



May 7, 2014

To Whom It May Concern:

The East Bay Regional Park District is soliciting proposals from qualified firms of certified public accountants for a three year audit services contract related to the District’s financial statement for the years ending December 31, 2014 through 2016, with the option of extending the contract for an additional two (2) years. Enclosed for your consideration is the Request for Proposal (RFP).

To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. Completed electronic proposals must be received at the following email address by 5:00 PM on Friday, May 30, 2014:

dspaulding@ebparks.org

If you have any questions about the RFP, please contact me.

Sincerely,

Deborah Spaulding
Assistant Finance Officer
East Bay Regional Park District
dspaulding@ebparks.org

encl.
Audit RFP
Sample District Contract

Board of Directors

Ayn Wieskamp President Ward 5	Whitney Dotson Vice-President Ward 1	Ted Radke Treasurer Ward 7	Doug Siden Secretary Ward 4	Beverly Lane Ward 6	Carol Severin Ward 3	John Sutter Ward 2	Robert E. Doyle General Manager
-------------------------------------	--	----------------------------------	-----------------------------------	------------------------	-------------------------	-----------------------	------------------------------------

EAST BAY REGIONAL PARK DISTRICT
OAKLAND, CA.
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
Issued: Wednesday, May 7, 2014

I Introduction

The East Bay Regional Park District (District) is requesting proposals (RFP) from qualified certified public accounting firms to audit its financial statements for the three fiscal years beginning with December 31, 2014, with the option of extending the agreement for two (2) additional one-year periods. These audits are to be performed in accordance with generally accepted auditing standards (GAAS) and the standards set for financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the provisions of the Federal Single Audit Act, as amended, and U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of States and Local Governments and Non-Profit Organizations*.

There is no expressed or implied obligation for the District to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt. Additionally, the District reserves the right to reject any or all proposals submitted.

To be considered, please submit an electronic proposal and all other required documentation by 5:00PM on Friday, May 30, 2014 to:

dspaulding@ebparks.org

Inquiries concerning the RFP should be addressed to dspaulding@ebparks.org. Proposals submitted will be evaluated by staff from the Finance & Management Services Division. Additional information and clarifications may be requested. Finalists will be interviewed during the week of June 16 – 20, 2014. Recommendation of the auditing firm selection will be presented to the Finance Committee of the Board of Directors at the July 23, 2014 meeting.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

II Description of the East Bay Regional Park District

The District was incorporated in 1934 as a California Special District. The District operates under Sections 5500-5595 of the Public Resources Code of the State of California for the purpose of acquiring park, recreation and open space land; and the development, operation and maintenance of these lands. The District operates 65 parks, 1,100 miles of trails, covers more than 113,000 acres within Alameda and Contra Costa Counties, and is the largest regional park district in the country. The District received voter approval in November, 2008 for Measure WW, to issue \$500 million in general obligation bonds.

The District's 2014 adopted budget totals \$193 million, \$111 million of which is for General Fund. The majority of the District's revenue is property tax (89%). In addition to the General Fund, the District includes:

- 17 special revenue funds,
- 5 capital project funds,
- 1 fiduciary funds,
- 5 internal service funds,
- 12 permanent funds and
- 4 debt service funds.

The governmental funds are grouped in the CAFR and presented as:

- General fund
- Debt service fund
- Project fund
- Non-major funds (includes all special revenue and permanent funds).

In 2011 the District had 5 major programs included in the Single Audit. In 2012 and 2013 there was only 1 major program.

More detailed information on the District and its finances can be found in the District's 2014 budget and the 2012 CAFR, which are located on the District's website at www.ebparks.org/about/budget.

The Finance Department consists of 19 employees and includes internal audit, budget, capital project accounting, accounting, accounts payable and payroll. The District uses SunGard-Bi-Tech IFAS version 7.7.2 for its accounting, payroll, human resource and budgeting applications, and is preparing to upgrade its software to SunGard's One Solution version 14.1.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

III Scope of Services

The selected auditor will be required to complete the following tasks in relationship to the Comprehensive Annual Financial Report (CAFR), Single Audit, and Agreed Upon Procedures Report:

1. Audit the District's basic financial statement in accordance with GAAS in the United States and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States;
2. Express an opinion on the financial statements as to whether they present fairly, in all material respects, the financial position of the District and the changes in financial position and cash flows (where applicable) in conformity with generally accepted accounting principles (GAAP), and issue an independent auditors' report stating this opinion;
3. Test internal control over financial reporting and compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters, in accordance with *Government Auditing Standards*, and issue a report on their consideration;
4. Apply limited procedures related to the Required Supplementary Information (RSI), Management's Discussion and Analysis (MD&A), budgetary comparison information, and the Supplementary Information;
5. Prepare Report to Board of Directors and Management which identifies control deficiencies, significant deficiencies and material weaknesses;
6. Perform agreed upon procedures on the appropriation limit under Article XIII B of the California Constitution, and issue related report;
7. Complete Single Audit of federal expenditures in compliance with OMB Circular A-133, and issue report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circular A-133, as well as a report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*;
8. Present and discuss annual financial statement and results of operations to the Finance Committee during the May meeting;

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

9. Communicate immediately and in writing all irregularities and illegal acts, or indications of illegal acts, of which they become aware, to the General Manager and the Assistant General Manager for Finance and Management Services;
10. Retain audit working papers for seven (7) years, unless the firm is notified in writing by the District of the need to extend the retention period. In addition, the firm shall respond to reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance;
11. Provide general consultation as required, during the year, on financial reporting matters, including implementation of GASB 67 and 68; and
12. As requested by the a member of bond financing team, issue a “consent and citation of expertise” as the auditor and any necessary “comfort letters” in relationship to District financials statements and auditors’ report, which are included in the Official Statement prepared in connection with sale of debt securities.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

IV Special Considerations

A. Key Dates for proposal evaluation and selection:

- | | |
|-----------------------------|--------------------------------------|
| a. Wednesday, May 7, 2014 | RFP issued |
| b. Friday, May, 30, 2014 | Proposals due |
| c. Week of June 16-20, 2014 | Interviews |
| d. Friday, June 20, 2014 | Notification of selected firm |
| e. Wednesday, July 23, 2014 | Finance Committee approval |
| f. Tuesday, August 5, 2014 | Board of Directors contract approval |

B. Project Schedule

Depending on the type and extent of interim audit procedures, the District will have preliminary year-end information available the beginning of January 2015, and would expect interim work to commence the middle of January, 2015.

The District expects to have all records, audit work papers, and a draft of the CAFR document ready for the audit field work by the second week of April, 2015.

The District will be responsible for the preparation of the basic financial statements, including: MD&A, government wide financial statements and fund financial statements for all funds, accompanying notes to the financial statements, RSI, supplementary information and statistical section. The District will be responsible for the printing of the CAFR.

The auditor will be responsible for the preparation of the Single Audit Report, and the Report on Agreed Upon Procedure Applied to Appropriations Limit Schedule, and provide required number of copies to the District.

Final draft CAFR, with the independent auditor's report will be presented to the Finance Committee at the end of May and at the Board of Directors at the beginning of July. The Report to the Board of Directors and Management is required to be submitted to the District by the beginning of May to enable management to respond and present the Report with management's responses to the Finance Committee at the end of May. The engagement partner/manager is required to attend the May Finance Committee meeting.

Additionally, the CAFR will be submitted to GFOA for consideration under the certificate of achievement for excellence in financial reporting program by June 30, 2015. The District has earned the GFOA Certificate of Achievement for Excellence in Financial Reporting for 13 consecutive years.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

C. Assistance Provided to the Auditor

Finance Department staff will be available during interim and audit field work to assist the firm by providing access and direction to information, documentation and be available for explanations of all inquiries. The District will provide the auditors with reasonable workspace, phone, wireless internet access and copy machine.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

V Proposal Requirements

A. Format of Technical Proposal

1. Title page
 - a) the RFP subject,
 - b) the proposing firm's name,
 - c) contact person's name, address, telephone number, and email address, and
 - d) the date of submission.
2. Table of Contents
 - a) identification of material submitted, by section and page number, and
 - b) cross reference to section and page number of RFP.
3. Transmittal Letter
 - a) general introduction stating the proposer's understanding of the services to be provided,
 - b) a positive commitment to perform the service within the time period specified,
 - c) name(s) of person(s) authorized to represent the proposer, title, address and telephone number, and
 - d) signature.
4. Technical Proposal Following the Order Set Forth in Section B
5. Cost Proposal As Set Forth in Section C

B. Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of the District in conformity with the requirements of this RFP. The substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this engagement. It should also specify an audit approach that will meet the RFP requirements.

The Technical Proposal should address all the points in the order outlined in the RFP (excluding any cost information, which should only be included in the cost proposal section). The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the RFP. While additional data may be presented, the areas detailed below must be included. They represent the criteria against which the proposal will be evaluated.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

1. License to Practice in California

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in California,

2. Independence

The firm should provide affirmative statement that it is independent of the East Bay Regional Park District as defined by generally accepted auditing standards and the US General Accounting Office's *Government Auditing Standards*.

3. Insurance Requirements

See sample District contract attached which includes insurance requirements in section B. 9.

4. Firm Qualification and Experience

To qualify, the firm must have extensive experience in audits of local governments as well as experience with the preparation of CAFRs in compliance with GASB 34.

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis. Staff consistency is a very important consideration.

Please submit a copy of the report on the firm's most recent external quality control (peer) review, with a statement whether that quality control review included a review of specific government engagements (required by *Government Audit Standards*).

Provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

5. Engagement Partner, Manager/Supervisor and Staff Qualifications and Experience

Identify the senior-level staff, including engagement partner and manager/supervisor, who would be assigned to this engagement on an on-

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

going basis. Indicate whether these individuals have CPA licenses. Please provide information on the governmental auditing experience of these individuals. The District reserves the right to approve or reject any replacements in the senior level staff participating in the District's audit.

Identify junior-level staff who would be assigned to this engagement. How stable is this team of individuals in relationship to being assigned to this engagement on an annual basis? Please indicate their experience. How will the quality of the junior-level staff be assured over the term of the agreement.

6. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed to perform the services required in Section III of this RFP.

- a). proposed segmentation of the audit work:
 - i. What will be accomplished during interim and what at year end?
 - ii. What other contact can the District expect during the year related to the audit engagement?
- b). expectations of District staff:
 - iii. What documents and working papers are expected to be provided by District staff during interim and year end work? Please provide sample PBC lists for each section of the audit field work.
- c). proposed time frame for each segment of audit work:
 - iv. What is the anticipated length of field work for interim and year end work?
 - v. What is the standard turn around time from end of fieldwork, to senior level review, to final draft, to partner review, to audit report issuance?
- d). planned hours on the engagement for each level of auditing staff.

7. Identification of Anticipated Potential Audit Problems

The proposer should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and any special assistance that will be required from the District.

8. References

Please provide name of all cities, counties and special districts for which the firm has audited GASB 34 financial statements in the CAFR format

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

during the past three (3) years. These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partner, total hours. Indicate which of these CAFRs were submitted, and received, the GFOA award for excellence in financial reporting. Additionally, please provide name of all cities, counties and special districts for which the firm has prepared a Single Audit during the past three (3) years.

Please include reference contact information for at least three of these agencies, including the name, telephone number and email address of the principal client contact. The District reserves the right to contact any or all of the listed reference.

9. Provide analysis and conclusion related to the following issue:

The District has a December 31 year end. The District receives property tax revenues from Alameda County and Contra Costa County. The District reports this revenue net of collection fees, which are immaterial. Contra Costa County remits secured property taxes under the "Teeter Plan." Alameda County remits secured property taxes as collected, plus interest and penalties. For both counties the lien date is January 1 and the taxes are levied on July 1.

Previously, the District reported 50% of 201x/201y taxes in the December 31, 201x financial statements. Amounts received in excess of 50% were "unearned" and deferred. In 2013 the District changed revenue recognition for property tax. At December 31, 2013 100% of the 2013/2014 property tax levy amount was recorded as earned. Amount received between January 1, 2014 and February 29, 2014 were included in Accounts Receivables, and amounts not received by February 28, 2014 were recorded in Account Receivables and Deferred Inflows.

Please comment on this change in treatment of property tax revenue, and describe impact this change in revenue recognition had upon the Government Wide Financial Statements.

10. Additional Information Required

What additional information would you require from the District, if you were selected to provide audit services, before you accepted the engagement?

NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

C. Contents of Cost Proposal

1. Total All-Inclusive Maximum Price

The cost proposal should contain all pricing information relative to performing the audit engagement as described in the Section III of this RFP. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs, including all out-of-pocket expenses.

It is not necessary for the components of the services, as itemized in Section III, to be costed separately.

Please present the annual maximum costs for each of the three (3) years of the proposed contract, as well as the total cost for each of the additional (2) two year contract extension. Additionally, please provide billing rates by staff level for special services for the District's information.

2. Contact Information

Enclosed with the Cost Proposal please provide the following information:
Firm name, address, contact name, phone, fax and email.

3. Manner of Payment

Progress payments will be made on work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's proposal. Interim billings shall cover a period of not less than a calendar month.

EAST BAY REGIONAL PARK DISTRICT
REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES
MAY 7, 2014

VI Evaluation Procedures

Proposals will be evaluated by District staff using the following criteria. Firms meeting the mandatory criteria will have their proposal evaluated and scored for both technical qualifications and price. The following represents the principal selection criteria, which will be considered during the evaluation process:

1. The audit firm is independent and licensed to practice in California
2. The firm has no conflict of interest with regard to any work to be performed for the District.
3. The firm adhered to the instructions in the RFP.
4. The firm has substantial experience in performing the required audits on government agencies comparable to the District.
5. The quality and stability of the firm's professional staff to be assigned to the engagement is acceptable to the District.
6. The firm provided proposed plans for the various segments of the engagement which are acceptable to the District.
7. The firm presented a thorough understanding of the objectives, scope and issues for this type of engagement.
8. The firm is committed to the timeliness in the conduct and completion of the audit.
9. Evaluation of the maximum fee to conduct the audit.

CONTRACT FOR SERVICES
CLASS D
(High Risk)

THIS AGREEMENT, made and entered into this _____ day of _____, _____, between the East Bay Regional Park District, a special district, 2950 Peralta Oaks Court, Oakland, California ("District") and _____, hereinafter referred to as "Contractor."

RECITALS

- A. District desires to engage the services of Contractor to provide various services herein described; and
- B. Contractor 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 _____. This Agreement may be terminated at any time by either party by giving 30 days' prior written notice to the other party.

2. Scope of the Contract

a. During the term of this Agreement, Contractor shall provide services as documented in Exhibit A attached hereto and made a part hereof.

Contractor agrees to utilize his/her professional skill and best efforts in the performance of the services specified herein. The representative of Contractor who will make all presentations, attend public hearings and supervise all service shall be _____.

b. District shall be responsible for performances under Exhibit B (unless not necessary and covered in Exhibit A) attached hereto and made a part hereof.

The representative of District who will monitor this Agreement and be responsible for its interpretation and/or modification shall be _____.

3. Time of Performance and Payment

a. Performance: Contractor's work shall be scheduled and performed to meet agreed-upon deadlines.

b. Payment: District shall compensate Contractor for services performed by Contractor as set forth in the rate schedule documented in Exhibit C (unless not necessary and

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

Contractor shall submit his/her compensable hours and reimbursable expenses monthly, and District shall make payments on the approved reimbursable expenses within 30 days, provided that in no event shall the amount paid Contractor exceed that percentage of the maximum total compensation and expenses payable under this Agreement (\$_____) which percentage equals the percentage of Contractor's work complete at the time.

4. Abandonment of Project

a. District shall have the right to abandon or indefinitely postpone ("abandon" or "abandonment") the project or the services for any or all of the project at any time. In such event, District shall give written notice of such abandonment. In the event of abandonment prior to completion of the final drawings and cost estimates, Contractor 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, Contractor 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 30 days following submission of a final statement by Contractor.

b. Should the project or any portion thereof be abandoned, District shall pay Contractor for all services performed theretofore in accordance with the terms of this Agreement as provided in paragraph 3.a and b above, as full payment due hereunder.

5. Contractor as Independent Contractor

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an agent or employee of District. Contractor 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. Contractor 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, subcontractors, agents and employees.

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

Contractor warrants that he/she has not employed nor retained any broker, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, 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. Contractor shall indemnify, defend, protect and hold harmless District, its directors, officers and employees from such claims.

Contractor shall comply with all Federal, State and local laws and regulations applicable to his/her work hereunder.

7. Employment Practices

During the performance of this Agreement, Contractor agrees as follows:

a. Contractor and Contractor's subcontractors will not discriminate against any employee or applicant for employment because of sex, race, creed, color or national origin. Contractor and Contractor's subcontractors will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their sex, race, creed, color or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoffs or 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, creed, or national origin.

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 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

8. Indemnification

a. Contractor agrees to indemnify, hold harmless, defend and protect District, its officers, directors, agents, employees, and invitees (each of which is an indemnitee) from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses (including attorneys' fees), penalties, judgments, or obligations whatsoever for or in connection with injury (including death) or damage to any person or the loss or damage of property to whomsoever belonging or pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by or the omission of Contractor.

b. District shall have no responsibility to safeguard the equipment and property of Contractor or any of his/her sub-Contractors. District shall have no responsibility to safeguard or protect the Contractor, or his/her employees, agents, officers, directors, or any of his/her sub-Contractors from bodily injury (including death) or personal injury.

c. In the event a claim is made against District or District is named a co-defendant in any action encompassed by paragraph 8(a) above, Contractor shall immediately notify District of such fact, and at District's option shall either retain legal counsel to represent

District in such action at Contractor's sole expense or reimburse District for District's litigation costs, expenses and attorneys' fees in undertaking to represent itself.

d. In the event a claim is made against both District and Contractor for the joint and several liability of District and Contractor, the determination as to the apportionment of liability between District and Contractor shall be made by the judge in a court of competent jurisdiction. Neither District nor Contractor shall request that the apportionment of liability be determined by a jury. Notwithstanding the apportionment of liability between District and Contractor, Contractor shall nevertheless be responsible to indemnify and hold harmless District as fully set forth above, unless the court determines that the injury or damage resulted from the sole negligence or intentional and willful misconduct of District, its officers, directors, agents or employees.

e. Contractor hereby waives all claims and recourse against District, including the right of contribution for loss or damage or expenses by reason of death or injury to persons or damage to property, and releases District from any liability relating to or in any way connected to Contractor's activities or Contractor's use of the property, premises or facilities, unless injury or damage is caused by the sole negligence or the intentional and willful misconduct of District, its officers, directors, agents or employees.

f. The provisions of this section shall survive the termination or expiration of this Agreement.

9. Insurance

a. Contractor shall procure and keep in force during the term of this Agreement, at Contractor'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. Contractor shall, 15 days prior to the commencement of this Agreement and prior to the termination of any policy, supply District with a certificate 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) General Liability (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 contractor'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 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 30 days' prior written notice to District. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Contractor 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 36 months following expiration of such policy.

Contractor 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. Contractor shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement.

In case of the breach of any provision of this section, District may, at District's option, take out and maintain, at the expense of Contractor, such types of insurance in the name of the Contractor 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 Contractor under this Agreement or may demand Contractor to promptly reimburse the District.

10. Default

In the event that Contractor defaults in any obligation of Contractor under this Agreement, or Contractor defaults in the performance of any of the terms and conditions of this Agreement, 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 Contractor,
- b. Terminate this Agreement, or
- c. Perform the obligations of the Contractor,

whereupon Contractor 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, 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 Contractor. The above remedies are in addition to any other remedies at law or equity District may have. Contractor shall pay or reimburse District for all of District's costs and expenses, including reasonable attorneys' fees incurred in enforcing its rights hereunder.

11. Assignment

Contractor 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.

12. 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.

13. 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
P. O. Box 5381
Oakland, CA 94605-0381

CONTRACTOR:

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

14. Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

15. 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 paragraphs 1 through 16 of the Agreement, the provisions of paragraphs 1 through 16 of the Agreement shall control.

16. Severability

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

EAST BAY REGIONAL PARK DISTRICT

By _____
Chief or AGM or GM

By _____
Contractor

Date: _____

Date: _____