

# East Bay Regional Park District

## REQUEST FOR PROPOSAL

### For Actuarial Services

Contact:

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Oakland, CA

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**Proposals Due:**  
**February 9, 2024 no later than 5:00 pm**



# REQUEST FOR PROPOSAL FOR ACTUARIAL SERVICES

## A. Statement of Purpose

East Bay Regional Park District (Park District) is inviting qualified firms to submit proposals for actuarial services. The Park District is seeking a three-year contract, with the option of one additional two-year extension at the Park District's discretion, to provide actuarial services related to its retiree medical plans (OPEB) and defined benefit pension plans.

The actuary services provider should have extensive experience with providing actuarial services to local government defined benefit retirement plans and OPEB plans in the State of California. The advisor will need to understand the existing structure of the Park District, including financial and operational goals. The advisor must understand current state and federal trends related to pensions, retirement and retiree medical and be able to provide projections to guide and advise the Park District in its long-term strategies. The Park District is seeking an actuarial firm that can act as technical advisor regarding plan design, actuarial assumptions and methods. A full listing of requirements is provided in Section F.

## B. 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 beautiful parklands and trails, including over 126,000 acres in 73 parks, and over 1,300 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 District has 978.5 budgeted full-time equivalent positions (FTEs) and a head-count of over 1,000 employees.

The Park District's 2024 Operating Budget is \$316.0 million, and over 92% of General Fund revenue is generated from property taxes. The Park District's Proposed 2024 Budget and 2022 Annual Comprehensive Financial Reports (ACFR) are available on the website: <http://www.ebparks.org/about/budget>.

The Park District has obtained the Distinguished Budget Award from the Government Finance Officers Association (GFOA) every year, since 2005 and has obtained the Certificate of Excellence in Financial Reporting award for its ACFR every year since 2000. The Park District has a AAA rating from Standard & Poors, and is one of only nine parks and recreation districts rated Aaa by Moody's nationally.

The Park District maintains conservative fiscal practices, including maintaining a reserve target of 32% of annual revenues. The Park District funds its pension and OPEB liabilities

at the actuarially determined required contribution level. Its pension funded status is above 70% for all of its plans.

## **C. Plans for which Actuarial Services are Required**

### **OPEB**

The Park District's EBRPD Retirement Plan provides medical insurance benefits to eligible retirees and their eligible dependents based on union agreements and Park District policy. There are benefits for pre-Medicare and post-Medicare status.

In 2007 the Park District began contributing to an OPEB trust to fund certain retiree medical insurance benefits. In 2012 the Park District joined the California Employers' Retiree Benefit Trust (CERBT), an agent multiple-employer defined benefit healthcare plan trust administered by CalPERS. Fiduciary responsibility is assumed by the plan administrator, CalPERS. The Park District's policy is to contribute to the Trust each pay period, for the purpose of funding its required contribution over a period of time. The current amount necessary to fund future benefits is based upon the June 30, 2021 actuarial valuation (Measurement Date of June 30, 2022) in accordance with GASB Statement No. 75, Accounting and Financial Reporting for Postemployment Benefits Other than Pensions.

Full details regarding the Park District's OPEB Trust can be found in the Park District's 2022 Annual Comprehensive Financial Report (ACFR) beginning on page 77. [ACFR-2022-FINAL.pdf \(ebparks.org\)](#)

### **PENSION PLANS**

The Park District has four defined benefit retirement plans:

1. The East Bay Regional Park District General Employees Plan
2. The East Bay Regional Park District Sworn Safety Plan
3. The CalPERS Miscellaneous Plan
4. The CalPERS Safety Plan

The plans provide retirement and disability benefits, annual cost of living adjustments and death benefits to plan members and their beneficiaries.

### **East Bay Regional Park District Retirement Plans**

The two East Bay Regional Park District Plans are single-employer defined benefit pension plans that provide retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. The EBRPD Plans are administered by Public Agency Retirement Services (PARS). Benefit provisions are established by Resolution of the Board of Directors. The EBRPD Sworn Safety Plan has been closed since January 1, 2000 and the General Employee plan has been closed since January 1, 2001. All new and eligible employees hired after these dates are enrolled in CalPERS Public Employees Retirement System. Membership in the EBRPD Plans is as follows:

<b>EBRPD Plan as of Jan 1, 2022</b>	<b>General Plan</b>	<b>Sworn Safety Plan</b>
Active employees	3	0
Retirees / beneficiaries currently receiving benefits	154	28
Vested terminated employees	3	1
<b>Total participants</b>	<b>160</b>	<b>29</b>

The Plan's annual required contributions are based on an actuarially determined amount that is estimated to finance costs of benefits earned by Plan members during the year, with additional amounts to finance any unfunded accrued liability. Full details regarding the District's EBRPD Retirement Plans can be found in the District's 2022 Annual Comprehensive Financial Report (ACFR) beginning on page 82.

[ACFR-2022-FINAL.pdf \(ebparks.org\)](#)

### **CalPERS Retirement Plans**

The majority of current Park District employees are part of the California Public Employee Retirement System (CalPERS). CalPERS provides retirement and disability benefits, annual cost-of-living adjustments and death benefits to plan members and beneficiaries. CalPERS acts as a common investment and administrative agent for participating public entities within the State of California.

The Miscellaneous Plan is an agent multiple-employer defined benefit pension plan which act as a common investment and administrative agent for its participating member employers. Miscellaneous Plan has two tiers: Classic for employees hired prior to January 1, 2013; and, PEPR, for employees hired after January 1, 2013. The District's Safety Plan is a cost-sharing multiple-employer defined benefit pension plan administered by CalPERS – a “risk pool” for agencies having fewer than 100 active members. The Safety Plan has several retirement benefit tiers: Classic tier for all safety employees hired prior to March 31, 2012. Police Tier II and Fire Tier II for employees hired prior to January 1, 2013. Police and Fire PEPR is for employees hired on or after January 1, 2013.

The table on the following page shows the number of employees covered by the benefit terms of the two CalPERS Retirement Plans as of June 30, 2022 valuation date.

<b>CalPERS members</b>	<b>Miscellaneous Plan</b>	<b>Safety Plan</b>
Active employees	673	33
Retirees currently receiving benefits	452	78
Inactive employees entitled to, but not yet receiving benefits	366	46
<b>TOTAL</b>	<b>1,491</b>	<b>157</b>

Full details regarding the District's CalPERS Retirement Plans can be found in the Park District's 2022 Annual Comprehensive Financial Report (ACFR) beginning on page 85.

[ACFR-2022-FINAL.pdf \(ebparks.org\)](#)

## D. RFP Calendar

TASK	DATE
RFP Issued	January 19, 2024
Proposal Submission Deadline – proposals should be emailed to <a href="mailto:msohara@ebparks.org">msohara@ebparks.org</a>	February 9, 2024 5pm
Respondents' Interviews	Week of February 19, 2024
Finance Committee Recommendation re Award of Contract	March 27, 2024
Board Meeting for Authorization of Award of Contract	April 16, 2024
Contract Finalization	April 30, 2024

## E. RFP Questions

Questions concerning this RFP and the selection process shall be submitted by email to Michelle Strawson O'Hara at [msohara@ebparks.org](mailto:msohara@ebparks.org). Questions will not be taken or answered verbally. No other Park District source is authorized to give information concerning the RFP document or to be contacted about this RFP.

Proposals should be submitted to the Park District via email to [msohara@ebparks.org](mailto:msohara@ebparks.org) no later than Friday, February 9, 2024 at 5pm.

## F. Requirements

To be considered for selection, proposing Actuary must meet at least the following terms and conditions:

- Supervising actuary must meet the American Academy of Actuaries Qualifications and be a Fellow of the Society of Actuaries (FSA) or an Associate of the Society of Actuaries (ASA) and hold all other licenses and registrations required by applicable federal and state laws. All required licenses and registrations must be current and in good standing.
- Must have a minimum of five California-based local government projects demonstrating experience with providing services described in Scope of Services, within one year of the date of this RFP. The lead staff proposed to be assigned to the District must have had a similar role in at least one of the prior projects.
- Supervising actuary must have experience presenting to governing bodies, such as the Board of Directors, to discuss actuarial theory, basis for assumptions and other actuarial matters.
- Must 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 Park District in connection with the award of the contract. No officer or employee of the Park 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 Park District to any and all remedies by law or in equity.

- Must declare no professional or personal financial interest, which could be a possible conflict of interest in representing the Park District. The Park District also requires the firm to further disclose arrangements to derive additional compensation from various investment and reinvestment products, if applicable. The Park District may reject a Proposal from any firm that, in the Park District's opinion, would be in a conflict of interest if the firm is awarded a contract.

## **G. Proposal Format and Contents**

Firm's proposal shall be submitted in several parts as set forth below. The firm's proposal in response to this RFP will be incorporated into the final agreement between the Park District and the selected firm. The submitted proposals should include each of the following sections:

1. **Transmittal Letter – 1 page maximum.** Letter should address the firm's interest and commitment to providing actuarial services to the Park District.
2. **Firm Profile – 1 page maximum.** Provide an overview of your firm, including a succinct description of capabilities, size and range of services offered. What are your firm and core team's particular strengths? What is the underlying philosophy of your firm?
3. **Relevant Experience – 1 page maximum.** Describe your experience with at least two similar projects (government agencies located in California) within the last year. Both projects should have involved the proposed project team.
4. **Project Deliverables – 2 pages maximum.** Describe your firm's approach, including the process, steps, and timing for providing the requested deliverables as detailed in the Scope of Services (Section H).
5. **References - 1 page maximum.** Provide a minimum of three references from current clients similar to the Park District in plan size and sophistication. For each reference, please include name, address, email address, and telephone numbers of individuals qualified to provide information from management / technical viewpoints. How long have you provided services to this client and in what context? Please list any clients who have terminated your relationship during the past three years and their reason for doing so.
6. **Detailed and Itemized Pricing – 1 page maximum.** Present your compensation approach and fee proposal for the scope of work. Please document any key assumptions made in developing the fee proposal and any other contingencies the Park District should be aware of. Proposals should include all costs to be charged to the Park District under the proposed contract. For special project work, indicate your hourly rates.
7. **Project Team Staffing – 1 page maximum.** Identify the person who will serve as the primary point of contact with the Park District. Provide information about

other key personnel who will be actively involved in working with the Park District, including name, level, role, responsibility, experience and length of tenure with your firm and experience with public agencies. Include résumés of key personnel as an attachment. If awarded the contract, no staffing substitutions shall be made without the District's approval.

8. **Affirmations – 1 page maximum.** Affirm that your firm meets the “District Requirements” as stated in Section F, or indicate in which areas the firm cannot comply. Include the statement confirming “no undue influence” and “no professional or personal financial interest which could be a conflict.” Affirm that your firm will be able to meet the conditions specified in the District's Professional Services Contract (Appendix A) or provide your proposed modifications to the contract.

## **H. SCOPE OF SERVICES REQUIRED**

The following services are required by the Park District:

1. Provide annual actuarial valuation, including calculation of plan liabilities, value of plan assets, funded status and annual required contribution of the East Bay Regional Park District General Employee Plan and Sworn Safety Plan, including GASB 67, GASB 68 and future applicable GASB statements.
  - Valuation required bi-annually: 1/1/25, 1/1/27 (most recent statement will be completed as of 1/1/23).
  - GASB adjustments dated as of 12/31 every year, needed by end of March the following year.
2. Provide annual actuarial valuation, including calculation of plan liabilities, value of plan assets, funded status and annual required contribution of the Park District's Retiree Medical Program Other Post Employment Benefits (OPEB) Plan, including GASB 75 reporting and future applicable GASB statements.
  - Valuation required bi-annually: 6/30/25, 6/30/27 (most recent valuation will be completed as of 6/30/23).
  - GASB adjustments dated as of 12/31 every year, needed by end of March the following year.
3. Provide annual independent review of the CalPERS Miscellaneous and Sworn Safety Plan.
  - Bi-annual review required using CalPERS valuations beginning 6/30/25.
4. Presentations to the Park District's Finance Committee on average once per year.
5. Additional consulting, as needed, on an hourly basis, for projects such as: asset allocation modeling, cash flow predictions, review of assumptions versus actuals and assistance with GASB implementations.

## **I. EVALUATION OF PROPOSALS**

Award of the contract resulting from this RFP will be based upon the most responsive firm whose offer will be the most advantageous to the Park District in terms of experience and qualifications of firm and assigned personnel, cost, understanding of the Park District, ability to provide services outlined in Scope of Services, and other factors as specified elsewhere in this RFP. The Park District reserves the right to:

- Reject any or all bids and discontinue this RFP process without obligation or liability to any potential vendor.
- Accept other than the lowest priced offer.

### **Appendix:**

- A. Park District's Standard Professional Services Contract



**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 17 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 17(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: \_\_\_\_\_

**EXHIBIT A – SCOPE OF WORK**

**EXHIBIT B – RATE SCHEDULE**

**East Bay Regional Park District  
Insurance Requirements**

**FORWARD TO YOUR INSURANCE AGENT - Reply within 4 business days**

**Certificate Holder and Mailing  
Address:**

East Bay Regional Park District  
Risk Management  
2950 Peralta Oaks Court  
Oakland, CA 94605

**Additional Insured:**

East Bay Regional Park District,  
its officers, employees, and  
agents are additional insured.

Note: It is suggested that "All Locations" or "As per Written Agreement" be listed on the insurance certificate and endorsement instead of job specific certificates to facilitate the insurance approval on future jobs.

**INSURANCE**

**1. General Liability Insurance - Certificate of Insurance with the following required endorsements\***

- a) **\*Additional Insured Endorsement**  
(separate stand-alone endorsement required and not substituted by referring to such coverage on the COI.)
- b) **\*Primary Insurance Endorsement**  
(separate stand-alone endorsement or policy language required and not substituted by referring to such coverage on the COI.)

**2. Auto Liability Insurance - Certificate of Insurance with the following required endorsement\***

- a) **\*Additional Insured Endorsement**  
(separate stand-alone endorsement required and not substituted by referring to such coverage on the COI.)

**3. Workers' Compensation - Certificate of Insurance with the following required endorsement\***

- a) **\*Waiver of Subrogation Endorsement**  
(separate stand-alone waiver required and not substituted by referring to such coverage on the COI.)

**4. Professional Errors & Omissions /Professional Liability or Pollution Liability - Certificate of Insurance**