview
- Existing Special Taxes & Assessment Districts
- Potential Conflicts of Interest
- Terms and Timeline
- Proposal Submission
- Selection Procedures

SECTION B Scope of Services Required

- Assessment District Engineering & Administration Services
- Community Facilities District Formation Services

SECTION C Proposal Components

SECTION D Appendix

- Park District Standard Form Contract for Services (subject to negotiated modifications for these services)

SECTION A - GENERAL INFORMATION

Introduction

The East Bay Regional Park District (Park District) is seeking a consultant to provide engineering and administration services for the Park District's two existing Lighting and Landscape Assessment Districts (LLDs); six Zones of Benefit (ZOBs); four Community Facilities Districts (CFDs), and possible creation of one CFD area, for three fiscal years, with the possibility of an extension for two additional years.

East Bay Regional Park District Overview

The Park District was incorporated in 1934 as a California Special District and operates under Sections 5500-5595 of the Public Resources Code of the State of California. The purpose of the Park District is to acquire, develop, and maintain park, recreation and open space land within Alameda and Contra Costa Counties.

The Park District is the largest regional park district in the nation, currently managing more than 125,000 acres of land. In 2008, the voters in Alameda and Contra Costa Counties approved the Park District's \$500 million bond measure for parkland acquisition and grants to local agencies. This was the largest local park bond measure passed in the U.S. to date.

Existing Special Tax, Assessment Districts and Community Facilities Districts:

The District has four Community Facilities Districts under the Mello-Roos Community Facilities Act of 1982.

CFD No. C-1 – Las Trampas was formed in 2015 through a landowner election process. The 109-acre site, called Podva Properties, is located in the Town of Danville on the eastern slope of the Las Trampas Regional Wilderness. CFD No. C-1 includes 20 single-family residential lots. Funds will be used to maintain approximately 96 acres of permanent open space, as well as trails for pedestrian access.

CFD No. C-2 Las Trampas is located in the City of San Ramon, California. The CFD was formed through landowner election, in 2016. This development, which will eventually include approximately 600 homes, is called the called the Faria Preserve. CFD No C-2 is development is also adjacent to the Las Trampas Regional Wilderness, and the funds will maintain the 144 acres dedicated to the Park District as permanent open space, including trails and staging area improvements.

CFD No. A/C-3 was voter-approved in the Statewide General Election in November 2018, as Measure FF. The tax generates approximately \$3 million in revenue and is levied on approximately 177,000 units in a specific area within both Alameda and Contra Costa Counties. The revenue is used to fund wildfire protection, public safety public access, and maintenance of parks and trails in the Measure FF area. This tax was approved for 20 years, beginning in FY 2020-21. An annual Special Tax report, will be required for Measure FF.

CFD No. C-4 Sycamore Valley is located in the Town of Danville, in the area of the Sycamore Valley Regional Open Space Preserve. The CFD covers approximately 407 acres with 69 Single-Family Residential Property Units anticipated. The special tax is

expected to generate approximately \$44,000 per year and will be used to cover maintenance costs of the trails, trailheads, public safety services, as well as required administrative costs. A Special Tax Levy report will be required annually.

The Park District estimates that one additional landowner-election CFD is possible within the next five years.

The Park District has two Landscaping and Lighting Act of 1972 (LLD) assessment districts, both of which are grandfathered under Proposition 218.

ECCC-1, the East Contra Costa County Landscaping and Lighting District was formed in 1991 to address operation and maintenance funding needs in the Liberty Union High School District. There are approximately 37,000 single family units in this district, and approximately 3,000 multiple residential units.

ACC-1, the Alameda County/Contra Costa County Regional Trails Landscaping and Lighting Assessment District was originally formed in 1993 and was re-approved as required by Proposition 218 in November 1996. The assessment funds are used for trail maintenance and improvements in specific areas within the Park District. There are approximately 360,000 assessable units in Alameda County and 300,000 assessable units in Contra Costa County in this district.

The Park District has six Zones of Benefit (ZOB) as follows:

1. Five Canyons Zone of Benefit was formed in 1994 and includes 1,089 parcels.
2. Dublin Hills Zone of Benefit was established in 1996 and includes 662 parcels.
3. Walpert Ridge Zone of Benefit was formed in 1998 and contains 765 parcels.
4. San Ramon Hills Zone of Benefit was established in 1999 and contains 140 parcels.
5. Stone Valley Zone of Benefit was formed in 2006 and contains 39 parcels.
6. Sibley Volcanic Regional Preserve (Gateway Valley/Sibley Volcanic) Zone of Benefit was established in 2007 and contains 245 parcels.

For additional background on the Park District, please review the financial information on the website: <http://www.ebparks.org/about/budget>.

Terms and Timelines

The Park District desires to contract with one firm that can provide all required services as described in this RFP:

- For administration and engineering services for the Park District's existing LLDs, ZOBs, Special Tax, and CFDs, for April 1, 2024 through March 31, 2027 (with a possible two-year extension).
- The proposal should provide information regarding fees for new CFD formation projects.

- The proposal should provide information regarding additional fees that may be charged at an hourly rate in the event of legal challenge or other projects.

Contract for Services – The Park District uses a standard contract for services that is provided in Section D.

Potential Conflicts of Interest - The respondent must declare and warrant that no undue influence or pressure (including coercion, confidential financial arrangement, or financial inducement) is used against or in concert with any officer or employee of the Park District in connection with the award of the benefit assessment engineering and professional administration contract, which will be executed as a result of this RFP. No officer or employee of the Park District will receive compensation, directly or indirectly, from the respondent, or from any officer, employee or agent of the vendor, in connection with the award of the contract which will be executed as a result of this RFP. Violation of this section shall be a material breach of the contract entitling the Park District to any and all remedies by law or in equity. Respondent confirms agreement to this section with submission of the proposal.

Validity – All proposals from responding firms shall remain firm for a period 90 days from proposal due date.

Estimated Timeline

DATE	DESCRIPTION
December 22, 2023	RFP Distributed
January 11, 2024	Proposals due by 5 pm
January 12 – 19	Park District evaluates proposals
January 12 – 19	In-person / video conference interviews with finalists
February 28, 2024	Recommendation of preferred Firm to Finance Committee
March 19, 2024	Board authorizes contract with preferred Firm
April 1, 2024	Services commence

Proposal Submission

Submit your proposal no later than Thursday, January 11, 2024 at 5:00 p.m.

Proposals should be emailed to:

Deborah Spaulding, Assistant Finance Officer
dspaulding@ebparks.org

Any question regarding this RFP should be submitted to:

dspaulding@ebparks.org

Selection Process

Proposals will be evaluated by members of Park District management. The method of selection will be based upon the following:

- Demonstrated competence and professional qualification necessary for the satisfactory performance of the services required by the Park District.
- Experience in performing similar formation services, benefit assessment engineering and professional administration services, with additional weight given to consultants with park and recreation districts experience.
- Understanding of the work required by the Park District and proposed approach to the scope of work.
- Quality and responsiveness of the proposal to the stated requirements.
- References.
- Proposed compensation. Note—a contract will not be awarded solely based upon price, but rather on a combination of factors determined to be in the best interest of the Park District.

The Park District appreciates your time and effort in completing the RFP and we look forward to reviewing your proposal.

SECTION B - SCOPE OF SERVICES REQUIRED

I. Assessment District, Zone of Benefit & Special Excise Tax Engineering and Community Facilities District Administration Services

Engineering and professional administration services will require the following vendor qualifications, tasks and deliverables:

- Thorough knowledge of State requirements related to assessment districts in general, and complete familiarity with the Park District's assessment districts, zones of benefit, community facilities districts, and special tax requirements in particular.
- Preparation of annual calendar of due dates detailing Park District's responsibilities and Consultant's responsibilities.
- Coordination with Park District staff to obtain information required for engineer's report including:
 - project plans, specification and improvements, and
 - financial data related to fund balances and budgeted expenditures.
- Cooperation and communication with the assessor of the Alameda and Contra Costa Counties to receive and provide information required for correct and timely assessment information submission.

- Preparation of the assessment roll listing parcel number, owner name, property address, assessment amount, and calculation of tax levy for each subject parcel.
- Preparation of the State Board of Equalization list of assessed public utility parcels, and file with counties.
- Reconciliation of the exceptions list and resubmission to auditor's office.
- Confirmation of the final assessment prior to the issuance of tax bills.
- Year-round response to property owners' inquiries regarding assessments, and senior discount program, including coordination of property owner appeals by phone, email or mail.
- Parcel research, analysis and audit as required to submit accurate assessment information to the counties' assessors.
- Preparation of annual comparison report for assessable parcels, including parcel use code changes, and new and deleted parcels.
- Assistance in the filing of the SB 165 report to the Board of Directors each year.
- Administration of the senior discount program associated with the special tax levy.
- Production of annual engineer's reports and special tax report for presentation by the Consultant to the public and the Park District's Board of Directors at the first Board meetings in June and July.
 - The report to include updated benefit analysis, cost estimates, method of apportionment and other engineering elements, as required by Proposition 218 and applicable special assessment laws and requirements, including special benefit justification for Park, Recreation and Open Space Districts and annual assessment continuation.
- Delinquency monitoring by providing comprehensive list of all delinquencies including name, address, delinquent amount and penalties.
- Consultation with Park District management related to changes in laws, impacts of court cases, plus parcel annexations and special tax and assessment district formation.
- Preparation of updated assessment diagrams and maps as needed and recordation with County Recorder.
- Attendance at Board of Directors and Board committee meetings, as necessary

- Note: services requested do not include public hearing notice, or Board resolution preparation.

II. Community Facilities District Formation

The formation of the Community Facilities District will include the following tasks & deliverables:

- Attend meetings with Park District and Developer as needed to develop timeline, goals and objectives for CFD, and to develop annual operating budget.
- Assist Park District in preparing preliminary estimate of CFD revenues and expenses and develop Rate and Method of Apportionment (RMA) to be recorded with the County.
- Prepare and mail Landowner election materials in advance of public hearing.
- Prepare Boundary Map to be approved by the Board and recorded by County.
- Prepare Resolution of Intention and Resolution of Formation for adoption by Board.
- Prepare CFD petition for the landowner within the proposed CFD, to waive applicable waiting periods for CFD special tax election.
- Prepare special tax disclosure documents pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code.
- Attend all Board of Directors and committee meetings & public hearings related to CFD formation.
- Prepare other required documents related to CFD formation

SECTION C - PROPOSAL COMPONENTS

Please format your response to this RFP in the following order to facilitate comparisons between respondents.

Transmittal Letter -- This letter should introduce the firm and summarize its qualifications. The letter should contain the location of the firm's home office, and the office from which our account will be serviced. Please include names, title, phone and email for individuals who will be assigned to our project.

General Description of Firm and Experience -- Provide a brief history of the firm, types of services provided and experience in providing services similar to those required by the Park District. Please include information about other park, open space and recreation districts for which you provide services.

Description of Proposed Services - Describe the firm's approach and timeframes to complete the Assessment District, Zone of Benefit, and Special Tax Engineering & Administration Services described in Section B of this RFP.

CFD Formation - Describe the firm's approach to complete the Community Facilities District Formation services described in Section B of this RFP.

Assessment Defense – In the event of a legal challenge to assessments or a claim by a property owner that they do not receive special benefits, describe what services your firm would provide.

Personnel to be Assigned – Project manager or managers who will work on our account, including relevant experience, years with firm and professional engineer license number as required to sign the Engineer's Report.

References – in two sections:

- Provide three clients, agency name, contact person's name, phone number and email, for which you are or have assisted in formation of a Community Facilities District.
- Provide three clients, agency name, contact person's name, phone number and email, for which you have provided assessment district engineering and administration services within the past two years.

Proposed Fees – in three sections:

- Annual cost of providing the scope of services in Section B, for engineering and administration services for the Park District's existing Assessment District, ZOB and Special Tax and CFDs for the time period beginning April 1, 2024 – March 31, 2027.
- Total cost for all personnel, materials, and services necessary to complete the scope of services to form a new Community Facilities District.
- Cost of legal challenge defense or new CFD formation. Please include hourly rates for staff who would work on these two special areas, if required.

Engineer's Report Sample – Please include an exhibit of an actual Engineer's Report submitted to a current client, preferably one from a park and recreation district authored by the engineer who will be assigned to our agency. The assessment roll does not need to be included.

SECTION D - APPENDIX

Attached is the Park District's standard contract for services, including insurance requirements.

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”) (together sometimes referred to as the “Parties”).

RECITALS

- A. District desires to engage the services of Consultant to provide professional 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 on _____ 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 Work.

During the term of this Agreement, Consultant shall provide all labor, materials, tools, equipment and services as set forth in **Exhibit A**, attached hereto and made a part hereof (“Scope of Work”). In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibit A**, the terms of the body of the Agreement shall prevail.

3. Standard of Care.

- a. Standard of Care. Consultant agrees to perform the work in a professional manner and in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. 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 Scope of Work. Consultant shall provide and maintain Project staffing levels as necessary to perform the services under this Agreement within the time provided in the Scope of Work. The total time scheduled for full completion of Consultant's services shall not exceed the durations shown in the Scope of Work, unless mutually agreed upon in writing by Consultant and District.

8. Payment.

District hereby agrees to pay Consultant a sum not to exceed \$ _____, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and the Scope of Work, attached as **Exhibit A**, or Consultant's compensation rate schedule attached as **Exhibit B**, regarding the amount of compensation, the text of the Agreement shall prevail. 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 the amount not to exceed amount stated in this section without a written amendment signed by both Parties.

Consultant and District acknowledge and agree that compensation paid by District to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. District therefore has no responsibility for such contributions beyond compensation required under this Agreement.

9. Invoices

Consultant shall submit invoices, not more often than once per month during the term of this Agreement, based on the cost for all services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain all the following information:

- a. Serial identifications of progress bills (i.e., Progress Bill No. 1 for the first invoice, etc.);
- b. The beginning and ending dates of the billing period;
- c. A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- d. At District's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- e. The total number of hours of work performed under the Agreement by each employee, agent, and subcontractor of Consultant performing services hereunder;
- f. Consultant shall give separate notice to the District when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds eight hundred (800) hours within a twelve (12)-month period under this Agreement and any other agreement between Consultant and District. Such notice shall include an estimate of the time necessary to complete work described

in Exhibit A and the estimate of time necessary to complete work under any other agreement between Consultant and District, if applicable.

- g. The amount and purpose of actual expenditures for which reimbursement is sought;
- h. The Consultant's signature.

Consultant shall submit his/her compensable hours and reimbursable expenses monthly, and District shall make payments on the approved compensation and reimbursable expenses within forty-five (45) days. 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.

10. Termination of Agreement for Convenience.

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

11. 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.

12. 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.

13. 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.

14. 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.

15. Nondiscrimination.

During the performance of this Agreement, Consultant and Consultant's sub-consultants agree as follows:

- a. Contractor and Contractor's subcontractors will not discriminate against any employee or qualified applicant for employment on the basis of any legally protected classification including but not limited to sex, race, gender identity, creed, color, ancestry, religion, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, or sexual orientation. Contractor and any subcontractors agree to comply with all nondiscrimination requirements for public contracting under State and Federal law. Contractor and Contractor's subcontractors will take affirmative steps to ensure that qualified applicants are employed and that employees are treated during employment without regard to their sex, race, gender identity, creed, color, ancestry, religion, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation or any other legally protected classification. This equal treatment will apply but not be limited to, the following: upgrade, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause.
- b. Contractor and Contractor's subcontractors will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, gender identity, creed, color, ancestry, religion, national origin, ethnic group identification, age, disability, medical condition, genetic information, marital status, sexual orientation, or any other legally protected classification.

- c. Contractor and Contractor's subcontractors will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this non-discrimination clause.

16. 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, pursuant to the Director's authority under Labor Code Section 1770 et seq. To the extent applicable, Consultant shall post a copy of the prevailing rate of per diem wages at each job site. Consultant shall forfeit fifty dollars (\$50) 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.

An error on the part of an awarding body does not relieve the Consultant from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775. The District will not recognize any claim for additional compensation because of the payment by the Consultant for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Consultant. 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.

17. Indemnification.

- a. Separate Professional Liability (PL) Indemnity. To the fullest extent permitted by law, including without limitation California Civil Code Section 2782 and 2782.8, and with respect to the performance of professional services, Consultant agrees to indemnify and hold harmless District, its officers, employees, authorized agents/volunteers, and invitees (collectively, the "District Indemnitees"), from and against any claims, damages, losses, demands, liabilities, judgments, settlements, expenses, and costs (including reasonable and necessary attorneys' fees, costs and expenses) to the extent caused by Consultant's negligent acts, errors or omissions or willful misconduct in the performance of services under this Agreement and anyone for whom Consultant is legally liable. Consultant has no obligation to pay for any of District Indemnitees defense related cost prior to a final determination of liability, or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.
- b. Separate Other than Professional Liability (OPL) Indemnity. As respect to its operations, other than the performance of professional services, Consultant agrees to indemnify, hold harmless and defend District with counsel approved by District, the District Indemnitees, from and against any damages, liabilities, judgments, settlements, costs, claims, demands, actions, suits, losses, and expenses (including

reasonable and necessary attorneys' fees, costs and expenses) arising out of the death or bodily injury to any person or destruction or damage to any property, to the extent caused by Consultant's negligent acts, errors or omissions or willful misconduct in the performance of services under this Agreement and anyone for whom Consultant is legally liable.

- c. Common PL & OPL Indemnity Provisions. Consultant's obligations under this Section 17 shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the gross negligence or willful misconduct of the District or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless under Section 17(b) includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- d. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Consultant shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.

18. 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) Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. In the alternative, Consultant may

rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the District. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the District and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

- (2) Commercial General Liability (“CGL”) (bodily injury and property damage) on an occurrence basis in an amount not less than one million dollars (\$1,000,000) per occurrence and at least two million dollars (\$2,000,000) 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 one million dollars (\$1,000,000) 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 one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) 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.

19. 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. Immediately 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.

20. 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), 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.

21. Assignment.

District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. 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.

22. 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.

23. Notices.

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

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

CONSULTANT: _____
Attention: _____
Address: _____

Phone: _____
Email: _____

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

24. 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.

25. 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. Any necessary conversion to formats compatible with District software to comply with this section shall be performed at no additional cost to the District.

26. Payment of Taxes, Tax Withholding.

Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. During the term of this Agreement and for

three (3) years after the termination of this Agreement, Consultant shall maintain in its files a valid California Franchise Tax Board form 590 (“Form 590”), as may be amended, or other valid, written evidence of an exemption or waiver from withholding for Consultant and all subcontractors receiving compensation under this Agreement. Consultant accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written copies of any Form 590 and/or documentation of compliance with Consultant’s withholding duty to District upon request.

27. 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.

28. Governing Law.

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

29. 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.

30. 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.

31. 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.

32. Severability.

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

32. Counterparts.

This Agreement may be executed in counterparts, and/or by electronic signature, 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, electronic 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: _____

Print Name

Print Name

Title

Title

Date: _____

Date: _____

EXHIBIT A – SCOPE OF WORK

EXHIBIT B – RATE SCHEDULE

East Bay Regional Park District Insurance Requirements

FORWARD TO YOUR INSURANCE AGENT - Reply within 4 business days

**Certificate Holder and Mailing
Address:**

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

Additional Insured:

East Bay Regional Park District,
its officers, employees, and
agents are additional insured.

Note: It is suggested that "All Locations" or "As per Written Agreement" be listed on the insurance certificate and endorsement instead of job specific certificates to facilitate the insurance approval on future jobs.

INSURANCE

1. General Liability Insurance - Certificate of Insurance with the following required endorsements*

- a) ***Additional Insured Endorsement**
(separate stand-alone endorsement required and not substituted by referring to such coverage on the COI.)
- b) ***Primary Insurance Endorsement**
(separate stand-alone endorsement or policy language required and not substituted by referring to such coverage on the COI.)

2. Auto Liability Insurance - Certificate of Insurance with the following required endorsement*

- a) ***Additional Insured Endorsement**
(separate stand-alone endorsement required and not substituted by referring to such coverage on the COI.)

3. Workers' Compensation - Certificate of Insurance with the following required endorsement*

- a) ***Waiver of Subrogation Endorsement**
(separate stand-alone waiver required and not substituted by referring to such coverage on the COI.)

4. Professional Errors & Omissions /Professional Liability or Pollution Liability - Certificate of Insurance