

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: _____