

Project
Consultant
Date

CONTRACT FOR SERVICES

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 "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:

I. 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

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

b. 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 subcontractors performing the work under this Agreement shall have sufficient skill and experience to perform the services assigned to them and that its employees and subcontractors have all licenses, permits, and qualifications required to perform the services under this Agreement. 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.

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c. Representatives. The representative of Consultant who will make all presentations, attend public hearings and supervise all service shall be: _____ . 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: Consultant's work shall be scheduled and performed to meet agreed-upon deadlines.

b. 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 expenses incurred as part of this Agreement will be reimbursed at actual cost. 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 invoices for his/her compensable hours/work product 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 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.

4. 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 30 days following submission of a final statement by Consultant.

5. 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-contractors, agents and employees.

6. 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.

7. Compliance with Laws. Consultant shall comply with all federal, state and local laws and regulations applicable to his/her work hereunder.

8. Nondiscrimination.

During the performance of this Agreement, Consultant and Consultant's sub-contractors 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.

9. Labor Code/Prevailing Wages.

To the extent applicable, Consultant and Consultant's subcontractors 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 subcontractor. Consultant shall defend, indemnify and hold harmless the District for any costs, claims and expenses arising from the failure of Consultant or Consultant's subcontractors to pay applicable prevailing wage rates.

10. Indemnification

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, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its employees, subcontractors, or agents in the performance of services under this Agreement. 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.

11. 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, 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

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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 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 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 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.

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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.

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. 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.

12. 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 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;

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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.

13. Consultants Books and Records/Audit.

Consultant 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 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.

14. Assignment

Consultant shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any persons or entities whatsoever without the prior written consent of District and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

15. 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

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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.

16. 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

CONSULTANT:

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

17. Ownership of Work.

All reports, data, maps, models, charts, studies, surveys, photographs, plans, specifications, reports, fie 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 subcontractor 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.

23. 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

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terms or conditions of any Exhibits to this Agreement conflict, directly or indirectly, with this Agreement, the provisions of this Agreement shall control.

24. Severability.

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

EBRPD

Consultant

By _____
Chief or AGM or GM

By _____
Consultant