

# East Bay Regional Park District

## REQUEST FOR PROPOSAL

### For Disaster Recovery Administrative Support of Grant Activities

Contact:

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East Bay Regional Park District  
Oakland, CA

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***Proposals Due:  
October 4, 2024, no later than 5:00 pm***



## **REQUEST FOR PROPOSAL FOR DISASTER RECOVERY ADMINISTRATIVE SUPPORT OF GRANT ACTIVITIES FOLLOWING A FEDERALLY DECLARED DISASTER**

### **A. Statement of Purpose**

The East Bay Regional Park District (Park District) is soliciting proposals from qualified contractors to provide disaster recovery administrative support of grant activities following a Federally Declared Disaster. The primary services required are Federal Emergency Management Agency (FEMA) Public Assistance Advisory Services supporting Damage Identification, Scope of Work Development, Cost Estimation, Project Worksheet Development and Mitigation; to ensure full compliance with all federal, state, and local laws and minimize impacts from future disasters.

### **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 Park District has 978.5 budgeted full-time equivalent positions (FTEs) and a headcount of over 1,000 employees.

The Park District's 2024 Operating Budget is \$316 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>.

In 2017 and 2023 the Park District sustained severe damages to our parks and facilities due to winter storm events. For 2017 we have 10 remaining PWs valued obligated at approximately \$6.5 million. For 2023 we are still in the process of developing project worksheets to capture all the damages sustained at our Parks we anticipate approximately 16 PWs valued at \$13 million. In preparation for the upcoming winter storm season the Park District intends to secure a contract to support grant activities related to disaster response and recovery as needed for the Federal Emergency Management Agency (FEMA) Public Assistance program. The selected contractor, working closely with and at the direction of the Park District staff, will assist in strategically managing program development after a declared emergency or disaster providing advisory and technical services. The selected contractor might also be asked to provide assistance in resolving any special issues related to 2017 and 2023 projects.

## **C. Scope of Work**

The selected firm will be expected to provide specific tasks including but not limited to the following:

### **Task #1: FEMA Public Assistance (PA) Advisory Services**

Provide extensive knowledge, experience, and technical competence in dealing with federal and state regulations, specifically including but not limited to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Post-Katrina Emergency Management Reform Act of 2006, the Sandy Recovery Improvement Act of 2013, the Disaster Recovery Reform Act of 2018. Advise Park District staff on FEMA's rules, practices, and procedures and provide updates on any changes in policies, procedures, or processes.

Assist in preparing responses to Request for Information, time extensions, and appeals to California Governor's Office of Emergency Services (Cal OES) and FEMA. Review eligibility issues and develop justifications for presentation to Cal OES and FEMA.

### **Task #2: Damage Identification and Inventory**

Collaborate with Park District staff to identify and document damages in each park within 90 days of the declared disaster. Draft a comprehensive Damage Inventory that meets FEMA's requirements. Submit Damage inventory within 90 days of the disaster declaration.

### **Task #3: Development and Revisions of Project Worksheets**

Evaluate and prepare FEMA PA Emergency and Permanent Work Project Worksheets. Ensure that all eligible damages have been identified, quantified, and presented to FEMA and Cal OES. This will involve attending FEMA Site Inspections, expertise in Cost Estimating, developing detailed Damage Descriptions and Dimensions (DDD) and project Scope of Work (SOW). Provide engineering, cost estimating, and architectural support, as well as other types of technical assistance as needed.

#### **Task #4: Hazard Mitigation Support**

Assist in developing and evaluating opportunities for mitigation measures in conjunction with repair of damaged facilities under Section 406 of the Stafford Act.

### **D. RFP Calendar**

<b>TASK</b>	<b>DATE</b>
RFP Issued	September 6, 2024
Deadline to Submit Questions	September 20, 2024 (5pm)
Proposal Submission Deadline – proposals should be emailed to <a href="mailto:kdignan@ebparks.org">kdignan@ebparks.org</a>	October 4, 2024 (5pm)
Evaluation of Proposals/ Optional Interviews	Week of October 21, 2024
Finance Committee Recommendation re Award of Contract	November 25, 2024
Board Meeting for Authorization of Award of Contract	December 3, 2024
Contract Finalization	December 31, 2024

### **E. RFP Questions**

Questions concerning this RFP and the selection process shall be submitted by email to Katie Dignan [kdignan@ebparks.org](mailto:kdignan@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.

Questions should be submitted to the Park District via email to [kdignan@ebparks.org](mailto:kdignan@ebparks.org) no later than Friday, September 20, 2024, at 5pm.

### **F. Requirements**

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

- Must have a minimum of five (5) years' experience providing similar professional services as outlined in the Scope of Work with local government projects.
- 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.** The letter should address the firm's interest and commitment to perform work necessary to provide consulting services as described. The person authorized by the firm to negotiate a contract with the Park District shall sign the letter.
2. **Qualifications and Experience– 10 page maximum.** Provide an overview of your firm, including a succinct description of capabilities, and specific qualifications in providing disaster recovery consulting services in accordance with FEMA and other federal programs. Describe your firm's experience with at least three similar projects (e.g., agency size, prior federally declared disaster(s) experience) highlighting scope of work performed, project team members, schedule, and costs.
3. **Project Approach – 2 pages maximum.** Describe your firm's approach, including the process, and steps for delivering the Scope of Services (Section C).
4. **Project Team Staffing – 4 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, role, responsibility, experience, and length of tenure with your firm and experience with public agencies. Provide a list of major projects both ongoing and planned to which the proposed team members are committed to during the time frame of this project, status of project, and estimated team member time commitment. Include résumés of key personnel as an attachment. If awarded the contract, no staffing substitutions shall be made without the Park District's approval.
5. **References - 1 page maximum.** Provide a minimum of three (3) client references that are similar in size to the Park District where your firm provided Disaster Recovery Services similar to scope proposed in Section C. Include brief description of work performed, role of your firm, proposed team members that were involved and their role, and project duration. For each reference, please include the name of reference, organization, address, email address, and telephone numbers of individuals qualified to provide information from management/technical viewpoints.
6. **Detailed and Itemized Pricing – 1 page maximum.** Provide all proposed positions, and hourly billing rates that may perform work required under the scope of services. Indicate any proposed increases in such rates during the term of the contract, and the types of reimbursable expenses with proposed charges.

7. **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 Park District’s Professional Services Contract (Appendix A) or provide your proposed modifications to the contract.

## **H. 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. Proposals received after the deadline will not be considered. The Park District is not responsible for any costs incurred by the proposers in preparing or submitting their proposals.

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.

## **I. CONTRACT TERMS**

The selected contractor will enter into a two-year contract with the option for renewal based on performance and funding availability.

### **Appendix:**

- A. Park District’s Standard Professional Services Contract
- B. Supplementary Conditions – Federally Funded Projects

**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: \_\_\_\_\_

**SUPPLEMENTARY CONDITIONS – FEDERALLY FUNDED PROJECT**1.1 Debarment

- .1 The Contractor and any prospective lower tier participant certify, by submission of this proposal, that neither it nor its principals nor any subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

1.2 Additional Federal Contracting Requirements

- .1 The Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- .2 The Contractor shall comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) **and sign attached Lobbying Certification.** (Contracts in excess of \$100,000).
- .3 The Contractor shall comply with the Copeland Anti-Kickback Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3).
- .4 The Contractor shall comply with the Davis-Bacon Act, as amended, (40 U.S.C. 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5).
  - a. This project is a public work in the State of California, funded in whole or in part with public funds. Therefore, the higher of the two applicable prevailing wage rates, federal or state, will be enforced.
- .5 The Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). (Contracts in excess of \$100,000).
- .6 The Contractor shall provide reporting as specified in the plans, specification and deliverables section of the contract.
- .7 The District shall have patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- .8 The District shall have copyrights and rights respective to any data which arises or is developed in the course of or under such contract.
- .9 The District, State, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Contractor which are directly

pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

- .10 The Contractor shall maintain records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
- .11 The Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C.7401-7671q), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$150,000)
- .12 The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).
- .13 Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- .14 The contractor shall not use Federal Government seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval from the Federal agency.
- .15 This is an acknowledgement that federal financial assistance will be used to fund the contract only. The contractor will comply will all applicable federal law, regulations, executive orders, policies, procedures, and directives.
- .16 The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**(ONLY IF DEPARTMENT OF TRANSPORTATION FUNDS)**

- .1 The following shall be included verbatim in all Subcontracts: *“The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the*

*award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such other remedy as the District deems appropriate, which may include, but is not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the contractor from future bidding as non-responsible.”*

- .2 Prompt Progress Payment: Contractor is required to timely pay subcontractors as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 7-day is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over thirty (3) days may take place only for good cause and with the District’s prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to a subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.
- .3 Prompt Payment of Withheld Funds to Subcontractors: Contractor is required to promptly and fully pay subcontractor retainage within thirty (30) days after the subcontractor’s work is satisfactorily completed and accepted. This is accomplished by using the following method:

The District shall hold retainage from Contractor and shall make prompt and regular incremental acceptances of portions, as determined by the District and pay retainage based on these acceptances. Contractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving the payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work. Any delay or postponement of payment may take place only for good cause and with the agency’s prior written approval. Any violation of these provisions shall subject the violating Contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the Contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by Contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both Disadvantaged Business Enterprise (DBE) and non-DBE subcontractors.

**(ONLY IF DEPARTMENT OF TRANSPORTATION FUNDS AND INCLUDES VEHICLE OR EQUIPMENT PURCHASE)**

- .4 The Contractor and any prospective lower tier participant certify, by submission

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of this proposal, that they will comply with the requirements of 49 CFR 26.69.

**(ONLY IF FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FUNDS)**

**1.1 Cost Plus Percentage Not Allowed**

- .1 Notwithstanding any provisions in the agreement to the contrary, the Contractor and any prospective lower tier participant are prohibited from using cost plus percentage contracts. This includes but is not limited to the use of percentages for change orders or mark ups on sub-contractors or materials. Cost plus fixed fee either lump sum or unit price is authorized.

**1.2 The contractor shall help implement federal requirements for Small and Minority Businesses as follows:**

- .1 §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- .2 (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- .3 (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (6) Requiring the prime Consultant, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of

this section.

- .4 See federal website at: [http://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200\\_1321&rqn=div8](http://www.ecfr.gov/cgi-bin/text-idx?node=se2.1.200_1321&rqn=div8)



**CERTIFICATION REGARDING LOBBYING**  
**APPENDIX A, 44 C.F.R. PART 18**

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official