

East Bay Regional Park District
Oakland, California

Request for Proposals:

East Bay Regional Park District
State Legislative Advocate

Issued: September 12, 2022

Responses Due: October 14, 2022, by 5:00 PM PST

PROPOSAL SUBMITTAL PROCESS

Proposals must be received by the EBRPD **no later than 5:00PM**, October 14, 2022. Please submit proposals via e-mail to lbaldinger@ebparks.org. Late proposals will not be considered.

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PROJECT DESCRIPTION

The East Bay Regional Park District (Park District) is soliciting proposals for state legislative and policy advocacy consultant(s) to provide legislative and policy tracking, maintain relationships with elected and agency offices in Sacramento, grant support, letter writing, committee hearing attendance, support for annual Park District Board Advocacy Day, and regular reports on relevant issues and bills. The consultant will support the Government Affairs staff with the Park District and attend monthly Board Legislative Committee meetings. The Park District is interested in a consultant with expertise and experience in the technical aspects of strategic advocacy and engagement. Specifically, with strong relationships with the state Administration, California Natural Resources Agency, California State Parks and other state agencies, and relevant Senate and Assembly Committees and Subcommittees. Additionally, strong understanding of the State of California Fair Political Practices Commission rules. The Park District seeks a consultant who can work effectively and strategically to achieve advocacy success and relationship building.

BACKGROUND ON THE PARK DISTRICT

The East Bay Regional Park District is a system of beautiful parklands in Alameda and Contra Costa counties to the east of San Francisco. The system comprises 73 parks spanning across 125,000 acres; 1,250 miles of trails; 55 miles of shoreline. We manage and preserve natural and cultural resources for all to enjoy and protect. The regional parks are ideal for healthful recreation and environmental education.

The Mission statement defines the essential role of the District:

The East Bay Regional Park District preserves a rich heritage of natural and cultural resources and provides open space, parks, trails, safe and healthful recreation and environmental education. An environmental ethic guides the District in all of its activities.

The Vision statement sets the direction, values and objectives of the District:

The District envisions an extraordinary and well-managed system of open space parkland in Alameda and Contra Costa counties, which will forever provide the opportunity for a growing and diverse community to experience nature nearby.

More information can be found at - <https://www.ebparks.org/about/mission-vision>

HISTORY OF GOVERNMENT AFFAIRS AT THE PARK DISTRICT

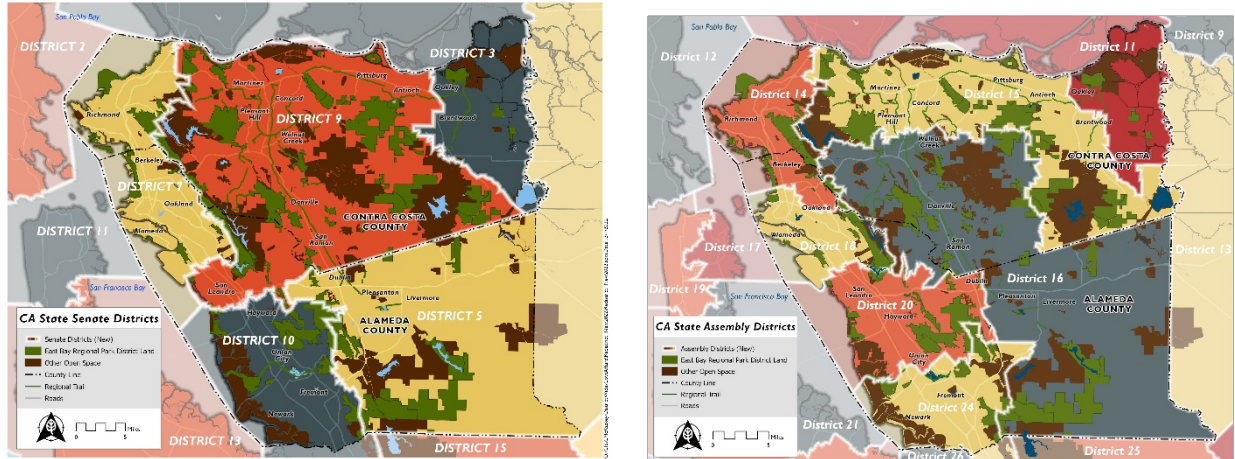
The unique nature of the East Bay Regional Park District began in 1934 when, in the midst of the Depression, voters imposed a tax of 5¢ for every \$100 of property owned to fund the creation of a Public Resources Code 5500 Special Park District in the East Bay. This vote was precipitated by a survey commissioned by the Olmsted Brothers and Ansel F. Hall which highlighted the need to preserve land as parks. Women's groups in the 1930's notably advocated to turn out the vote through lunches with elected officials. In 1936, the Park District started with three parks spanning 2,166 acres. All three parks were located in Alameda County. From 1934 - 1939 the Park District provided work for Civilian Conservation Corps and Works Progress Administration crews, whose skilled work can still be found in District infrastructure today. The Park District's growth would not be possible without the public support it relies on for funding. Currently, 87% of the Park District's funding base comes from property tax, while the remainder comes from robust state and federal grants, as well as local parcel tax and bond measures.

Community support continued to grow as the Park District delivered on services and projects benefitting the public as the East Bay became increasingly urbanized. In 1988, over two thirds of voters in Alameda and Contra Costa counties voted to pass Measure AA to provide \$225 million in bond funding for the Park District and local parks. This was the first bond measure for the acquisition and preservation of thousands of acres of land. In 2008 72% of voters chose to extend the bond measure by passing Measure WW, providing \$500 million in bonding authority. Measure WW included \$125 million for a local grant program which benefitted municipal park departments and unincorporated areas of both counties during the recession. Also, voters in the northwestern area of the Park District supported a parcel tax to fund, maintain and enhance services, and provide staff by voting for Measure CC in 2004 and extending the tax with an 85.6% vote for Measure FF in 2018.

The Park District's mission to preserve a rich heritage of natural and cultural resources and to provide open space, parks, safe trails, essential healthy activity and environmental education is meaningful to the growing and diverse communities of Alameda and Contra Costa counties. Increasing opportunities to provide welcoming visitor use facilities is a primary goal of the Park District's advocacy. To ensure this, the Park District has employed surveys since 1976 to understand the community's needs and interests. The first survey identified a 94% user satisfaction rate of visitors. In compliment, a 2022 scientific survey of East Bay residents confirmed 94% of respondents agree East Bay parks are important for their community, 93% agreed they are a valuable public resource and 85% agreed they hold a sense of ownership of these parks and agree they are theirs to care for and enjoy.

The Park District is governed by a publicly elected Board of Directors who each serve four - year terms. Each Director represents a specific geographic area of the Park District known as a Ward. Currently, Wards consist of approximately 400,000 individuals, roughly the same size as a state Assembly district. Directors must be a resident of their Ward to serve on the Board. The Board appoints a General Manager, who is responsible for leading the Park District. The tenth General Manager, Sabrina Landreth, was appointed in March 2021. She is the first female General Manager.

EAST BAY STATE SENATE AND ASSEMBLY DISTRICTS



Pictured: The East Bay Regional Park District's elected official district maps - East Bay Senate Districts 3, 5, 7, 9 and 10 and Assembly Districts 11, 14, 15, 16, 18, 20, 24.

The East Bay Regional Park District Government and Legislative Affairs works on a local, state and Federal level to support the agency's projects, programs and communities. The Department strives to align funding and policy advocacy with identified project and program needs and priorities. Guided by the East Bay Regional Park District's (Park District) mission and elected Board of Directors, the Government and Legislative Affairs team tracks relevant state and Federal funding and policy programs, maintains relationships with external partners through regular meetings, site visits and events. Government and Legislative Affairs leads research and survey projects in support of identified advocacy goals. The team's scope of responsibility includes seven Board Members, eight Federal legislative offices, 11 State legislative offices, 10 County Supervisor offices and 33 cities with 180 council members.

SCOPE OF SERVICES AND DELIVERABLES

The role of the Park District's Government and Legislative Affairs is to align funding and policy advocacy with identified project and program needs and priorities. This is done by on-going efforts to track relevant state and Federal funding and policy programs, as well as by maintain relationships with external partners through regular meetings, site visits and events. In support of this work, the Consultant will be expected to perform the following services:

Provide on-going support on legislation and bill analysis. On an annual basis, the Park District is seeking to sponsor one to three pieces of state legislation. The advocate(s) is (are) expected to provide support on the full process of bill sponsorship including hearing attendance and coordination of meetings with relevant elected officials and staff. Additionally, the advocate(s) shall provide information on any relevant bills as requested. This work can be captured within:

- Weekly reports about bills relevant to the Park District
- Weekly reports on and attendance of relevant committee hearings
- Monthly meetings with Government Affairs managers
- Letter writing about relevant legislation and issues
- Transmittal of support letters to relevant legislators
- Priority setting of introduced legislation
- Tracking and follow-up of Park District state grants
- Maintenance of strategic relationships with elected offices, East Bay delegation, relevant committees and subcommittees, state agencies and the Governor's office
- Attendance and participation in annual Park District Board Sacramento visit
- Submit itemization of actions taken in support of the Park District as part of each monthly invoice

The Park District Government and Legislative Affairs team coordinates and staffs the Board Legislative Committee. This Committee meets regularly throughout the year with a total of eight scheduled meetings and additional special meetings as needed. For this Committee, the advocate will:

- Provide regular budget and issue reports
- Provides timely written reports on relevant issue documents, as well as the proposed and adopted state budget
- Provide additional input about bills being considered for support/oppose/watch
- Attend and participate at Park District Board Legislative Committee Meeting

For maintaining relationships within Sacramento, the Park District is also requesting administrative support in coordination of events and meetings. Additionally, this advocate will provide administrative support on the Fair Political Practices Commission Reports on behalf of the Park District. Specifically, the advocate will provide:

- Fair Political Practices Commission Reports
- Support at annual Sacramento Luncheon and Radke Award for Championing Advocacy event, as requested

- Coordination of elected office, state agencies, and other relevant meetings for Park District Board and General Manager

PROPOSAL REQUIREMENTS

The following materials should be submitted within the proposal.

1. Cover Letter
 - a. The cover letter should briefly state:
 - i. The advocate or firm's profile including size (revenue and staff) and location(s), and whether the firm has Federal and/or state advocacy experience
 - ii. The advocate or firm's understanding of the work to be performed, the commitment to perform the work in a timely manner, and why the consultant believes they are the best qualified to perform the duties and tasks outlined.
2. Qualifications
 - a. The proposal should include the following information:
 - i. Identify the consultant and/or team who will be assigned to this work and provide one-page resumes of each individual.
 - ii. A description of prior relevant experiences, relationships, legislative successes or other relevant advocacy achievements.
 - iii. Provide samples of work prepared for other similar agencies, e.g. bill summary sheets, letters, grant comments, etc.
 - iv. Please include at least three (3) current and/or previous clients as references to your work with contact phone number and email.
3. Approach and Scope
 - a. Provide a proposed approach and scope of services for this work.
4. Cost
 - a. Please include cost estimate and justification.
5. Relevant Certifications
 - a. Please include all relevant certifications.
6. Conflict of Interest
 - a. Throughout the term of any agreement resulting from the Request for Proposal (RFP), Consultant will not accept any employment or engage in any work which creates a conflict of interest with the East Bay Regional Park District or in any way compromises the work to be performed under this RFP or any agreement resulting from this RFP.
7. Standard Park District Agreement
 - a. Attached as "Exhibit A" is the Park District standard form professional services

agreement. Please review the agreement. You must be willing to sign the agreement “as-is” or with minimal changes that the Park District must agree to prior to firm selection. If you will have significant issues with the agreement’s terms and conditions, please re-consider. The submitter of an RFP shall carry at its own cost and expense, insurance as required above.

The Park District reserves the right to reject any or all RFPs, whether or not minimum qualifications are met, and to modify, postpone or cancel the RFP without liability, obligation or commitment to any party, firm or organization. In addition, the Park District reserves the right to request and obtain additional information from any candidate submitting an RFP, and to waive any minor informality or irregularity.

A PROPOSAL MAY BE REJECTED for any of the following reasons:

- Proposal received after designated time and date.
- Proposal not containing the required elements, exhibits nor organized in the required format.
- Proposal considered not fully responsive to this RFP.
- Proposal contains excess or extraneous material not called for in the RFP.

PARK DISTRICT RESPONSIBILITIES

The Park District will provide support and input from staff, Board and Executive Team. In their proposal, the Consultant shall define additional information, services and expertise needs from the District for the implementation of this work.

COMMUNICATIONS

Questions regarding this RFP shall be submitted in writing to Lisa Baldinger five business days before the proposal submission date at lbaldinger@ebparks.org. We request consultants notify the District (via email) of their interest in submitting a proposal. The District responses to substantive questions will be shared with all consultants that notify the District. To ensure fair competition, all proposers will receive the same information and materials; no individual telephone or personal inquiries about this RFP will be answered.

RFP TERMS AND CONDITIONS

The selection of a consultant for this work and any agreements for services resulting from this RFP is dependent upon the approval of the East Bay Regional Park District Board of Directors. The District reserves the right to waive any minor irregularities, informalities or oversights at its sole discretion. The term “minor” as used herein means any Consultant or District irregularities or oversights that do not materially affect or alter the intent and purpose of this RFP, and is not in violation of any State of California rules, laws and regulations that may apply to this procurement.

The Park District reserves the right to cancel in part or in whole or amend this RFP, to extend the date responses are due, and/or to re-solicit this Request for Proposals.

Additional conditions:

- Late Proposals are not acceptable and will not be reviewed.
- The Park District reserves the right to request, receive and evaluate supplemental information and clarifications during its evaluation of Proposals. The Park District will conduct this process in a fair and impartial manner.
- Incomplete Proposals or inaccurate information may be cause for disqualification.
- All materials submitted to the Park District will become the property of the Park District and will not be returned.

CONSULTANT SELECTION PROCESS

All proposals submitted by the required deadline will be reviewed for accuracy, completeness, content, approach, qualifications and other criteria developed during the review process. Consultants who have submitted proposals which pass the initial review may be invited for interviews approximately two weeks after submittal. The District reserves the right to conduct interviews of those consultants who pass the initial review or select a consultant without conducting interviews.

The contract will be awarded to the Consultant deemed by the District to be the best qualified for the scope of work. Consultants are encouraged to elaborate on their qualifications, performance data and staff expertise relevant to advocacy work.

PUBLIC RECORDS ACT

All proposals submitted in response to this RFP become the property of the Park District and are subject to the requirements of the California Public Records Act (California Government Code Section 6250 et seq.) Once a successful proposal is identified or all proposals are rejected, all proposals shall be deemed public records. The proposer must identify in writing all copyrighted material, trade secrets or other proprietary information the proposer claims are exempt from disclosure under the Public Records Act. Proposers claiming exemption must include the following statement in their proposal:

The proposer agrees to indemnify and hold harmless the Park District, its officers, employees and agents from any claims, liability or damages against the Park District, and to defend any action brought against the Park District for proposer's refusal to disclose such material, trade secrets or other proprietary information to any party.

Failure of a proposer to include this statement and/or identify in writing the claimed exempt material shall be deemed a waiver of any exemption from disclosure under the Public Records Act. Requests to review proposal submissions will not be allowed until after a Staff Recommendation is made.

EXHIBITS

Exhibit A

CONTRACT FOR SERVICES (Licensed Professionals)

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 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.

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. 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.

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 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.

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, 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.

16. 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.

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) 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.

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. 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.

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), 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.

20. 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.

21. 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.

22. 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.

23. 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.

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. Any necessary conversion to formats compatible with District software to comply with this section shall be performed at no additional cost to the District.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

[Signatures on Following Page]

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: _____