



REQUEST FOR PROPOSALS (RFP) TO PROVIDE

A STRATEGIC PLAN FOR THE EAST BAY REGIONAL PARK DISTRICT'S FINANCE DEPARTMENT

KEY DATES

*Issued: January 17, 2023*

*Proposals Due: February 10, 2023 at 9am*

**Contact**

Deborah Spaulding, Assistant Finance Officer  
East Bay Regional Park District

[dspaulding@ebparks.org](mailto:dspaulding@ebparks.org)

### **Project Description**

The East Bay Regional Park District (Park District) is searching for a firm to develop a Strategic Plan to help the Park District's Finance Department perform at its peak efficiency and effectiveness, meeting the Park District needs related to: providing efficient best-practice business process, providing financial information to support short-term and long-term decision-making, achieving timely financial and budgetary reporting, ensuring transparent processes, providing effective purchasing and payroll processing, providing effective cash management, and providing excellent customer service.

The District seeks an experienced firm specializing in performing evaluations of local government financial operations. The consulting firm must be highly knowledgeable about government financial management, accounting, and reporting principles, standards and the application of these standards in practice.

The engagement of staff and leadership through this process is critical. The firm will:

- Work with the CFO and Assistant Finance Officers to develop and finalize the strategic planning process.
- Define roles for the Executive Team, Finance Department staff, and other key staff.
- Develop a work plan to guide project activities and communication.
- Conduct an orientation for key stakeholders on project goals and potential outcomes.
- Conduct interviews and gather data to assess the current state of the Finance function.
- Develop recommendations including short-term and long-term goals and objectives for the Finance function.
- Be available for presentations to the Finance Staff, Executive Team or Board of Directors regarding the strategic plan developed through this project.

This RFP provides additional introductory information, describes the general scope of work, sets forth proposal requirements, and outlines selection procedures.

The proposed timeline for this contract is included in this RFP, and the entire project is expected to be completed within six months. Proposers must be able to guarantee pricing for the term of the contract.

### **East Bay Regional Park District Background**

The Park District was incorporated in 1934 as a California Special District and operates under Sections 5500-5595 of the Public Resource Code of the State of California. It is a legally separate and fiscally independent entity from other government agencies, with capacity and authority to issue its own debt. The Park District's purpose is to acquire, develop, and maintain parks, recreation and open space lands within Alameda and Contra Costa counties.

The Park District manages a system of parklands, including almost 125,000 acres in 73 parks, and over 1,250 miles of trails. It is governed by a seven-member Board of Directors, elected by voters in their respective wards and serving a four-year term. The Park District has over 965 budgeted full-time equivalent positions (FTEs) and total staffing exceeds 1,000 employees during the peak summer months. The Park District’s 2023 Operating Budget is approximately \$330 million. The Park District maintains strong fiscal practices, including maintaining a General Fund Reserve fund balance policy with a target of 32% of annual revenues. The Park District’s Budget and Annual Comprehensive Financial Report (ACFR) may be viewed on the Park District’s website: [www.ebparks.org](http://www.ebparks.org).

Park District staff are included in the following eight divisions:

General Manager’s Office (17 FTE)
Operations (541 FTE)
Public Safety (197 FTE)
Acquisition, Stewardship & Development (90 FTE)
Finance & Management Services (54 FTE)
Human Resources (21 FTE)
Public Affairs (27 FTE)
Legal & Risk (14 FTE)

The Finance Department provides financial services to all divisions. Staff prepare their own timecards, purchase requests, budget requests and budget transfer requests and have could run budget and financial reports from the Park District’s ERP System. However, the processing of those purchasing, payroll and budgeting transactions is done centrally by the Finance Department.

**East Bay Regional Park District Finance Department**

The Finance Department is a part of the Finance & Management Services Division. The Assistant General Manager/CFO of the Finance & Management Services oversees the Finance Department with the help of two Assistant Finance Officers, and a third Assistant Finance Officer serves in Management Services. Within the Finance Department, 23 staff work in five units:

- Accounts Payable - 4 FTE (Supervisor, 2 Accounting Specialist & 2 Accounting Technicians)
- Budget & Projects – 2 FTE (Budget Manager, 1 Administrative Analyst II)
- General Ledger & Accounts Receivable – 4 FTE (Finance Manager, 2 Accountants, 1 Accounting Technician)
- Internal Audit – 2 FTE (Audit Manager, 1 Accountant)
- Payroll – 4 FTE (Supervisor, 1 Accounting Specialist & 3 Accounting Technicians).

An organizational chart of the entire Park District, the Finance & Management Services Division, and the Finance Department is included as Attachment A.

It is important to note that certain functional areas that might be included in a typical Finance Department reside in other functional areas of the Park Districts.

- Grants Department (3 FTE - Grants Manager, 1 Accountant, 1 Accounting Technician).
- Business Services Department (20 FTE includes Business Services, Revenue Services, Reservations, Reservable Facilities)

Note that EBRPD does not collect taxes directly. The Park District also does not have enterprise funds. A Cost Allocation Plan / Fee Study is a separate project currently underway at the Park District.

### **ERP Software**

The Park District uses the cloud-based Central Square Finance Enterprise ERP System, (previously known as OneSolution, or IFAS). The Park District has been using this software since 2000, although it has been upgraded regularly. The following modules are in use at the Park District:

- Accounts Payable
- Accounts Receivable
- Bank Reconciliation
- Budgeting
- Fixed Assets
- General Ledger
- Human Resources
- Payroll
- Position Budgeting
- Purchasing / Encumbrances
- Project Accounting
- Stores Inventory (Central Stores)
- Reports (two modules: Click Drag & Drill and Cognos).

The Finance Department is not considering changing its ERP System at this time, and the Strategic Plan should not include a review of the ERP System. Note that the Information Systems Department is currently conducting its own five-year strategic plan which will address software needs for the Finance Department.

### **Scope of Services Required**

The scope of services required for the Finance Department Strategic Plans include:

#### Phase One – Discovery

- Conduct stakeholder interviews and focus groups with key leaders and constituencies, including executive leadership, Finance staff, user groups of key stakeholders.
- Review existing Policies & Procedures and internal controls.
- Review workload and number of transactions vs. staffing levels, external and internal resources.

#### Phase Two – Develop & Discuss

- Organizational Overview – assessment of the strengths, weaknesses and competencies of the Finance Department.
- Create Preliminary Vision Statement for Finance Department.
- Recommend changes or improvements to existing finance policies & procedures, and optimal timelines for annual financial reporting, budgeting and investment reporting.
- Create short-term and long-term goals and objectives, the strategies and tactics to achieve those goals, and a prioritization of these recommendations.
- Recommend changes to staffing levels and organizational structure.

#### Phase Three – Documentation & Vetting

Draft strategic planning document for review and presentation to Finance Leadership and Executive Team. At a minimum, the consultant will provide the following deliverables:

1. Draft Strategic Plan document.
2. Proposed alternative structures of the Finance Department with ideal staffing recommendations to improve efficiency and communication; and estimates of costs / cost savings upon implementation.
3. An implementation timeline and alternative implementation timelines, such as a five-year or ten-year plan and related costs.
4. Recommendations for improved efficiency and effectiveness of the purchasing function at the Park District and estimates of costs to implement.
5. Executive summary of the draft Strategic Plan; and
6. Recommended package of materials suitable for distribution and outreach.

#### Phase Four – Launch

Produce final strategic plan with defined milestones and benchmarks that the Finance Department leadership team can use to manage activities and measure progress.

*Excluded from the scope of this RFP are:*

- *Recommendations for a new ERP System*

**RFP Timeline**

Process Step	Proposed Timeline (2023)
RFP issued	Tuesday January 17
Questions from potential firms due	Monday, January 23
Email stating interest sent to <a href="mailto:dspaulding@ebparks.org">dspaulding@ebparks.org</a>	Monday, January 23
Responses to questions sent to all interested parties	Friday, January 27
Proposal Due Date	9am on Friday, February 10
Interviews of Short-Listed Firms	February 13 - 15
Contract Recommendation	February 22 Finance Committee
Contract Awarded	March 7 Board meeting
Work Begins	March 13 <sup>th</sup>
Work Concludes	August 31st

**Proposal Submission Requirements**

Responses to this RFP should be sent via email only [dspaulding@ebparks.org](mailto:dspaulding@ebparks.org) by 9am on Friday February 10<sup>th</sup> PST. Please be sure that the responses to questions are in Word format (not a read-only format). Any supplemental exhibits may be provided in PDF format.

**Minimum Requirements**

**Proposers must confirm that they will be able to meet the conditions and minimum requirements of proposers by signing and submitting the last page of proposal.**

**Selection Process**

The following specific criteria and the points for each criterion, for a total of 100 points, will be used in evaluating and rating the Proposals to determine firms invited to interview:

- EXPERIENCE: 40 points
- QUALIFICATIONS AND ORGANIZATION: 35 points
- APPROACH: 20 points
- OTHER FACTORS: 5 points

*“Other factors” include presentation, completeness, clarity, and responsiveness*

### **Interview of Short-Listed Firms**

A screening committee will review and evaluate the submittals and will select firms for interview by a selection committee, comprised of various District representatives. The shortlisted firms may be requested to provide additional written information (“proposal”) prior to the interview. Short-listed firms will be notified in writing via email regarding next steps in the interview process.

The interviews will last approximately 1 hour, with the time allocated between the consultant’s presentation and a question & answer period.

The firms should be prepared to discuss at the interview their experience, qualifications, approach, available resources, and other pertinent information that would distinguish them. Interviews will be conducted via a Zoom meeting.

### **Contract Negotiations and Award**

The completion of the interview process will result in the firms being numerically ranked. Negotiations will commence with the highest ranked firm. Should the District and the firm not be able to reach an agreement as to contract terms within a reasonable time frame, the District may terminate the negotiations and begin negotiations with the firm that is next in line, and proceed down the list as necessary.

Upon successful completion of the negotiations, a recommendation by District staff to the Board of Directors will be made to authorize award of the contract to the selected firm.

The District’s standard professional services agreement is included in this RFP as Attachment B. The selected firm will be required to enter into a contract consistent with the terms and conditions of the standard agreement.

### **Proposal Submission**

Proposals should contain the following information:

- Cover Letter introducing the firm and the individual who will be the primary contact person. Proposed statement of work, project approach, and plan to accomplish the work. Describe in detail the project approach and methodology in managing and implementing a project of this size and scope and experience in developing and supporting the implementation of a comprehensive strategic plan. Key elements include (1) project understanding; (2) project methodology and deliverables (3) roles and responsibilities; and (4) project management.
- Description of the firm’s qualifications.

- Qualifications of individuals that will be engaged in the strategic planning services.
- Three references should be attached to the proposal, with client names, contact persons, and phone numbers. References should be of other Finance Departments.
- Detailed description of approach and strategy for each phase of the project, including timeline.
- Description of two or three projects of a similar scope, magnitude, and complexity to the work described in this solicitation.
- Pricing narrative with a proposed fee schedule for each phase of the project, including any incidental or travel fee estimates with a requirement that the proposer will include at least one on-site meeting / presentation.
- Signature of an authorized individual to bind the firm.

**Proposed Fee Schedule: (in Excel)**

The Park District will accept fee proposals that are fixed and transaction-based (i.e. itemized). The proposer must indicate any exceptions to a bundled/fixed fee.

All terms of the fee proposal must be guaranteed for the duration of the contract (expected to be six months).

List any assumptions you have made in the fees proposed. Clearly identify any assumptions which, if changed, might alter your fee proposal. *For example, would fees differ if the number of individual persons or groups required to be interviewed were greater than 50.*



**Declarations and Disclosure:**

**Sign at the bottom of this page to confirm the following statements:**

You confirm that all fees, direct and indirect, associated with any aspect of the services proposed have been disclosed.

You declare that no undue influence or pressure, including coercion, confidential financial arrangement, or financial inducement, is used against or in concert with any officer or employee of the District in connection with the award of the contract. No officer or employee of the District will receive compensation, directly or indirectly, from the respondent, or from any officer, employee or agent of the vendor, in connection with the award of the contract which will be executed as a result of this RFP. Violation of this section shall be a material breach of the contract entitling the District to any and all remedies by law or in equity.

You declare no professional or personal financial interest, which could be a possible conflict of interest in transacting with the District. The District also requires the firm to further disclose arrangements to derive additional compensation from various service providers and subcontractors that may be engaged pursuant to implementation of their proposed strategic plan, if applicable. The District may reject a Proposal from any firm that, in the District's opinion, would be in a conflict of interest if the firm is awarded a contract.

You affirm that your firm will be able to meet the conditions specified in the District's Professional Services Contract (Appendix B) or provide your proposed modifications to the contract.

You affirm that your firm has a minimum of three local government clients, and has demonstrated experience with providing services described in Scope of Services Required, within one year of the date of this RFP.

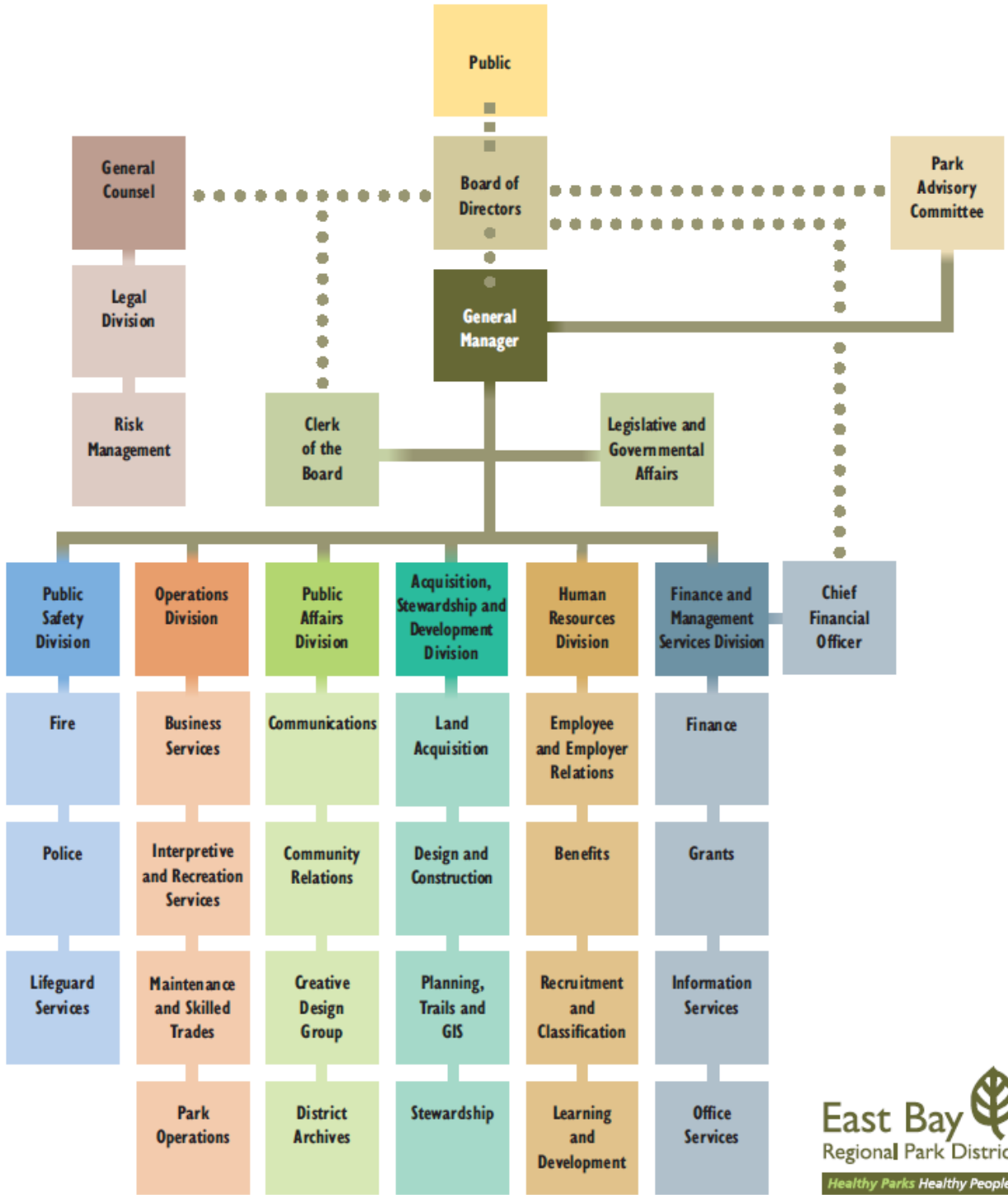
Signature of person responsible for responding to this RFP

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

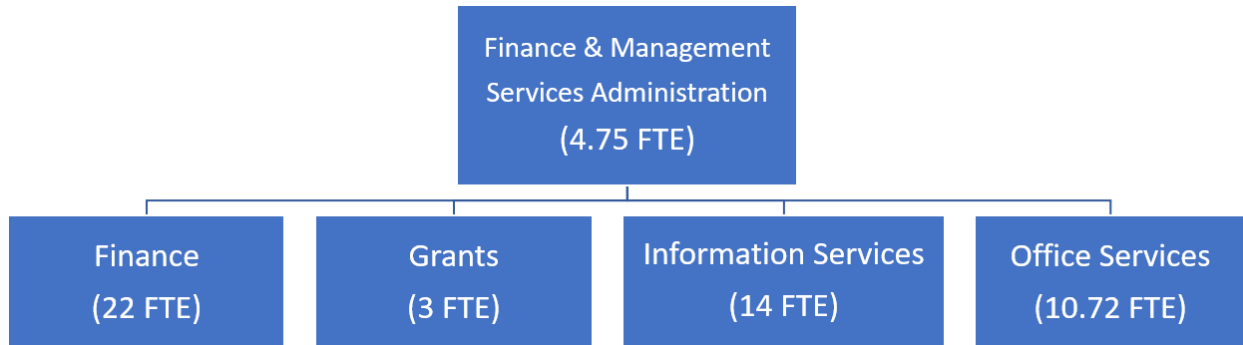
EAST BAY REGIONAL PARK DISTRICT PROFILE

EAST BAY REGIONAL PARK DISTRICT ORGANIZATION CHART

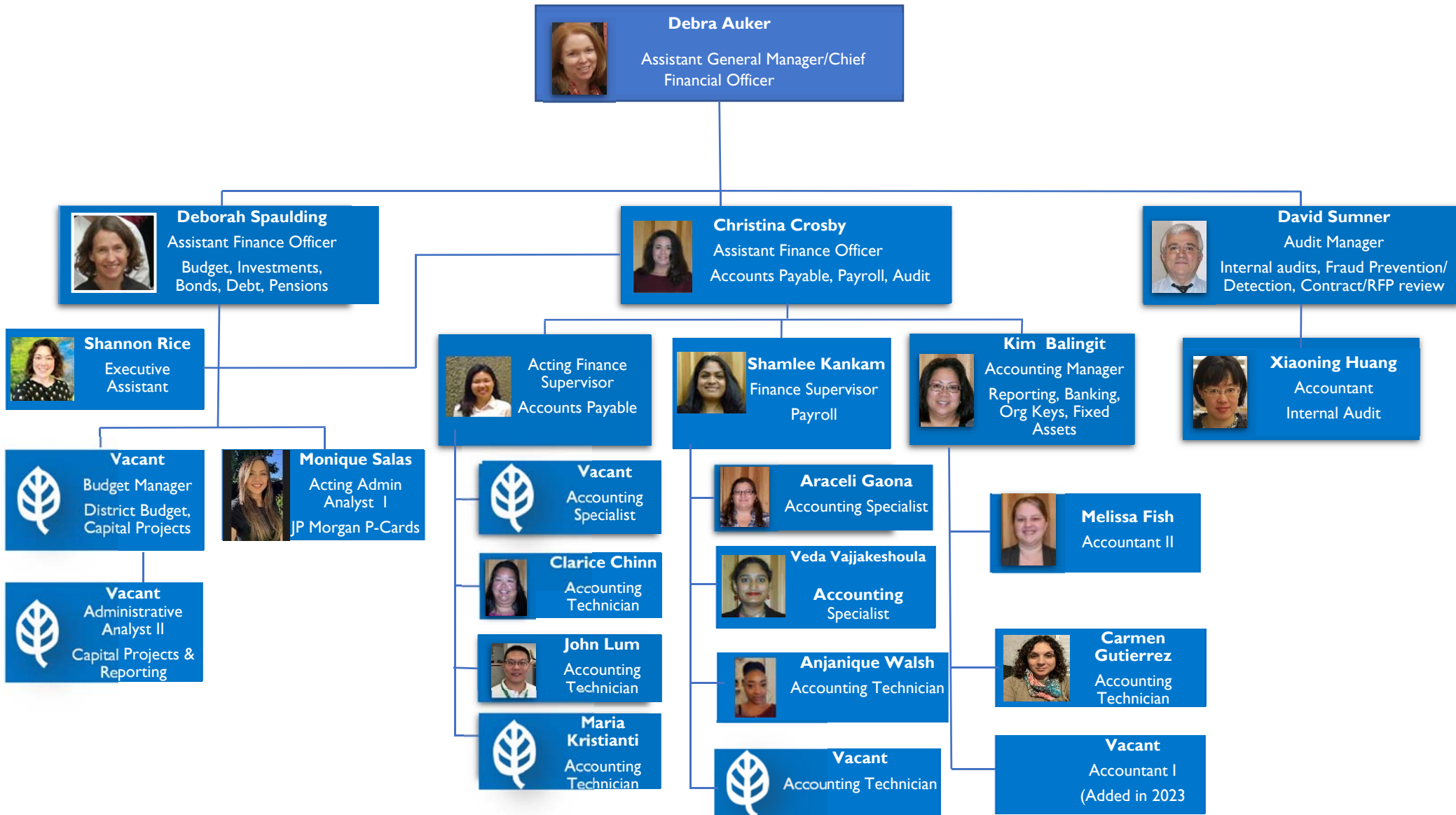


Elected by Ward: ■ ■ ■  
 Board of Directors Appointees: ● ● ●  
 Staff Supervision/Coordination: ———

# Finance & Management Services Simple Organization Chart



# Finance Department Organizational Chart



**CONTRACT FOR SERVICES**  
(Licensed Professionals)

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

**RECITALS**

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

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

1. Term.

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

2. Scope of Work.

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

3. Standard of Care.

- a. Standard of Care. Consultant agrees to perform the work in a professional manner and in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. Consultant warrants and represents that all of the personnel, employees, and subconsultants performing the work under this Agreement shall have sufficient skill and experience to perform the services assigned to them and that its employees and subconsultants have all licenses, permits, and qualifications required to perform the services under this Agreement.
- b. Subconsultants. Consultant is as responsible for the performance of its subconsultants as it would be if it had rendered these services itself. Consultant shall not subcontract any portion of the performance contemplated and provided for in this Agreement, other than

to the subconsultants noted in Consultant's proposal, without prior written approval of the District. In the event that District, in its sole discretion, desires the reassignment of any persons performing work under this Agreement, Consultant shall, upon receiving notice from the District, immediately reassign such person or persons.

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

4. Representatives.

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

5. District-Provided Studies or Surveys.

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

6. Acceptance.

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

7. Time of Performance.

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

## 8. Payment.

District hereby agrees to pay Consultant a sum not to exceed \$ \_\_\_\_\_, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and the Scope of Work, attached as **Exhibit A**, or Consultant's compensation rate schedule attached as **Exhibit B**, regarding the amount of compensation, the text of the Agreement shall prevail. All reimbursable expenses incurred by Consultant as part of this Agreement will be reimbursed at actual cost and in no event shall expenses be advanced by District to Consultant. Such compensation shall be full payment to Consultant (including expenses) for performance of said services; provided, however, that in no event shall the sum of total compensation paid Consultant and reimbursable expense exceed the amount not to exceed amount stated in this section without a written amendment signed by both Parties.

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

## 9. Invoices

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

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

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

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

Consultant shall submit his/her compensable hours and reimbursable expenses monthly, and District shall make payments on the approved compensation and reimbursable expenses within forty-five (45) days. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided in this Agreement, unless this Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

#### 10. Termination of Agreement for Convenience.

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

#### 11. Consultant as Independent Contractor.

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

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

Consultant warrants that he/she has not employed nor retained any broker, agent, company or person other than bona fide, full-time employees of Consultant working solely for Consultant, to solicit or secure this Agreement, and that he/she has not paid nor agreed to pay any broker, agent, company, nor persons other than bona fide employees any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award of this Agreement. Consultant shall indemnify, defend, protect and hold harmless District, its directors, officers, and employees from such claims.



### 13. Compliance with Laws.

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

### 14. Grant Funding.

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

### 15. Nondiscrimination.

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

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

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

#### 16. Labor Code/Prevailing Wages.

To the extent applicable, Consultant and Consultant's subconsultants shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation, and payment of prevailing wages as determined by the Director of California Department of Industrial Relations, pursuant to the Director's authority under Labor Code Section 1770 et seq. To the extent applicable, Consultant shall post a copy of the prevailing rate of per diem wages at each job site. Consultant shall forfeit fifty dollars (\$50) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for any public work done under the Agreement by it or any subconsultant.

An error on the part of an awarding body does not relieve the Consultant from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775. The District will not recognize any claim for additional compensation because of the payment by the Consultant for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Consultant. Consultant shall defend, indemnify and hold harmless the District for any costs, claims and expenses arising from the failure of Consultant or Consultant's subconsultants to pay applicable prevailing wage rates.

#### 17. Indemnification.

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

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

- c. Common PL & OPL Indemnity Provisions. Consultant's obligations under this Section 16 shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the gross negligence or willful misconduct of the District or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless under Section 16(b) includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by District of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- d. In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of District, Consultant shall indemnify, defend, and hold harmless District for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of District.

## 18. Insurance.

- a. Consultant shall procure and keep in force during the term of this Agreement, at Consultant's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company and which are acceptable to District. Consultant shall, fifteen (15) days prior to the commencement of this Agreement and prior to the termination of any policy, supply District with a certificate, on the District's certificate of insurance form, showing that such insurance is in force.
  - (1) Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. In the alternative, Consultant may

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

- (2) Commercial General Liability (“CGL”) (bodily injury and property damage) on an occurrence basis in an amount not less than one million dollars (\$1,000,000) per occurrence and at least two million dollars (\$2,000,000) in the aggregate, including premises and operations (including off-site operations), blanket contractual liability, broad form property damage, products and completed operations, owner’s and Consultant’s protective liability, (and if one or more of the following is applicable) personal injury, coverage for explosion, collapse and underground hazards, non-owned watercraft protection and indemnity, U.S. longshore and harbor workers coverage, pollution liability, liquor liability, and saddle animal liability.
- (3) Automobile Liability (bodily injury and property damage) in an amount not less than one million dollars (\$1,000,000) per occurrence extending to owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under Agreement.
- (4) Professional Liability Insurance (errors and omissions), including contractual liability, in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Such coverage may be written on a claims-made basis.
  - b. Each of the above policies must contain a provision that the policy shall not be cancelled or the terms or conditions thereof materially changed without thirty (30) days’ prior written notice to District. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of Consultant to furnish the required insurance during the term of this Agreement.
  - c. Upon written request by District, the insurer or his/her agent will furnish a copy of any policy cited above, certified to be a true and complete copy of the original.
  - d. The policies listed under a(1) above shall contain a waiver of subrogation in favor of the District.
  - e. The policies listed under a(2) and a(3) above shall name the District as an additional insured with respect to the operations performed under this Agreement.
  - f. The coverage afforded on behalf of District under a(2), a(3) and a(4) above shall be primary insurance and any other insurance available to District under any other policies shall be excess over the insurance outlined above.

- g. Upon written request of District, annual loss reports will be supplied to District. The loss report will include a list of all incidents/claims submitted against the insurance company and the estimated reserved and paid value of the claims.
- h. District reserves the right to require reasonable increases in the limits of coverage from time to time during the term of this Agreement.
- i. Policies should be written on an occurrence basis. Only by special permission of District may a claims-made form be used. The retroactive date on any policy written on a claims-made basis shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy, provided that the extended reporting or discovery period shall not be less than thirty-six (36) months following expiration of such policy.
- j. Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Consultant shall comply with the provisions of Section 3700 of the Labor Code before commencing the performance of the work under this Agreement.
- k. Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein.
- l. In case of the breach of any provision of this section, District may, in addition to any other remedies it may have, at District's option, take out and maintain, at the expense of Consultant, such types of insurance in the name of the Consultant as District may deem proper and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Consultant under this Agreement or may demand Consultant to promptly reimburse the District.

19. Default.

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

- a. Enforce performance of the Agreement by Consultant.
- b. Immediately terminate Consultant's services under this Agreement.
- c. Perform the obligations of the Consultant, whereupon Consultant shall reimburse District

for any amounts paid or expenses incurred by District, or pay District any expenses and/or damages incurred by District in the performance of such obligations, District's increased cost in performing the work, together with interest at the maximum rate of interest allowed by law on demand by District. District at its option may deduct any sum due to District from sums to be paid by District to Consultant.

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

## 20. Consultants Books and Records/Audit.

Consultant and Consultant's subconsultants, if any, shall maintain any and all ledgers, books of account, invoices, vouchers, and any other records or documents pertaining to charges for services, expenditures and disbursements to District under this Agreement for a minimum of three (3) years, or such longer period required by law, from the date of final payment to Consultant by District. Any records or documents required to be maintained under this section shall be made available to District for inspection and copying upon request. In accordance with California Government Code Section 8546.7, if the Not to Exceed Amount exceeds ten thousand dollars (\$10,000), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

## 21. Assignment.

District and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to District for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any persons or entities whatsoever without the prior written consent of District and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

## 22. Advice of Counsel/Attorneys' Fees.

If either party prevails against the other in a legal action concerning any aspect of this Agreement, such successful party shall be entitled to recover its reasonable attorneys' fees and costs incurred in such action from the losing party.

Both parties have had a full and complete opportunity to have the Agreement reviewed by legal counsel, and no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

23. Notices.

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

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

CONSULTANT: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

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

24. Ownership of Work.

All reports, data, maps, models, charts, studies, surveys, photographs, plans, specifications, or any other documents in electronic or any other form (collectively “documents and materials”), that Consultant prepares or obtains pursuant to this Agreement shall be the property of the District to be used, reused or disposed of by the District in its sole discretion without the permission of Consultant. In the event of early termination of this Agreement and notwithstanding any dispute regarding payments, the District retains its ownership of the documents and materials and retains the right to receive and use any documents or materials pursuant to this Agreement.

25. Digital Files.

In addition to any other format required in the Scope of Work, Consultant shall provide copies of all deliverables on compact disk in a digital format. Files shall be compatible with software used by the District. Any necessary conversion to formats compatible with District software to comply with this section shall be performed at no additional cost to the District.

26. Payment of Taxes, Tax Withholding.

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

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

27. Confidential Information.

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

28. Governing Law.

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

29. No Waiver.

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

30. Conflicts of Interest.

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

31. Entire Agreement.

This Agreement contains all of the agreements and understandings of the parties pertaining to the subject matter contained herein and supersedes all prior, contemporaneous agreements, representations and understandings of the parties. This Agreement cannot be amended or



modified except by written agreement of all the parties. In the event that the terms or conditions of any Exhibits to this Agreement conflict, directly or indirectly, with this Agreement, the provisions of this Agreement shall control.

32. Severability.

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

32. Counterparts.

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

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

**EAST BAY REGIONAL PARK DISTRICT**

**CONSULTANT**

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

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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

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