



## REQUEST FOR PROPOSALS

*FOR*

## WATER SYSTEM MASTER STUDY CONSULTING SERVICES

*AT*

## DEL VALLE REGIONAL PARK Livermore, CA

*Project No. 173600*

Rob Lim, P.E., Chief of Design and Construction  
Design and Construction Department  
2950 Peralta Oaks Court  
Oakland, CA 94605

PROPOSALS DUE NO LATER THAN **5:00 PM, THURSDAY, JULY 2, 2015**. PROVIDE (5 COPIES) TO THE ATTENTION OF **NELSON LAM** AT THE ABOVE ADDRESS

Board of Directors

Whitney Dotson  
President  
Ward 1

Doug Siden  
Vice-President  
Ward 4

Beverly Lane  
Treasurer  
Ward 6

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Ward 2

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Diane Burgis  
Ward 7

Robert E. Doyle  
General Manager

## **1.0 PROJECT SUMMARY**

The East Bay Regional Park District invites proposals from interested professional firms to provide consulting services to conduct a water system study (Study) at Del Valle Regional Park in Livermore, California. The Study shall include analyzing the water usage at the existing facility including demands for both domestic, irrigation, and fire suppression water, evaluating the possibility of separating irrigation water from domestic water, comparing different types of domestic water treatment systems that can be upgraded to the “non-transient non-community” status, and providing recommendations on a water system that is best suited for the park. All as referenced below in greater details.

## **2.0 PROJECT INFORMATION**

### **2.1 PROJECT LOCATION**

The Del Valle Regional Park is located approximately ten miles south of Livermore on Del Valle Road. The park is located at the bottom of a valley, and surrounds Lake Del Valle. This approximately 5,200 acre regional park includes picnic and barbecue areas, swimming beaches, hiking trails, day use areas, overnight campsites, a marina and boat launch ramps, concessions providing food and supplies for visitors, restrooms and showers, maintenance facilities, and a permanent residence occupied by District staff.

### **2.2 PROJECT BACKGROUND**

Lake Del Valle is part of the State Water Project operated by the California Department of Water Resources and was originally constructed in 1968 to provide recreation, fish and wildlife enhancement, flood control for Alameda Creek, and storage for the South Bay Aqueduct. The reservoir has a capacity of 77,000 acre-feet and is fed by runoff from Arroyo Del Valle and from the Sacramento/San Joaquin River Delta. The reservoir serves the Zone 7 Water Agency, the Alameda County Water District, and the Santa Clara Water District.

The source of domestic and irrigation water is drawn from this lake, which is treated by a surface water treatment plant. Storage is provided by means of two ground level 300,000 gallon water tanks located on the hills above the park. The tanks are located at a sufficient elevation to supply the park by gravity. Domestic, irrigation, and fire suppression waters are supplied under the same distribution system. The chlorine residual of the system is maintained by purging the irrigation system near the end of the line.

The water treatment plant, originally constructed in 1976 to serve the park, has been experiencing operational and reliability problems and is near the end of its useful life. The District has undertaken a program to identify upgrades to the plant which will increase its performance and reliability. An engineering study was conducted in 2011 to evaluate options to upgrade this aging water treatment plant.

This water supply system is permitted by the California Department of Public Health (CDPH) as Water System No. 0100510, which is a “transient non-community” water system

(non-transient population under 25) operating under permit 020500P0100510 issued on September 5, 2000.

The amount of water the park can draw from the lake is restricted by the California Department of Water Resources, and the allocation fluctuates widely on an annual basis. This variation impacts the operation of the park.

### 2.3 PROJECT OBJECTIVES

The objectives of this Study are to assess domestic, irrigation, and fire suppression waters usage demands, understand the condition of the existing water system, develop and compare conceptual design alternatives to isolate irrigation system from domestic and to evaluate the impacts to the conveyance system and the water treatment plant, while improving the reliability, efficiency, and ease of operation and maintenance of the system.

### 2.4 PROJECT SCHEDULE

The anticipated project schedule is as follows:

<b>Milestone</b>	<b>Dependent/Duration</b>	<b>Approximate Timeline</b>
Notice to Proceed	Upon Board of Directors approval of selected consultant contract	September, 2015
Water Conveyance Base Map Survey	4 weeks after receipt of "Notice To Proceed"	October, 2015
Water Conveyance System Inspection Report	6 weeks after receipt of "Notice to Proceed"	November, 2015
Draft of Conceptual Design Alternatives Study Report	8 weeks after receipt of Conveyance System Inspection review comments from the District	January, 2016
2 <sup>nd</sup> Draft of Conceptual Design Alternatives Study Report	4 weeks after receipt of the Draft of Conceptual Design Alternatives Study Report review comments from the District	March, 2016
Final Conceptual Design Alternatives Study Report	4 weeks after receipt of the 2 <sup>nd</sup> Draft of Conceptual Design Alternatives Study Report review comments from the District	May, 2016

## 3.0 SCOPE OF REQUIRED SERVICES

### 3.1 GENERAL

The Scope of Services is not definitive and is intended only as a guide to illustrate the minimum project requirements. All prospective consultants are encouraged to present additional alternative scope to produce a more efficient approach to complete the Study.

1. Assess water demands for domestic, irrigation, and fire suppression usages based on ultimate built-out condition of the park; five existing restroom buildings are scheduled to be replaced with additional toilets and showers in the new buildings, service yard and visitor center are to be expanded in the future. The scopes of the expansions are being developed this time. Detail information on the expansions will be provided during the Study.
2. Prepare field survey base map to identify locations of, such as but not limited to, water mains, water laterals, fire hydrants, irrigation connections, valves, and service points. Irrigated areas shall also be identified.
3. Conduct field inspection and prepare a report on the existing conveyance system to understand its condition and life expectancy based on relevant industry inspection standard(s).
4. Develop conceptual design alternatives:
  - a. Keeping the existing mode of operation, upgrade existing water treatment plant to meet “non-transient non community” standards as defined by the California Department of Public Health, renovate existing conveyance system to enhance reliability and provide flexibility to feed treated water to west tank (shown as #8 on Drinking Water Distribution System Exhibit in the Attachments) independent of east tank (shown as #11 on Drinking Water Distribution System Exhibit in the Attachments) conveyance network.
  - b. An independent irrigation system drawing raw water from the lake, and utilizing the upgraded water treatment plant (identified above) for domestic only use.
  - c. An independent irrigation system drawing raw water from the lake, and constructing a new reduced capacity water treatment plant; identified as a direct filtration plant in the attached Engineering Report by HydroScience Engineers, Inc., dated April, 2011.
  - d. An independent irrigation system drawing raw water from the lake, and utilizing on-demand water treatment, such as package unit, or others, for domestic water at service points; abandoning the existing water treatment plant.
  - e. Optionally, an alternative developed by the consultant that’s more suitable in meeting the objectives of the Study.

The above alternatives should include a comparison analysis including environmental impacts, permitting needs, ease of maintenance and operation, and cost estimates. The cost estimate comparisons should include but not be limited to capital implementation, annual operation and maintenance, and based on engineering economic analysis of life cycle, rate of return, and...etc.

Licensing/certification requirements under current regulation for staff to operate and maintain the water treatment plant should also be discussed and compared for each of the treatment alternatives.

The conceptual design of the independent irrigation system shall be presented and incorporated into the report.

5. Recommend the best conceptual design alternative based on above analysis.

### 3.2 WORK ELEMENTS

3.2.1 Preliminary Investigation: attend orientation meeting in the field with District staff to gain understanding of current operation, assess water demands for domestic, irrigation usages, and fire suppression, perform field survey to identify locations of the water system.

3.2.2 Conveyance System Condition Inspection Report: following the field survey to identify the overall layout of the conveyance system, inspection shall be conducted at the critical and best representative locations to evaluate the overall condition of the existing conveyance system. Identify modes of failures and anticipated life expectancy if no improvements are made.

3.2.3 Initial Draft of Conceptual Design Alternatives Report: Conduct pre-conceptual design meeting with the District to discuss alternatives to be evaluated. Conduct presentation with the delivery of Initial Report to describe the alternatives, and document District feedback.

3.2.4 Second Draft of Conceptual Design Alternatives Report: Meet with the District to discuss and incorporate comments from District review of Initial Draft of Conceptual Design Alternatives Report.

3.2.5 Final Conceptual Design Alternatives Report: Meet with District to discuss and incorporate comments from District review of Second Draft of Conceptual Design Alternatives Report.

3.2.6 Each submittal of the Conceptual Design Alternatives report shall be

provided both electronically, and in hardcopies. Electronic report shall be in PDF format as a single file including all attachments, and delivered on a CD. Five (5) hardcopies shall be submitted.

3.3 ITEMS TO BE PROVIDED BY THE DISTRICT (Available at <http://www.ebparks.org/about/bids>, as Attachment)

3.3.1 Park Map

3.3.2 Record drawings of the original water system construction

3.3.3 Arroyo Del Valle Land Use Plan

3.3.4 Water Allotment and Water Treatment Plant Production Record

3.3.5 Engineering Report for Del Valle Water Treatment Plant Improvements

3.3.6 Drinking Water Distribution System Map

3.3.7 Service Point Inventory List

3.3.8 Turf Map and Rough Irrigation Demand Calculation

3.4 PROJECT DELIVERABLES

3.4.1 Water Conveyance Base Map Survey

3.4.2 Water Conveyance System Inspection Report

3.4.3 Draft of Conceptual Design Alternatives Study Report

3.4.4 Second Draft of Conceptual Design Alternatives Study Report

3.4.5 Final Conceptual Design Alternatives Study Report

3.5 PROJECT ADMINISTRATION

The selected consultant shall be required to perform the following project administrative duties:

3.5.1 Provide invoices by task that will present charges by staff member at agreed hourly rates, expense charges, and subconsultant charges. Support documentation for direct expenses and subconsultant charges shall be

attached.

## **4.0 SPECIFICATIONS FOR PROPOSAL**

### **4.1 REQUIRED INFORMATION**

The response to this Request for Proposal shall include, but need not be limited to, the following information:

- 4.1.1 Number, function and availability of personnel assigned to perform the work specified in Section 3.0. A project organization chart, including names of individuals and any subconsultants, must be included. No staffing substitutions shall be made without the District's approval.
- 4.1.2 Qualifications, including education, experience, certifications of key personnel who will be assigned to the project from start to finish, including the subconsultants. Expertise applicable to the work specified in Section 3.0 should be emphasized.
- 4.1.3 The prospective consultant's anticipated approach to the work, including:
  - 4.1.3.1 A summary of the methodology to be used for the work specified in Section 3.0.
  - 4.1.3.2 A discussion of the methods of management, quality control, and coordination that will be used to accomplish the work schedule for the tasks delineated in Section 3.0.
  - 4.1.3.3 An estimate of the level of effort (in number of hours) required.
- 4.1.4 A statement of past work performed on projects of a similar nature that would indicate qualifications of the prospective consultant. Supply names of clients, client's contact person and telephone number, type of projects, and description of prospective consultant's activities. The District reserves the right to contact the prospective consultant's previous clients at any time.
- 4.1.5 A detailed statement explaining any provision in Sections 3.0 and 4.0 that the prospective consultant chooses not to address in the proposal.
- 4.1.6 An hourly rate schedule for each classification and subconsultant proposed.
- 4.1.7 A copy of representative sample study.

- 4.2 No reimbursement will be made by the District for any cost incurred by a prospective consultant for the preparation of a response to this Request for Proposals.

## **5.0 SUBMITTAL OF PROPOSAL**

- 5.1 Five (5) copies of the proposal shall be submitted in writing.
- 5.2 The proposal shall be signed by an officer, or officers, authorized to execute legal documents on behalf of the prospective consultant.

## **6.0 PARK DISTRICT REQUIREMENTS**

### **6.1 INSURANCE REQUIREMENT**

The selected consultant will be required to carry insurance in accordance with the requirements listed in the District Standard Contract included in Exhibit A.

## **7.0 PRE-PROPOSAL ACTIVITIES**

### **7.1 PRE-PROPOSAL MEETING & SITE VISIT**

A non-mandatory informational pre-proposal meeting will be held on **Wednesday, June 10, 2015 at 10:00 a.m.** at the Del Valle Regional Park Service Yard, 7000 Del Valle Road, Livermore, CA 94550.

A pre-proposal site visit will be held immediately after the pre-proposal meeting on June 10, 2015. Prospective consultants are encouraged to attend.

**(Inform the gate attendant at park entrance of this meeting to waive entry fee and receive directions to the meeting location)**

### **7.2 QUESTIONS CONCERNING PROPOSAL REQUIREMENTS**

Questions regarding the RFP must be submitted by email and directed to:

East Bay Regional Park District  
Design and Construction Department  
2950 Peralta Oaks Court  
Oakland, California, 94605  
Attn: Nelson Lam  
email: [nlam@ebparks.org](mailto:nlam@ebparks.org)

Questions shall be received no later than **5pm, Friday, June 19, 2015.**

The Park District's responses will be released as an addendum as necessary. The Park District reserves the right to summarize, and select questions for the addendum. Any addenda will be posted on District website, under <http://www.ebparcs.org/about/bids>, on **Friday, June 26, 2015**. Proposers shall regularly check the District's website for any posted addenda.

## **8.0 ADDITIONAL SERVICES THAT MAY BE REQUIRED**

The selected consultant may be required to provide additional services at the discretion of the District. A contract change will be negotiated at the time it is determined by the District that any additional services are required. This notification is made to inform prospective consultants of this option by the District.

## **9.0 EVALUATION CRITERIA**

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

### **9.1. EXPERIENCE (40 points)**

- Similar, past, recently completed, or on-going projects that will substantiate experience.
- Prior experience and ability to work with public agency staff, jurisdictional agencies, and addressing the various interests in developing a successful Study.

### **9.2 QUALIFICATIONS AND ORGANIZATION (35 points)**

- Professional background and qualifications of firm and team members.
- Current workload.
- Available staff.
- Resources.
- Capacity and flexibility to meet schedules, including any unexpected work.
- Ability to perform on short notice and under time constraints.
- Cost control procedures in a similar Study.
- Capabilities that distinguish you from other firms.

### **9.3 APPROACH (20 points)**

- Understanding of the project, the project's complexities and challenges, and the Study's mission and goals.
- Awareness of potential problems and providing possible solutions.
- Understanding of the nature and extent of the services required and a specific outline of how the work will be performed.

### **9.4 OTHER FACTORS (5 points)**

Presentation, completeness, clarity, organization, and responsiveness of RFP.

## 10.0 SELECTION PROCESS

A consultant selection committee will assess and rate all eligible written proposals based on the criteria under Section 9. The proposals will be reviewed and the top rated firms will be notified by **FRIDAY, July 17, 2015**. Consultant interviews are tentatively scheduled to occur **in the week of July 27, 2015**; however, these dates are subject to change.

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

### REJECTION RIGHTS

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

# EXHIBIT A

**CONTRACT FOR SERVICES**  
(Licensed Professionals)

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, between the East Bay Regional Park District (“District”) and \_\_\_\_\_, hereinafter referred to as “Consultant”.

**RECITALS**

- A. District desires to engage the services of Consultant to provide various services herein described; and
- B. Consultant desires to perform such services for District;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Term.

The term of this Agreement shall commence \_\_\_\_\_ and shall end on \_\_\_\_\_. The General Manager or his/her designee may extend the term of this Agreement by providing written notice to Consultant. Time is of the essence in the performance of this Agreement.

2. Scope of the Contract.

During the term of this Agreement, Consultant shall provide all labor, materials, tools equipment and services as documented in Exhibit A – Scope of Work attached hereto and made a part hereof.

3. Standard of Care.

- a. Standard of Care. Consultant agrees to perform the work in a professional manner and shall conform to the high standards of care and skill generally recognized as being employed by professionals in the same discipline as Consultant in the State of California. Consultant warrants and represents that all of the personnel, employees, and subconsultants performing the work under this Agreement shall have sufficient skill and experience to perform the services assigned to them and that its employees and subconsultants have all licenses, permits, and qualifications required to perform the services under this Agreement.
- b. Subconsultants. Consultant is as responsible for the performance of its subconsultants as it would be if it had rendered these services itself. Consultant shall not subcontract any portion of the performance contemplated and provided for in this Agreement, other than to the subconsultants noted in Consultant’s proposal, without prior written approval of the District. In the event that District, in its sole discretion, desires the reassignment of

any persons performing work under this Agreement, Consultant shall, upon receiving notice from the District, immediately reassign such person or persons.

- c. Materials. Any construction materials and manufactured items called for by Consultant's documents shall be currently available and suitable for their intended use to achieve design intent.

4. Representatives.

The representative of Consultant who will make any presentations, attend any public hearings, supervise all service, and be the first point of contact in providing all services under this Agreement shall be [REDACTED]. The representative of District who will monitor this Agreement and be responsible for its interpretation and/or modification shall be [REDACTED].

5. District-Provided Studies or Surveys.

Consultant shall make a recommendation to the District regarding the completeness or sufficiency of any survey or specialized study provided to Consultant, or the need for any study or survey that the Consultant believes is required for the Project that is not included in the Consultant's Scope of Work. Consultant may rely on the information provided by District but only to the extent such reliance is consistent with Consultant's obligations under this Agreement.

6. Acceptance.

The District's review, approval or acceptance of Consultant's work shall not relieve Consultant from responsibility for error and omissions in Consultant's work. Consultant shall, at no cost to District, satisfactorily correct any and all errors, omissions, deficiencies, or conflicts in the documents prepared by Consultant promptly upon discovery or notice. The obligations of Consultant to correct defective or nonconforming work shall not limit any other obligations of Consultant.

7. Time of Performance.

Consultant acknowledges that all time limits stated in this Agreement are of the utmost importance to District. Consultant's work shall be scheduled and performed to meet agreed-upon deadlines, as set forth in the Project Schedule in Exhibit A-1 (unless not necessary and covered in Exhibit A). Consultant shall provide and maintain Project staffing levels as necessary to perform the services under this Agreement within the time provided in the Project Schedule. The total time scheduled for full completion of Consultant's services shall not exceed the durations shown in the Project Schedule, unless mutually agreed upon in writing by Consultant and District.

8. Payment.

District shall compensate Consultant for services performed by Consultant as set forth in the rate

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

Consultant shall submit his/her compensable hours and reimbursable expenses monthly, and District shall make payments on the approved reimbursable expenses within thirty (30) days, provided that in no event shall the amount paid Consultant exceed that percentage of the maximum total compensation and expenses payable under this Agreement ( \$ \_\_\_\_\_ ) which percentage equals the percentage of Consultant's work complete at the time. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided in this Agreement, unless this Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

#### 9. Termination of Agreement for Convenience.

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

#### 10. Consultant as Independent Contractor.

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Consultant shall be, and is, an independent contractor, and is not an agent or employee of District. Consultant has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting him/her in the performance of his/her services hereunder. Consultant shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding, and all other regulations governing such matters, and shall be solely responsible for his/her own acts and those of his/her subordinates, sub-consultants, agents and employees.

#### 11. Brokers: Compliance with Federal, State and Municipal Statutes.

Consultant warrants that he/she has not employed nor retained any broker, agent, company or person other than bona fide, full-time employees of Consultant working solely for Consultant, to solicit or secure this Agreement, and that he/she has not paid nor agreed to pay any broker, agent,

company, nor persons other than bona fide employees any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of this Agreement. Consultant shall indemnify, defend, protect and hold harmless District, its directors, officers and employees from such claims.

#### 12. Compliance with Laws.

Consultant shall comply with all federal, state and local laws and regulations applicable to his/her work hereunder. Consultant shall use its professional judgment and expertise to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of Project. Where applicable, Consultant shall comply with all mitigation measures identified in the Project's environmental review documents.

#### 13. Grant Funding.

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity or public grant program, Consultant and any subconsultants shall comply with all applicable rules and regulations to which District is bound by the terms of such fiscal assistance program.

#### 14. Nondiscrimination.

During the performance of this Agreement, Consultant and Consultant's sub-consultants will not discriminate against any employee or qualified applicant for employment on the basis of any legally protected classification including sex, race, creed, color, ancestry, religion, national origin or sexual orientation. The Consultant will take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to sex, race, creed, color ancestry, religion, national origin or sexual orientation or any other legally protected classifications. This equal treatment shall apply but not be limited to the following: upgrade, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeships.

#### 15. Labor Code/Prevailing Wages.

To the extent applicable, Consultant and Consultant's subconsultants shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation, and payment of prevailing wages as determined by the Director of California Department of Industrial Relations. Consultant shall post a copy of the prevailing rate of per diem wages at each job site. Consultant shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or any subconsultant. Consultant shall defend, indemnify and hold harmless the District for any costs, claims and expenses arising from the failure of Consultant or Consultant's subconsultants to pay applicable prevailing wage rates.

## 16. Indemnification.

To the fullest extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, Consultant shall indemnify, hold harmless, defend (with counsel reasonably acceptable to District) and protect District, its officers, directors, agents, employees, and invitees from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including without limitation expert and attorneys' fees and costs of investigation, whether or not involving a third party claim, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its employees, subconsultants, or agents in the performance of services under this Agreement. Consultant shall have the duty to defend the District if there is any possible obligation to indemnify the District. The District's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligations under this section. The provisions of this section shall survive the termination or expiration of this Agreement.

With respect to third party claims against Consultant, Consultant waives any and all rights of any express or implied indemnity against the District.

## 17. Insurance.

- a. Consultant shall procure and keep in force during the term of this Agreement, at Consultant's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company and which are acceptable to District. Consultant shall, fifteen (15) days prior to the commencement of this Agreement and prior to the termination of any policy, supply District with a certificate, on the District's certificate of insurance form, showing that such insurance is in force.
  - (1) Workers' Compensation as required by law and Employer's Liability with limits of \$500,000 per occurrence (if employees are to be hired).
  - (2) Commercial General Liability ("CGL") (bodily injury and property damage) on an occurrence basis in an amount not less than \$1 million per occurrence and at least \$2 million in the aggregate, including premises and operations (including off-site operations), blanket contractual liability, broad form property damage, products and completed operations, owner's and Consultant's protective liability, (and if one or more of the following is applicable) personal injury, coverage for explosion, collapse and underground hazards, non-owned watercraft protection and indemnity, U.S. longshore and harbor workers coverage, pollution liability, liquor liability, and saddle animal liability.
  - (3) Automobile Liability (bodily injury and property damage) in an amount not less than \$1 million per occurrence extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under Agreement.

- (4) Professional Liability Insurance (errors and omissions), including contractual liability, in an amount not less than \$1 million per occurrence and \$2 million in the aggregate. Such coverage may be written on a claims-made basis.
- b. Each of the above policies must contain a provision that the policy shall not be cancelled or the terms or conditions thereof materially changed without thirty (30) days' prior written notice to District. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Consultant to furnish the required insurance during the term of this Agreement.
  - c. Upon written request by District, the insurer or his/her agent will furnish a copy of any policy cited above, certified to be a true and complete copy of the original.
  - d. The policies listed under a(1) above shall contain a waiver of subrogation in favor of the District.
  - e. The policies listed under a(2) and a(3) above shall name the District as an additional insured with respect to the operations performed under this Agreement.
  - f. The coverage afforded on behalf of District under a(2), a(3) and a(4) above shall be primary insurance and any other insurance available to District under any other policies shall be excess over the insurance outlined above.
  - g. Upon written request of District, annual loss reports will be supplied to District. The loss report will include a list of all incidents/claims submitted against the insurance company and the estimated reserved and paid value of the claims.
  - h. District reserves the right to require reasonable increases in the limits of coverage from time to time during the term of this Agreement.
  - i. Policies should be written on an occurrence basis. Only by special permission of District may a claims-made form be used. The retroactive date on any policy written on a claims-made basis shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy, provided that the extended reporting or discovery period shall not be less than thirty-six (36) months following expiration of such policy.
  - j. Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Consultant shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement.
  - k. Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein.

1. In case of the breach of any provision of this section, District may, in addition to any other remedies it may have, at District's option, take out and maintain, at the expense of Consultant, such types of insurance in the name of the Consultant as District may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Consultant under this Agreement or may demand Consultant to promptly reimburse the District.

#### 18. Default.

In the event that Consultant defaults in any obligation of Consultant under this Agreement, or Consultant defaults in the performance of any of the terms and conditions of this Agreement, and Consultant does not cure its failure to perform to the satisfaction of the District within ten (10) days (or such time authorized by the District in writing) after written notice by the District, District may, at its option, declare this Agreement to be in default and, at any time thereafter, may do any one or more of the following:

- a. Enforce performance of the Agreement by Consultant.
- b. Terminate Consultant's services under this Agreement.
- c. Perform the obligations of the Consultant, whereupon Consultant shall reimburse District for any amounts paid or expenses incurred by District, or pay District any expenses and/or damages incurred by District in the performance of such obligations, District's increased cost in performing the work, together with interest at the maximum rate of interest allowed by law on demand by District. District at its option may deduct any sum due to District from sums to be paid by District to Consultant.
- d. The above remedies are in addition to any other remedies at law or equity District may have. Consultant shall pay or reimburse District for all of District's costs and expenses, including reasonable attorneys' fees incurred in enforcing its rights hereunder.

#### 19. Consultants Books and Records/Audit.

Consultant and Consultant's subconsultants, if any, shall maintain any and all ledgers, books of account, invoices, vouchers, and any other records or documents pertaining to charges for services, expenditures and disbursements to District under this Agreement for a minimum of three (3) years, or such longer period required by law, from the date of final payment to Consultant by District. Any records or documents required to be maintained under this section shall be made available to District for inspection and copying upon request. In accordance with California Government Code Section 8546.7, if the Not to Exceed Amount exceeds ten thousand dollars (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.



24. Digital Files.

In addition to any other format required in the Scope of Work, Consultant shall provide copies of all deliverables on compact disk in a digital format. Files shall be compatible with software used by the District.

25. Confidential Information.

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other documents or data either created by or provided to Consultant in connection with the performance of this Agreement shall be treated as confidential by Consultant. Such materials shall not, without the prior written consent of District, be used by Consultant for any purposes other than the performance of the services. Such materials shall not be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is generally known, or has become known, to the related industry shall be deemed confidential.

26. Governing Law.

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

27. No Waiver.

The waiver of any breach of a term or requirement of this Agreement does not constitute a waiver of any other breach of that term or requirement or any other term or requirement of this Agreement.

28. Conflicts of Interest.

Consultant declares that Consultant has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services hereunder. Consultant further declares that in the performance of this Agreement no subconsultant or person having such interest shall be employed. No officers or employee of the District with responsibility for review, approval of or carrying out of the work to be performed shall be hired by Consultant during the term of this Agreement.

29. Entire Agreement.

This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior, contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or modified except by written agreement of all the parties. In the event that the terms or conditions of any Exhibits to this Agreement conflict, directly or indirectly, with this Agreement, the

provisions of this Agreement shall control.

30. Severability.

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

31. Counterparts.

This Agreement may be executed in counterparts, and/or by fax, and/or by scan and email, and all so executed shall constitute one agreement which shall be binding upon all parties hereto, notwithstanding that the signatures of all parties do not appear on the same page. A facsimile signature and/or scanned and emailed signature shall be binding upon any party as though it were an original.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized as of the day, month, and year first hereinabove written.

**EAST BAY REGIONAL PARK DISTRICT**

**CONSULTANT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_