

EAST BAY REGIONAL PARK DISTRICT
OAKLAND, CA

REQUEST FOR PROPOSALS
FOR PROFESSIONAL AUDITING SERVICES

Contact:

Michelle Strawson O'Hara, Interim Assistant Finance Officer
East Bay Regional Park District

msohara@ebparks.org

Proposals Due:

May 31, 2024, no later than 5:00 pm



EAST BAY REGIONAL PARK DISTRICT

REQUEST FOR PROPOSALS

PROFESSIONAL AUDITING SERVICES

MAY 10, 2024

I. Introduction

The East Bay Regional Park District (Park District) is requesting proposals (RFP) from qualified certified public accounting firms to audit its financial statements for the three fiscal years beginning with December 31, 2024, with the option of extending the agreement for two (2) additional one-year periods. These audits are to be performed in accordance with generally accepted auditing standards (GAAS) and the standards set for financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the provisions of the Federal Single Audit Act, as amended, and Office of Management and Budget (OMB) *Compliance Supplement*.

There is no expressed or implied obligation for the Park District to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the California Public Records Act (Government Code Sec. 6250 et seq.), unless exempt. Additionally, the Park District reserves the right to reject any or all proposals submitted.

To be considered, please submit a proposal and separate cost proposal as well as all other required documentation by **5:00 pm on Friday, May 31, 2024** to Michelle Strawson O'Hara via email at: msohara@ebparks.org.

II. 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 governmental funds are grouped in the Annual Comprehensive Financial Report (ACFR) and presented as:

- General fund

- Debt service fund

- Project fund

- Non-major funds (includes all special revenue and permanent funds).

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More detailed information on the Park District and its finances can be found in the 2024 budget and the 2022 ACFR located on the Park District's website: www.ebparks.org/about/budget

The Finance Department consists of 23 employees and includes internal audit, budget, capital project accounting, general ledger accounting, accounts payable and payroll. The Park District uses Central Square Finance Enterprise ERP System (version 22.2) for accounting, payroll, human resources, project allocation and budgeting.

III. Scope of Services

The selected auditor will be required to complete the following tasks in relationship to the ACFR, Single Audit, and Agreed Upon Procedures Report:

1. Audit the Park District's basic financial statements in accordance with GAAS in the United States and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States;
2. Express an opinion on the financial statements as to whether they present fairly, in all material respects, the financial position of the Park District and the changes in financial position and cash flows (where applicable) in conformity with generally accepted accounting principles (GAAP), and issue an independent auditors' report stating this opinion;
3. Test internal controls over financial reporting and compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters, in accordance with *Government Auditing Standards*, and issue a report on their consideration;
4. Prepare the Pension Plans worksheets and conversion entries from the actuary valuation reports pursuant to GASB Statements No. 68 for the note disclosures and Required Supplementary Information;
5. Prepare the OPEB Plan conversion entries from the actuary valuation reports pursuant to GASB Statements No. 75;
6. Apply limited procedures related to the Required Supplementary Information (RSI), Management's Discussion and Analysis (MD&A), budgetary comparison information, and the Supplementary Information;
7. Prepare Report to Board of Directors and Management which identifies control deficiencies, significant deficiencies and material weaknesses;

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- 8. Perform agreed upon procedures on the appropriation limit under Article XIII B of the California Constitution, and issue related report;
- 9. Complete Single Audit of federal expenditures in compliance with audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), and issue report on compliance with requirements applicable to each major program and internal control, as well as a report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*;
- 10. Meet with the Board Finance Committee (without the presence of Finance Department staff) to discuss the outcomes of the annual audit;
- 11. Present and discuss annual financial statement and results of operations to the Finance Committee during the June meeting;
- 12. Communicate immediately and in writing all irregularities and illegal acts, or indications of illegal acts, of which they become aware, to the General Manager and the Assistant General Manager of Finance and Management Services;
- 13. Provide general consultation as required, during the year, on financial reporting matters, including implementation any new GASB statements that are relevant to the Park District; and
- 14. As requested by the bond financing team, issue a “consent and citation of expertise” as the auditor and any necessary “comfort letters” in relationship to Park District financials statements and auditors’ report, which are included in the Official Statement prepared in connection with sale of debt securities.

IV. Special Considerations

A. Key Dates:

RFP issued	May 10, 2024
Deadline to Submit Questions	May 24, 2024 by 5pm
Proposals due	May 31, 2024 by 5pm
Interviews	June 5 - 12, 2024
Finance Committee Recommendation re Award of Contract	July 24, 2024
Board Meeting for Authorization of Award of Contract	September 3, 2024

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B. RFP Questions

Questions concerning this RFP and the selection process shall be submitted by email to Michelle Strawson O'Hara at msohara@ebparks.org no later than Friday, May 24, 2024. 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.

C. Project Schedule

Depending on the type and extent of interim audit procedures, the Park District will have preliminary year-end information available and would expect interim audit work to commence no later than January 2025.

The Park District expects to have all records and audit work papers ready for the audit field work by the mid-April 2025. The draft ACFR document would be ready for review by mid-May.

The Park District will be responsible for the preparation of the basic financial statements, including: MD&A, government-wide financial statements, and fund financial statements for all funds, accompanying notes to the financial statements, RSI, supplementary information and statistical section. The Park District will be responsible for the printing of the ACFR.

The auditor will be responsible for the preparation of the Single Audit Report, and the Report on Agreed Upon Procedure Applied to Appropriations Limit Schedule.

Final draft ACFR will be presented to the Finance Committee at the end of June and to the Board of Directors at the beginning of July. The Report to the Board of Directors and Management is required to be submitted to the Park District by the beginning of June to enable management to respond and present the Report with management's responses to the Finance Committee at the end of June. The ACFR will be submitted to GFOA for consideration under the certificate of achievement for excellence in financial reporting program by June 30th.

Finance Department staff will be available during interim and audit field work to assist the firm by providing access and direction to information, documentation and be available for explanations of all inquiries.

V. Proposal Requirements

A. Format of Technical Proposal

- I. Title page
 - a) the RFP subject,
 - b) the proposing firm's name,

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- c) contact person's name, address, telephone number, and email address, and
 - d) the date of submission.
2. Table of Contents
- a) identification of material submitted, by section and page number, and
 - b) cross reference to section and page number of RFP.
3. Transmittal Letter – 1 page maximum
- a) general introduction stating the proposer's understanding of the services to be provided,
 - b) a positive commitment to perform the service within the time period specified,
 - c) name(s) of person(s) authorized to represent the proposer, title, address and telephone number, and
 - d) signature.
4. Detailed Proposal Following the Order Set Forth in Section B

B. Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence, and capacity of the firms seeking to undertake an independent audit of the Park District in conformity with the requirements of this RFP. The substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the staff to be assigned to this engagement. It should also specify an audit approach that will meet the RFP requirements.

The Technical Proposal should address all the points in the order outlined in the RFP (excluding any cost information, which should only be included in the cost proposal section). The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the RFP. While additional data may be presented, the areas detailed

below must be included. They represent the criteria against which the proposal will be evaluated.

1. License to Practice in California
An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in California,
2. Independence
The firm should provide affirmative statement that it is independent of the East Bay Regional Park District as defined by generally accepted auditing standards and the US General Accounting Office's *Government Auditing Standards*.

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3. Insurance Requirements

See sample Park District contract attached which includes insurance requirements.

4. Firm Qualification and Experience

To qualify, the firm must have extensive experience in audits of local governments as well as experience with the preparation of ACFRs in compliance with GASB 34.

The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of the professional staff to be employed in this engagement. Staff consistency is an important consideration.

Please submit a copy of the report on the firm's most recent external quality control (peer) review, with a statement whether that quality control review included a review of specific government engagements (required by *Government Audit Standards*).

Provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

5. Engagement Partner, Manager/Supervisor and Staff Qualifications and Experience

Identify the senior-level staff, including engagement partner and manager/supervisor, who would be assigned to this engagement on an on-going basis. Indicate whether these individuals have CPA licenses. Please provide information on the governmental auditing experience of these

individuals. The Park District reserves the right to approve or reject any replacements in the senior level staff participating in the Park District's audit.

Identify junior-level staff who would be assigned to this engagement. How stable is this team of individuals in relationship to being assigned to this engagement on an annual basis? Please indicate their experience.

6. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed to perform the services required in Section III of this RFP.

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- a) Proposed segmentation of the audit work:
 - i. What will be accomplished during interim and what at year end?
 - ii. What other contact can the Park District expect during the year related to the audit engagement?
- b) Expectations of Park District staff:
 - iii. What documents and working papers are expected to be provided by Park District staff during interim and year end work? Please provide sample PBC lists for each section of the audit field work.
- c) Proposed time frame for each segment of audit work:
 - iv. What is the anticipated length of field work for interim and year end work?
 - v. What is the standard turn-around time from end of fieldwork, to senior level review, to final draft, to partner review, to audit report issuance?
- d) Planned number of hours on the engagement for each level of auditing staff.

7. Identification of Anticipated Potential Audit Problems

The proposer should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and any special assistance that will be required from the Park District.

8. References

Please provide name of all cities, counties, and special districts for which the firm has audited financial statements in the ACFR format during the past three (3) years. Indicate which of these ACFRs were submitted, and received, the GFOA award for excellence in financial reporting. Additionally, please provide name of all cities, counties and special districts for which the firm has prepared a Single Audit during the past three (3) years.

Please include reference contact information for at least three of these agencies, including the name, telephone number and email address of the principal client contact. The Park District reserves the right to contact any or all the listed reference.

9. Additional Information Required

What additional information would you require from the Park District, if you were selected to provide audit services, before you accepted the engagement?

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C. Contents of Cost Proposal

The cost proposal should contain all pricing information relative to performing the audit engagement as described in the Section III of this RFP. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs, including all out-of-pocket expenses. Please present the annual maximum costs for each of the three (3) years of the proposed contract, as well as the total cost for each of the additional (2) two-year contract extension. Additionally, please provide billing rates and proposed hours by staff position in a format similar to this chart:

Staff Position	Proposed Hours	Quoted Hourly Rates	2024	2025	2026	2027-Optional	2028-Optional
Partners							
Manager							
Senior							
Staff							
Other-Clerical							
Out-of-pocket expenses							
Total							
Audit							
Single Audit (3 Programs)							
Out-of-pocket expenses							
Total							
Single Audit cost of each additional program, beyond 3							

For the Single Audit cost proposal, please provide a cost based on three audit programs, as well as the additional cost for additional programs to be audited.

VI. Evaluation Procedures

Proposals will be evaluated by Park District staff using the following criteria. Firms meeting the mandatory criteria will have their proposal evaluated and scored for both technical qualifications and price. The following represents the principal selection criteria, which will be considered during the evaluation process:

1. The audit firm is independent and licensed to practice in California.
2. The firm has no conflict of interest regarding any work to be performed for the Park District.

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3. The firm adhered to the instructions in the RFP.
4. The firm has substantial experience in performing the required audits on government agencies comparable to the Park District.
5. The quality and stability of the firm's professional staff to be assigned to the engagement is acceptable to the Park District.
6. The firm provided proposed plans for the various segments of the engagement which are acceptable to the Park District.
7. The firm presented a thorough understanding of the objectives, scope and issues for this type of engagement.
8. The firm is committed to the timeliness in the conduct and completion of the audit.
9. Evaluation of the maximum fee to conduct the audit.

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 not withstanding 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