

**EAST BAY REGIONAL PARK DISTRICT**  
**ASSESSMENT OF SOLID WASTE MANAGEMENT PRACTICES &  
DEVELOPMENT OF ACHIEVABLE WASTE DIVERSION GOALS**

October 29, 2018

The East Bay Regional Park District (Park District) is soliciting proposals from qualified professional firms (Consultant) to assess the Park District's current solid waste management practices, recommend achievable solid waste diversion goals, and provide an implementation plan to achieve the stated goals.

**I. ABOUT THE EAST BAY REGIONAL DISTRICT**

The East Bay Regional Park District is an independent special district created by the voters and incorporated in 1934 to operate under Sections 5500 et seq. of the California Public Resources Code. The Park District is a system of beautiful public parklands and trails in Alameda and Contra Costa counties on the eastern side of the San Francisco Bay and is the largest regional park district in the nation, currently stewarding more than 120,000 acres of land with over 25 million annual visitors.

Typical activities enjoyed by the public at the Park District include hiking, cycling, boating, horseback riding, picnicking, jogging, camping, and nature study. The Park District is governed by an elected seven-member Board of Directors, and its annual operating budget for 2018 is approximately \$220 million with approximately 825 full-time equivalent staff. The Park District's core mission is *"Preservation of a rich heritage of natural and cultural resources and to provide open space, parks, trails, safe and healthful recreation and environmental education. An environmental ethic guides the District in all of its activities."*

For more information about the Park District, visit [www.ebparks.org](http://www.ebparks.org).

**II. BACKGROUND**

The Park District's jurisdiction extends across two counties which include 33 incorporated cities as well as unincorporated territory. The Park District differs from a typical city or county government agency in that it has a single focused mission. The Park District operates and/or manages a wide range of activities including:

- 73 regional parks, recreation areas, wilderness, shorelines, preserves and land bank areas.
- 31 regional inter-park trails
- 1,250 miles of trails within parklands
- 11 freshwater swimming areas, boating and/or stocked fishing lakes and lagoons, and a disabled-accessible swimming pool
- 40 fishing docks; 3 bay fishing piers
- 235 family campsites; 42 youth camping areas
- 2 golf courses
- 2,082 family picnic tables
- 1,707 reservable group picnic tables

- 10 interpretive and education visitor centers
- 18 children's play areas
- Wedding, meeting and banquet facilities

The Park District has approximately 800 employees and over 25 million visitors per year who generate approximately 3,000 tons of recyclable and compostable materials, and trash per year. The Park District uses over twelve different private hauling contractors. The State of California has a goal of 75 percent diversion from landfill and requires all large generators to recycle and compost. The Park District is required to provide collection services for the following three streams: 1) all recyclable materials; 2) all compostable materials (including food scraps and food soiled paper); and 3) trash. In addition, the Park District requires separate collection of yard trimmings, construction and demolition materials, scrap metal, universal, electronic and hazardous waste.

### **III. CURRENT ISSUES AND AREAS OF INTEREST**

1. Evaluate existing solid waste management practices.
2. Determine baseline solid waste diversion information.
3. Evaluate waste volume tracking process.
4. Identify feasible and appropriate solid waste diversion goals.
5. Develop strategic plan to achieve identified goals.
6. Identify possible funding sources.

### **IV. PROJECT DESCRIPTION**

The goal of this project is to achieve a comprehensive approach to District-wide solid waste management that results in:

1. A reduction in solid waste sent to landfills
2. Cost savings related to solid waste
3. Consistency across the varied Park District lands and facilities
4. Comply with all laws, resolutions and regulations
5. Waste generation and diversion tracking system

Project outcomes include assessment of Park District-wide solid waste management practices, development of achievable and measureable solid waste diversion goals, and an implementation plan to achieve those goals. The project will be coordinated out of the M.A.S.T. Department led by the Chief of Maintenance. The Consultant will be required to develop a Project Implementation Plan with specific milestones and timelines to achieve desired project outcomes.

The Consultant will be expected to deliver on the following outcomes:

1. Review and analyze the Park District's current solid waste management practices to identify opportunities and determine whether best practices are being used at all park locations. Information on current solid waste management practices and policies will be provided by the Park District.
2. Review Park District solid waste management policies and determine whether they are consistent with current local, state and federal laws.

3. Interview a limited number of selected Park District staff members (managers, supervisors and field staff) to understand unique solid waste challenges of a large public agency that operates across 33 cities and two counties.
4. Recommend changes to current practices to reflect best practices that are consistent with all local, state, and federal laws.
5. Recommend phased implementation plan to achieve desired goals.

## V. SCOPE OF SERVICES

The selected Consultant will perform services necessary for the completion of the project and delivery of the project outcomes described in Section IV. Project Description. The tasks listed below generally describe the services to be provided by the Consultant. The services listed are not all-inclusive, but rather represent those normally expected during performance of the project. The services shall include the following:

1. Develop a strategy to implement a solid waste reduction plan.
2. Develop survey techniques and methodology.
3. Independently collect data from internal resources (contract documents, invoices, audits, staff interviews, etc.).
4. Independently collect relevant information from outside sources (including best management practices, and federal, state and local laws, ordinances and regulations, etc.).
5. Evaluate and analyze data for comparability and accuracy.
6. Provide a draft and final written assessment of the Park District's solid waste management practices.
7. Provide draft and final written recommendations for achievable solid waste diversion goals and a solid waste reduction plan to achieve those goals. Include documentation of research and analysis to support recommendations.
8. Provide weekly status updates on project progress to the Chief of Maintenance or his designee.
9. Present findings and recommendations as requested to the General Manager and to the Board of Directors.

## VI. ANTICIPATED PROJECT SCHEDULE

The Park District's desired schedule for completion of the project is as follows. All dates are tentative and subject to change except for the proposal submission deadline of **Friday, November 16, 2018**:

Issue Request for Proposals	Monday, October 29, 2018
Proposal Submission Deadline	Friday, November 16, 2018
Interviews with Top-Qualified Firms	Week of November 19, 2018
Award Notification to Final Selected Firm	Friday, November 30, 2018
Project Start	Include in Proposal
Project Completion	Include in Proposal

## VII. SUBMISSION REQUIREMENTS

The letter of proposal must be in the sequence listed below and include:

1. The names of individuals who will be assigned to and working on the subject Project and their specific areas of responsibility and technical expertise.
2. Description of Project approach, including your firm's experience with solid waste management assessment studies and experience working with special districts.
3. Based on the requirements listed in the scope of services, a proposed outline of specific tasks, deliverables, and project schedule including the number of hours required to complete each task or project. Identify milestones and when coordination meetings, staff briefings, and a public Board of Directors meeting presentation is proposed.
4. The method(s) that will be used to complete the solid waste management assessment and their basis in industry standards.
5. 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 identified by name.
6. The likelihood of your firm's success in meeting Project goals and intended outcomes given your firm's capacity and resources to complete the Project in an effective and timely way.
7. Any anticipated barriers and risks to Project success, and how you would address anticipated Project barriers and risks.
8. Based on the requirements listed in the project description and scope of services, identify and suggest any options for cost reduction.
9. An itemized budget based on the above tasks, deliverables, and hours including for each assigned, participating consultant, their hourly rates, roles, and time estimates.
10. Provide list of three references – Provide name, telephone number, and email address of references that can attest to the quality and effectiveness of the past projects of similar scope.
11. Insurance - Provide a statement of the firm's acceptance of the Park District's insurance and indemnification requirements, or any reservations the firm has with the requirements. Please see Attachment 3 – Insurance Requirements.

## VIII. SELECTION PROCEDURE

The Park District would like to begin this process expeditiously as possible. The selection process is coordinated by the Human Resources Department. Upon review of proposals, only the most qualified firms will participate in the next step of the selection process, consisting of an in-person interview by a Park District panel. Invited firms must be ready to make a presentation on their proposal.

All inquiries and submittals must be made to Andrew Green, Sanitation Recycling Coordinator, at [agreen@ebparks.org](mailto:agreen@ebparks.org) or (510) 690-6682.

Full proposals must be in PDF format and received electronically by **5:00 p.m. on Friday, November 16, 2018** to [agreen@ebparks.org](mailto:agreen@ebparks.org).

Hard copies may be mailed to the address below and must be received by **5:00 p.m. on Friday, November 16, 2018**.

Please call Mr. Green at (510) 690-6682 to verify receipt of proposals. All proposals shall become the sole property of the Park District.

Mailing Address:

East Bay Regional Park District  
Attn. Andrew Green  
17930 Lake Chabot Road,  
Castro Valley, CA 94546

The Park District reserves the right to reject any or all proposals received and to request additional information as deemed necessary and appropriate.

## **IX. GENERAL STIPULATIONS**

The Park District is not responsible for any expenses which proposers may incur in preparing and submitting the proposal. The Park District will not be liable for any costs incurred by the proposers that are related to the request for proposal process including production of the proposal, interviews/presentations, travel and accommodations. The Park District reserves the right to request or negotiate modifications to the proposals that are deemed appropriate. All proposals received from proposers in response to this Request for Proposal will become the property of the Park District and will not be returned to the proposers. In the event of contract award, all documentation produced as part of the contract will become the exclusive property of the Park District. The Park District reserves the right to reject any and all proposals and to waive minor irregularities. The Park District also reserves the right to seek new proposals or re-advertise if responses have not been satisfactory or for any other reason.

### Public Records and Proprietary Information and Indemnification

The Park District recognizes that proposers will occasionally believe that all or portions of their proposals are confidential or proprietary. This can present problems in participating in a public agency request for proposal process. All proposals, strategies, supporting information, rate schedules and other information and documents are presumptively public records under the California Public Records Act (Gov't Code Section 6250 et seq.), subject to prompt disclosure upon request by any member of the public.

The Park District is not soliciting, does not wish to receive, and will not treat any information received under this proposal as proprietary or confidential information, unless specifically called for or expressly accepted by the District Counsel in writing, and will be accepted and considered only when, in the sole discretion of the Park District it is necessary to serve the public purpose of the project. If the inclusion of confidential or proprietary information is determined to be necessary to the proposal, proposers must identify each and every specific item and each and every page and segregate the information into a separate envelope or electronic file labeled conspicuously as confidential, with a cover page describing the information and applicable law exempting the same from disclosure. Any material marked or claimed as confidential or proprietary may be returned to the proposer by the Park District or destroyed and may not be considered in the review of proposals if the claim does not appear justified or would inhibit the public purposes of the project proposed.

If the documents have been properly marked and expressly accepted as confidential and proprietary in writing by the District Counsel, the Park District will make its best effort to advise the proposer of any Public Records Act request, should any be received, seeking documents claimed to be confidential or proprietary, to give the proposer an opportunity to take legal steps to protect such property from disclosure to third-party requester. The Park District expressly disclaims any duty and will not defend the confidentiality or proprietary nature of any information submitted. By submitting any confidential or proprietary information to the Park District, the proposer agrees to hold harmless and indemnify and defend the Park District and its officers, employees, and agents for any and all costs, including attorney's fees, incurred by the Park District or awarded to a Public Records Act requester relating to a request for release of proposer's data should the proposer ask the information to be handled as proprietary or confidential.

## **X. LIST OF EXHIBITS AND ATTACHMENTS**

- Attachment 1: East Bay Regional Park District Map
- Attachment 2: Sample Contract for Services
- Attachment 3: Insurance Requirements



## Attachment 2: Sample Contract for Services

### 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”.

#### RECITALS

- A. District desires to engage the services of Consultant to provide various 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 \_\_\_\_\_ 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 the Contract.

During the term of this Agreement, Consultant shall provide all labor, materials, tools equipment and services as documented in Exhibit A – Scope of Work attached hereto and made a part hereof.

3. Standard of Care.

- a. Standard of Care. Consultant agrees to perform the work in a professional manner and shall conform to the high standards of care and skill generally recognized as being employed by professionals in the same discipline as Consultant in the State of California. 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 Project Schedule in Exhibit A-1 (unless not necessary and covered in Exhibit A). Consultant shall provide and maintain Project staffing levels as necessary to perform the services under this Agreement within the time provided in the Project Schedule. The total time scheduled for full completion of Consultant's services shall not exceed the durations shown in the Project Schedule, unless mutually agreed upon in writing by Consultant and District.

## 8. Payment.

District shall compensate Consultant for services performed by Consultant as set forth in the rate schedule documented in Exhibit B attached hereto and made a part hereof. 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 \$\_\_\_\_\_ without prior written authorization by District.

Consultant shall submit his/her compensable hours and reimbursable expenses monthly, and District shall make payments on the approved reimbursable expenses within thirty (30) days, provided that in no event shall the amount paid Consultant exceed that percentage of the maximum total compensation and expenses payable under this Agreement (\$\_\_\_\_\_) which percentage equals the percentage of Consultant's work complete at the time. 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.

## 9. Termination of Agreement for Convenience.

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

## 10. Consultant as Independent Contractor.

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

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

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

#### 12. Compliance with Laws.

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

#### 13. Grant Funding.

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

#### 14. Nondiscrimination.

During the performance of this Agreement, Consultant and Consultant's sub-consultants will not discriminate against any employee or qualified applicant for employment on the basis of any legally protected classification including sex, race, creed, color, ancestry, religion, national origin or sexual orientation. The Consultant will take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to sex, race, creed, color ancestry, religion, national origin or sexual orientation or any other legally protected classifications. This equal treatment shall apply but not be limited to the following: upgrade, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeships.

#### 15. Labor Code/Prevailing Wages.

To the extent applicable, Consultant and Consultant's subconsultants shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation, and payment of prevailing wages as determined by the Director of California Department of Industrial Relations.

Consultant shall post a copy of the prevailing rate of per diem wages at each job site. Consultant shall forfeit fifty dollars (\$50.00) 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. Consultant shall defend, indemnify and hold harmless the District for any costs, claims and expenses arising from the failure of Consultant or Consultant's subconsultants to pay applicable prevailing wage rates.

#### 16. Indemnification.

To the fullest extent permitted by law, including without limitation California Civil Code 2782 and 2782.8, Consultant shall indemnify, hold harmless, defend (with counsel reasonably acceptable to District) and protect District, its officers, directors, agents, employees, and invitees from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including without limitation expert and attorneys' fees and costs of investigation, whether or not involving a third party claim, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its employees, subconsultants, or agents in the performance of services under this Agreement. Consultant shall have the duty to defend the District if there is any possible obligation to indemnify the District, however, the cost to defend charged to Consultant shall not exceed Consultant's proportionate percentage fault. The District's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligations under this section. The provisions of this section shall survive the termination or expiration of this Agreement.

With respect to third party claims against Consultant, Consultant waives any and all rights of any express or implied indemnity against the District.

#### 17. Insurance.

- a. Consultant shall procure and keep in force during the term of this Agreement, at Consultant's own cost and expense, the following policies of insurance with companies licensed to do business in the State of California, which are rated at least "A" or better by A.M. Best Company and which are acceptable to District. Consultant shall, fifteen (15) days prior to the commencement of this Agreement and prior to the termination of any policy, supply District with a certificate, on the District's certificate of insurance form, showing that such insurance is in force.
  - (1) Workers' Compensation as required by law and Employer's Liability with limits of \$500,000 per occurrence (if employees are to be hired).
  - (2) Commercial General Liability ("CGL") (bodily injury and property damage) on an occurrence basis in an amount not less than \$1 million per occurrence and at least \$2 million 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 \$1 million 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 \$1 million per occurrence and \$2 million 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.

#### 18. Default.

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

- a. Enforce performance of the Agreement by Consultant.
- b. Terminate Consultant's services under this Agreement.
- c. Perform the obligations of the Consultant, whereupon Consultant shall reimburse District for any amounts paid or expenses incurred by District, or pay District any expenses and/or damages incurred by District in the performance of such obligations, District's increased cost in performing the work, together with interest at the maximum rate of interest allowed by law on demand by District. District at its option may deduct any sum due to District from sums to be paid by District to Consultant.
- d. The above remedies are in addition to any other remedies at law or equity District may have. Consultant shall pay or reimburse District for all of District's costs and expenses, including reasonable attorneys' fees incurred in enforcing its rights hereunder.

#### 19. Consultants Books and Records/Audit.

Consultant and Consultant's subconsultants, if any, shall maintain any and all ledgers, books of account, invoices, vouchers, and any other records or documents pertaining to charges for services, expenditures and disbursements to District under this Agreement for a minimum of three (3) years, or such longer period required by law, from the date of final payment to Consultant by District. Any records or documents required to be maintained under this section shall be made available to District for inspection and copying upon request. In accordance with

California Government Code Section 8546.7, if the Not to Exceed Amount exceeds ten thousand dollars (\$10,000.00), this Agreement and the Consultant's books and records related to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement.

20. Assignment.

Consultant shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any persons or entities whatsoever without the prior written consent of District and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

21. Advice of Counsel/Attorneys' Fees.

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

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

22. Notices.

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

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

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

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

### 23. Ownership of Work.

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

### 24. Digital Files.

In addition to any other format required in the Scope of Work, Consultant shall provide copies of all deliverables on compact disk in a digital format. Files shall be compatible with software used by the District.

### 25. 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.

### 26. 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.

### 27. 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.

### 28. 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.

29. 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.

30. Severability.

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

31. Counterparts.

This Agreement may be executed in counterparts, 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 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: \_\_\_\_\_

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

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

Attachment 3: Insurance Requirements

(Licensed Professional Contract for Services)

**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**