

EAST BAY MUNICIPAL UTILITY DISTRICT

REQUEST FOR PROPOSAL (RFP) No. FIN 2016-01 for EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES

For complete information regarding this project, see RFP posted at <http://ebmud.com/business> or contact the EBMUD representative listed below. Thank you for your interest!

Contact Person: Olivia Young, Executive Assistant II
Phone Number: (510) 287-0216
E-mail Address: oyoung@ebmud.com

Please note that prospective Proposers are responsible for reviewing <http://ebmud.com/business>, during the RFP process, for any published addenda regarding this RFP.

RESPONSE DUE
by
4:00 p.m.
on
March 25, 2016
at
EBMUD, Purchasing Division
375 Eleventh St., First Floor
Oakland, CA 94607



375 Eleventh Street, Oakland, CA 94607
Website: ebmud.com

EAST BAY MUNICIPAL UTILITY DISTRICT

RFP No. FIN 2016-01

for

EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES

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I. STATEMENT OF WORK**A. SCOPE**

East Bay Municipal Utility District (District) intends to award a seven year contract (with one option to renew for a two-year term) to the Proposer who best meets the District's requirements.

The intent of this RFP is to select one banking institution to provide consolidated depository/demand banking services for the District. However, the District may also elect to award an agreement(s) to winning proposals for any or all optional services including business credit card, pay card, purchasing card and custodial services.

The District's primary banking services consist of general depository, disbursement and cash management services. The District is requesting proposals from qualified banks willing to enter into a contract to provide these banking services. The District's goal is to finalize a contract for banking services no later than May 2016. Banks are encouraged to submit a comprehensive proposal offering high quality services with appropriate enhancements to improve the District's current banking, cash management, and customer service procedures taking advantage technological advances as appropriate. Please provide options that may create efficiencies, process improvements, and/or take advantage of new, applicable technologies.

Banks are encouraged to be creative and educational in their responses. Include information about your bank's dedicated resources for serving the public sector and community involvement. While your format must be consistent with the requirements of this RFP, if there is additional information that would be beneficial to the selection process, you are invited to include the information in your proposal.

The investment activities of the District will in no way be affected by the appointment of a banking institution(s) to handle the District's regular depository and custody accounts. All investment activities will continue to be handled at the direction of the District's Treasurer. The activities described in this RFP are handled largely at the direction of the District's Controller.

The District reserves the right to select a bank or banks whose proposals, in the sole judgment of the District, best meet the needs of the District. The District's decision to award a contract will be based on many factors, including but not limited to, service, cost, financial strength and innovation. No single factor, such as cost, will determine the final decision to award. (See "Evaluation of Proposals")

The awarding of a contract shall be contingent on the requisite approvals. The decision to award the contract to a particular institution will be based on many factors

enumerated below, including but not limited to bank branch locations, products available, service levels, cost to the District, financial strength of the bank, etc. No single factor will determine the final award decision.

B. SPECIFIC REQUIREMENTS

The specific requirements of this RFP are detailed in Exhibit A, pg. 5-16, Required Documentation and Submittals.

II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION	
RFP Issued	February 19, 2016	
Deadline to Submit Questions This deadline is the final date for submission of questions which will be addressed at the Pre-Proposal Conference.	February 26, 2016	
Pre-Proposal Conference	At 9:30 a.m. – 11:30 a.m. on March 11, 2016	East Bay Municipal Utility District Board Room 375 Eleventh Street Oakland, CA 94607-4240
Proposal Due	March 25, 2016 by 4:00 p.m.	
Interview with Finalists	April 11-15, 2016	
Board Award	May 10, 2016	

Note: All dates are subject to change.

A. RFP QUESTION SUBMISSION

As it is expected that each bank may have different needs for information, it is incumbent upon each bank to make the inquiries it deems necessary in order to respond to this RFP. All questions and request for information, interpretation or clarifications pertaining to this RFP or any of the services requested, must be submitted in writing by **February 26, 2016** in order to be addressed at the pre-proposal conference. All questions and the District's responses will become a public record and will be shared by email with all banks to whom the RFP was sent. Failure to request an interpretation will be considered evidence that the responder understands the provisions of the RFP.

Requests for information and questions regarding this RFP will be addressed at the pre-proposal conference. Please direct any such requests or questions to Olivia Young,

Executive Assistant II, Finance Department, at oyoung@ebmud.com by the date listed in the above paragraph. All requests and questions must be submitted by e-mail, indicate “RFP for Banking Services” in the subject line, and reference the relevant RFP page and topic.

B. PRE- PROPOSAL CONFERENCE

Pre-Proposal conference will be held to:

1. Allow the District to discuss the scope of the project.
2. To facilitate clear communication and to achieve an equitable dissemination of information.

III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS

A. RFP ACCEPTANCE AND AWARD

1. RFP responses will be evaluated by a committee and will be scored/ranked in accordance with the RFP section entitled “Evaluation Criteria/Selection Committee.”
2. The committee will recommend award to the Proposer who, in its opinion, has submitted the RFP response that best serves the overall interests of the District. Award may not necessarily be made to the Proposer with the lowest overall cost.
3. The District reserves the right to award to a single Proposer or to multiple Proposers, dependent upon what is in the best interest of the District.
4. The District has the right to decline to award this contract or any part of it for any reason.
5. Any specifications, terms, or conditions issued by the District, or those included in the Proposer’s submission, in relation to this RFP, may be incorporated into any PO or contract that may be awarded as a result of this RFP.
6. With respect to awarding the contract, the right is reserved to reject any or all proposals, to accept some parts of a proposal and reject others, unless the Proposer stipulates to the contrary, and to waive technical defects, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

B. EVALUATION CRITERIA/SELECTION COMMITTEE

All proposals will be evaluated by a District Selection Committee (DSC). The DSC may be composed of District staff and other parties that may have expertise or experience in this type of procurement. The DSC will select a Proposer in accordance with the evaluation criteria set forth in this RFP. The evaluation of the RFP responses shall be within the sole judgment and discretion of the DSC.

The DSC will evaluate each RFP response meeting the qualification requirements set forth in this RFP. Proposers should bear in mind that any RFP response that is unrealistic in terms of the technical or schedule commitments, or unrealistically high or low in cost, will be deemed reflective of an inherent lack of technical competence or indicative of a failure to comprehend the complexity and risk of the District's requirements as set forth in this RFP.

RFP responses will be evaluated and scored according to each of the Evaluation Criteria below, and scored according to a zero to five-point scale. The scores for all Evaluation Criteria will then be added to arrive at a weighted score for each RFP response. An RFP response with a high weighted total will be deemed of higher quality than one with a lesser-weighted total.

The Evaluation Criteria are as follows:

	Evaluation Criteria	Weight
A.	Public Sector Experience and Resources: The bank's experience in providing services to the public sector, as well as dedicated resources and personnel and the quality of references and experience with public agency clients.	20
B.	Strength and Stability of Bank: The bank's financial standing among its peers and the associated credit quality ratings and ability of bank to collateralize deposits.	20
C.	Assigned Relationship Manager/Team: The credentials and experience of the person(s) assigned to the District's relationship.	5
D.	Charges for Services: The amount of proposed charges and pricing increases in subsequent years.	30
E.	Service Enhancements: The bank's efforts to understand the District's banking needs and goals, and the creativity the bank shows in introducing new technologies and efficiencies to improve the District's current practices and procedures.	5
F.	Location and convenience of bank office(s).	15

G.	Other Factors: Any other factors that we believe would be in the District's best interest to consider which were not previously described.	5
H.	Contract Equity Program: Proposer shall be eligible for SBE preference points if they are a certified small business entity (SBE), as described in the guidelines contained in Exhibit A-Contract Equity Program, <u>and</u> they check the appropriate box, requesting preference, in Exhibit A-Proposer Information and Acceptance.	5

C. PRICING

1. Prices quoted shall be firm for the length of any contract that may be awarded pursuant to this RFP.
2. All prices quoted shall be in United States dollars.
3. Price quotes shall include any and all payment incentives available to the District.

D. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after either of the following: posting of the RFP results on the District's website (www.ebmud.com), or notification of selection/non-selection, whichever is sooner. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from Proposers or potential Proposers only.

If the protest is mailed and not received by the District, the protesting party bears the burden of proof to submit evidence (e.g., certified mail receipt) that the protest was sent in a timely manner so that it would be received by the District within the RFP protest period.

Bid protests must contain a detailed and complete written statement describing the reason(s) for protest. The protest must include the name and/or number of the bid, the name of the firm protesting, and include a name, telephone number, email address and physical address of the protestor. If a firm is representing the protestor, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven

day time limit. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

The bid protester can appeal the determination to the District's Director of Finance. The appeal must be submitted to the Department Director no later than five working days from the date of receipt of the requesting organization's determination on the protest.

Such an appeal must be made in writing and must include all grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the Purchasing Division a copy of all materials sent to the Department Director. The Department Director will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will make a recommendation for award and inform the protester it may request to address the Board of Directors at that meeting.

The District may transmit copies of the protest and any attached documentation to all other parties who may be affected by the outcome of the protest. The decision of the District as to the validity of any protest is final. This District's final decision will be transmitted to all affected parties in a timely manner.

E. INVOICING

1. The District shall notify selected Proposer(s) of any billing adjustments required.
2. The District will pay selected Proposer(s) in an amount not to exceed the negotiated amounts which will be referenced in the agreement signed by both parties.

IV. RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION

A. DISTRICT CONTACTS

All contact during the competitive process is to be through the contact listed on the first page of this RFP. The following persons are only to be contacted for the purposes specified below:

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Olivia Young
EBMUD Finance Department
E-Mail: oyoung@ebmud.com
PHONE: (510) 287-0216

B. SUBMITTAL OF RFP RESPONSE

1. Late and/or unsealed responses will not be accepted.
2. RFP responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFP responses and/or those sent by electronic mail ("e-mail").
3. RFP responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 4:00 p.m. on the due date specified in the Calendar of Events. Any RFP response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened. All RFP responses must be received and time stamped at the stated address by the time designated. The Purchasing Division's timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFP responses.
4. RFP responses are to be addressed/delivered as follows:

Mailed:

Andrew Akelman, Manager of Purchasing
East Bay Municipal Utility District
EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES
RFP No. FIN-2016-01
EBMUD—Purchasing Division
P.O. Box 24055
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Andrew Akelman, Manager of Purchasing
East Bay Municipal Utility District
EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES
RFP No. FIN-2016-01
EBMUD—Purchasing Division
375 Eleventh Street, First Floor
Oakland, CA 94607

Proposer's name, return address, and the RFP number and title must also appear on the mailing package.

5. Proposers are to submit one (1) original hardcopy RFP response (Exhibit A – RFP Response Packet, including Contract Equity Program forms and all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A), all with original ink signatures and three (3) copies of the original.
6. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.
7. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Proposer offers and agrees that if the RFP response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the purchasing body pursuant to the RFP response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer.
8. Proposer expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
9. The RFP response shall remain open to acceptance and is irrevocable for a period of one hundred and twenty (120) days from the proposal due date, unless otherwise specified in the RFP documents.
10. It is understood that the District reserves the right to reject any or all RFP responses.

C. RESPONSE FORMAT

1. **Proposers shall not modify any part of Exhibits A, B, C, D, or E, or qualify their RFP responses. Proposers shall not submit to the District a re-typed or otherwise re-created version of these documents or any other District-provided document.**
2. RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to

public disclosure. The District shall not be liable in any way for disclosure of any such records.

3. The District will not be liable for errors or omissions in the bank's proposal. Proposers will not be allowed to alter proposal documents after the proposal due date.
4. No corrections or resubmission of proposals will be accepted after the proposal submission deadline.



EXHIBIT A RFP RESPONSE PACKET

RFP No. FIN 2016-01 – EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES

To: The EAST BAY MUNICIPAL UTILITY District (“District”)

From: _____
(Official Name of Proposer)

RFP RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, PROPOSERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFP RESPONSE WITH ORIGINAL INK SIGNATURES, AND THREE (3) COPIES OF THE ORIGINAL, EACH CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - **EXHIBIT A – RFP RESPONSE PACKET, INCLUDING PROPOSER INFORMATION AND ACCEPTANCE FORM, CONTRACT EQUITY PROGRAM FORMS, AND ALL REQUIRED DOCUMENTATION AS DESCRIBED IN THIS EXHIBIT A- REQUIRED DOCUMENTATION AND SUBMITTALS**
 - **EXHIBIT B- INSURANCE FORMS**
- **PROPOSERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFP RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFP RESPONSE REJECTED IN TOTAL.**
- **IF PROPOSERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**



PROPOSER INFORMATION AND ACCEPTANCE

1. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFP documents of RFP No. FIN-2016-01
2. The undersigned declares that they are authorized to bind the financial institution to all commitments made in the RFP.
3. The undersigned declares that all RFP documents, including, without limitation, the RFP, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
4. The undersigned acknowledges acceptance of all District addenda related to this RFP. List Addenda for this RFP on the line below:

Addendum #	Date

5. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the Proposer, as set forth in this RFP Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
6. The undersigned acknowledges that the Proposer is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFP and associated RFP documents.
7. It is the responsibility of each Proposer to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFP response, the Proposer certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
8. Patent indemnity: General or Professional Service Providers who do business with the District shall hold the District, its Directors, officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary

right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.

9. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.
10. The undersigned Proposer hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Proposers Response Packet, and any attachments, shall be used to form the basis of a Contract, which once executed shall take precedence.
11. The undersigned acknowledges **ONE** of the following (please check only one box)*:
- ☐ Proposer is not an SBE and is ineligible for any Proposal preference; **OR**
- ☐ Proposer is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, and has completed the Contract Equity Program and Equal Employment Opportunity forms at the hyperlink contained in the Contract Equity Program and Equal Opportunity section of this Exhibit A.

*If no box is checked it will be assumed that the Proposer is ineligible for Proposal preference and none will be given. For additional information on SBE Proposal preference please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the below referenced hyperlink.

Official Name of Proposer (exactly as it appears on Proposer's corporate seal and invoice): _____

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

☐ Corporation

☐ Joint Venture

☐ Limited Liability Partnership

☐ Partnership

☐ Limited Liability Corporation

☐ Non-Profit / Church

☐ Other: _____

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Street Address Line 1: _____

City: _____ State: _____ Zip Code: _____

SIGNATURE: _____

Name and Title of Signer (printed): _____

Dated this _____ day of _____ 20_____



REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation and content listed below is required to be submitted with the Exhibit A – RFP Response Packet. Proposers shall submit all documentation, in the order listed below, and clearly label each section of the RFP response with the appropriate title (i.e. Table of Contents, Transmittal Letter, etc.). Proposals which do not include the required information may be deemed non-responsive.

Banks that choose not to submit a proposal for an entire or part of a section described below should communicate their intentions by marking the service section “No Proposal.” The bank may offer an alternative or equivalent service or solution. Acceptability of alternatives will be solely at the District’s discretion. The District reserves the right to reject the bank’s entire proposal due to a failure to submit a proposal for an entire or part of the required services. However, if the primary proposal response is acceptable to the District the proposal will be considered and evaluated.

Title Page/Cover: One printed page maximum. This should include the name of the proposing bank, its principal business address where the relationship will be managed, the local branch address that can meet the District’s daily banking needs, and a contact person with telephone number and E-mail address that will be available during the proposal submission and review process.

Tab 1 – Title Page/Cover: One printed page maximum. This should include the name of the proposing bank, its principal business address where the relationship will be managed, the local branch address that can meet the District’s daily banking needs, and a contact person with telephone number and E-mail address that will be available during the proposal submission and review process.

Tab 2 - Table of Contents: Two printed pages maximum.

Tab 3 - Transmittal Letter: Two printed pages maximum. The letter should address the bank’s willingness and commitment if selected, to provide the services, and why the bank believes it should be selected. The letter should be addressed to: Sophia D. Skoda, Director of Finance, East Bay Municipal Utility District and signed by the Relationship Manager to be assigned to the District’s account(s).

Tab 4 - Bank and Staff Profile: Five printed pages maximum. Respond to the following sections:

Overview: Provide a corporate overview of your bank including your bank’s financial strength, experience and team. Also identify the location of the nearest full service branch to the District’s headquarters (375 Eleventh Street, Oakland, CA 94607) that can assist the District with the

District's immediate banking needs. The successful bank must have a full service branch in the City of Oakland, CA.

Qualifications: Describe the bank's compliance with the following criteria. To be considered for selection, proposing banks must have the following qualifications:

- a) Be a Federally or State of California chartered financial institution.
- b) Be a member of the Federal Reserve System and have access to all services.
- c) Be a qualified depository for public funds.
- d) Be a full service bank in good standing among other comparable banks.
- e) Be capable of providing the services sought by the District.
- f) Have established offices within the District's service territory. Preference will be given to banks with branches in close proximity to the District's headquarters location.
- g) Agree to assign experienced and dedicated staff committed and capable of servicing the accounts.
- h) Be sufficiently capitalized to accommodate the District' cash/investment management needs.

Reporting Requirements: Include copies of the bank's quarterly call reports for the past two (2) years and annual financial report for the past three (3) years. These reports will be used by the District to determine the financial strength of the proponent. The successful bank shall, during the duration of this contract, be required to furnish the District updated issues of each report electronically in a timely manner. Please indicate your ability to comply with this requirement.

Collateral Posting: The successful depository bank will be required to post collateral in compliance with Section 53651 of the California Government Code. The collateral must have a market value of at least 110% of the District's funds on deposit. In addition this collateral must be "marked to market" monthly. Please indicate your ability to comply with this requirement.

Experience: Describe the bank's experience in providing services to the public sector. Include exclusive resources dedicated for the public sector. Provide three references most comparable to the District in size and financial needs that may be contacted. Include a brief description of the services provided, how long such services have been provided, and a contact person, telephone number and email for each client described.

Relationship Management: Describe the relationship team that will be assigned to service the relationship. Describe individual roles, responsibility and briefly detailing credential and related banking experience.

Services and Exceptions: Include a statement confirming your bank's ability to provide the full scope of required services listed below, listing any exceptions. Note whether your bank is electing to provide any of the optional services listed below.

Scope of Required Services

Tab 5 - Collected Balances and Earnings Allowance: Two printed pages maximum. Describe the bank's calculation of collected balances and method of calculation of charges for funds advanced. Also describe the earnings allowance methodology that would be used to give credit to the District for bank balances.

Tab 6 - Subvention Payments from the State and LAIF: One printed page maximum. Describe method the bank processes subvention payments from the State of California and LAIF transfers.

Tab 7 - Change/Currency Order Services: One printed page maximum. Describe the bank's procedures for requesting change/currency orders. The bank must be prepared to provide cash in small denominations up to \$100,000 under District determined emergency conditions.

Tab 8 - FDIC Charges and Float: One printed page maximum. Provide information on applicable FDIC charges and the bank's availability schedule. Also present any float advantages by converting or maintaining the banking relationship at your bank.

Tab 9 - Deposit Processing: Four printed pages maximum. The District has a number of locations in the service area that make deposits daily. Currency is usually bundled by denomination. Generally coin is limited. Most deposit items are encoded. The District uses ACH truncation for our headquarter deposits.

The following is a list of deposit processing items that are expected in the proposal.

- The bank will provide accounts necessary for the District for which daily deposits, ACH Deposits and payments, wire transfers, investment transactions, electronic deposits and checks issued will be made.
- The bank will accept deposit items, which may not be encoded and unsorted although a majority of checks deposited will be encoded.
- The bank will credit the District's account for all checks in accordance with the bank's availability schedule. (Banks are required to attach a copy of their availability schedule to their proposal.) The awarded bank will notify the District, in writing, of any changes to the schedule.
- Describe how the bank would accommodate the volume associated with the District's account. Indicate deposit options, including cash vault centers.
- The bank must have a centralized cash vault operation that can accommodate the security, deposit volume and change order demands associated with the District's accounts.

- Describe armored carrier service available for use.
- Also include information on the bank's processing of returned/recleared items in this section.

Tab 10 - Direct Deposit: Two pages maximum. The District currently processes direct deposits of payroll through our current banking institution. Approximately 95% of the 3,000 combined totals of employees and retirees taking advantage of direct deposit. The bank must have the capability to accommodate a wide range of electronic payment and deposit services.

Tab 11 - Account Reconciliation: Three printed pages maximum. The following is a list of account reconciliation items that are expected in the proposal.

- The bank must provide full Account Reconciliation and Positive Pay with full data transmission capabilities. The bank must reject all items not conforming to the District's listed transaction unless individually approved for payment.
- The proposal must state the bank's policy on how dishonored returned check items will be handled. The bank must allow the District 60 days in which to identify and notify the bank of forged or disputed items charged to the account allowing full credit for the disputed item.
- The bank must provide monthly account reconciliation reports, bank statements, account analysis statements, confirmations and other report related features.
- The bank must be able to provide various reports and statements in a computer media and also provide specialized reports, where feasible, as needed.
- Describe the account reconciliation services offered by the bank.
- Describe the bank's check truncation services, including estimated savings if used.

Tab 12 - Controlled Disbursement: Two printed pages maximum. Describe the controlled disbursement program offered by the bank. The District does not currently utilize a controlled disbursement program.

Tab 13 - Daylight Overdraft Protection: One printed page maximum. Describe any issues, concerns and charges associated with the use of a daylight overdraft facility.

Tab 14 - Payroll Tax Processing: One printed page maximum. Describe the services available from the bank to accommodate the District's payment and reporting of payroll taxes.

Tab 15 - Direct Payment: Two pages maximum. The District currently processes Direct Payment of water bill customers once a week. This program is also called Direct Debit or Automatic Bill Payment (ABP). There are approximately 336,000 ABP transactions made in 2015 with a dollar volume of \$68.4 million. Describe the capabilities of the bank to receive ABP files from the District in National Automated Clearing House Association (NACHA) format using File Transfer Protocols (FTP) with encryption.

Tab 16 - Consolidated Electronic File Processing: Three pages maximum. The District currently receives a daily consolidated electronic payment file containing information from three sources: home banking transactions – Customer Initiated Entries (CIE) from multiple sources, the District's credit card vendor (also CIE format) and EDI transactions (either CCD+ or CTX). The three sources are uniquely identified and are transmitted in a single file using File Transfer Protocols (FTP) with encryption. In addition, the District receives three detail daily fax reports of all items with payment breakdown statistics. Describe the services available from the bank to accommodate and/or enhance the District's consolidated electronic file processing capability, list all changes District customers would be required to make due to any change in banks, and discuss how you would minimize the impact to District customers. Following are the Consolidated Electronic File Payment Counts and Dollar Volumes for 2015.

Type	Count	Dollar Volume
Credit Card	35,722	\$4.7 million
EDI/ACH	6,369	\$33.3 million
Home Banking	188,325	\$29.8 million

Tab 17 - Electronic Money Transfers: Two printed pages maximum. The District will consider incoming wire transfers as available for same day investment by the District. The bank will provide the District with on-line capability to initiate outgoing wires in addition to oral transfers. Describe the bank's incoming and outgoing electronic money transfer services. Include safeguards and security measures offered by your service.

Tab 18 - Balance Reporting: Two printed pages maximum. The following is a list of balance reporting items that are expected in the proposal.

- The bank must have an electronic communication/file transmission system to allow receipt no later than 5:30 a.m. Pacific Standard Time, previous day balance and transaction information for each designated account. The system must also have wire transfer capability.
- The bank will provide "on line" access to daily account balances, wire transfers, check status inquiry, image retrieval and stop payment requests. A description of the features offered shall be

included in the response. Describe the balance reporting system offered by the bank, its features, including user-friendliness.

Tab 19 – Computer Systems Interface/Knowledge: Provide pages as necessary. The District utilizes PeopleSoft as its enterprise resource planning (ERP) software but is planning on upgrading or replacing this system in the near- to medium-term. Describe the bank’s ability to support the PeopleSoft technology, the other technologies supported by the bank, and the bank’s ability to assist with the conversion.

Tab 20 - Overnight Sweep Account Facility: One printed page maximum. Describe the overnight sweep account offered by the bank. Also include other overnight investment options available to maximize the District’s earnings potential on available cash balances. The District does not currently use a sweep account feature in the depository demand account relying on available balances to generate compensating balance credit towards the costs of banking services.

Tab 21 - Service Enhancements: Three printed pages maximum. Based upon information presented in the District’s RFP and your bank’s knowledge of the public sector, describe any enhancements, technological or otherwise, that we should consider to improve operational or cash management efficiencies. Provide access to demo web sites or provide details regarding online banking services.

Optional Services

Tab 22 - Credit Card Processing: (OPTIONAL SERVICE) Two printed pages maximum. The District is setting up a limited credit card program. The average draft size is projected to be \$7.00 to \$50.00. The annual volume is projected to be \$700,000. The bank must be able to provide an electronic system, which will accommodate credit card authorizations. Describe the electronic system(s) available for processing credit card transactions. Banks that choose not to submit a proposal for this optional service should communicate their intentions by marking this section “No Proposal.”

Tab 23 - Business Credit Card: (OPTIONAL SERVICE) One printed page maximum. The District currently uses two business credit cards under a total credit line amount of \$25,000. Describe the bank’s issuance of credit cards for travel and expenses and any electronic capabilities the bank offers with regard to its credit card programs. Banks that choose not to submit a proposal for this optional service should communicate their intentions by marking this section “No Proposal.”

Tab 24 - Purchasing Card: (OPTIONAL SERVICE) One printed page maximum. The District has an active Purchase Card program with annual transactions of approximately \$10 million with 500 cards outstanding of which approximately 310 cards have activity each month. Discuss the electronic capabilities the bank offers with regard to its purchase card programs. Please also describe your “Revenue Sharing Program”, how does it works, and the proposed rebate calculations. Banks that choose not to submit a proposal for this optional service should communicate their intentions by marking this section “No Proposal.”

Tab 25 - Investment Services: (OPTIONAL SERVICE) Three printed pages maximum. The District currently has a \$400 million investment portfolio excluding retirement system assets, bond funds and bond reserve funds. Individual investments are purchased from an open list of qualified brokers and dealers. Describe investment services, if any offered by the bank; but exclude duplicate description of overnight Sweep Account capabilities in this section. Banks that choose not to submit a proposal for this optional service should communicate their intentions by marking this section “No Proposal.”

Tab 26 - Custody Services: (OPTIONAL SERVICE) Provide pages as necessary. The District has a \$400 million portfolio excluding retirement system assets, bond funds and reserve accounts deposited with a trustee. The portfolio generates approximately 250 annual security transactions. Describe custody services offered by the bank including systems capabilities, standard reporting package and pricing schedule. Banks that choose not to submit a proposal for this optional service should communicate their intentions by marking this section “No Proposal.”
Conversion Plan and Other Information

Tab 27 - Conversion Plan: Four pages maximum. Describe the overall plan your bank would provide to ensure a smooth transition from the current provider. Include a schedule of when any information to be provided by the District should be available. The bank must also provide on-site training to District personnel for the operation and use of the bank’s services and automated systems for all areas of service. Response should include the following:

- a) Describe the process by which your institution would coordinate to ensure a smooth transition from the current provider as well as a schedule of the conversion process (to take no more than 90 days). Provide a detailed schedule of this plan in increments.
- b) Do you have an implementation process critical path analysis highlighting key milestones that may affect the completion of the transition?
- c) Identify staff responsible for implementation, a conversion team, or regular client service personnel. If a conversion team is used, how will the District’s account be transitioned to the ongoing client service team?
- d) Describe your bank’s approach to pricing during the implementation phase.
- e) Describe the training program that will be used to train District staff on all of the systems that will be used by the District.

Tab 28 - Additional Information: Four printed pages maximum. Describe any other information not previously mentioned that the bank believes should be given consideration.
Pricing Terms, Conditions and Schedule

Tab 29 - Pricing Terms and Conditions: One printed page maximum. Describe the bank's proposed terms of contract, and method in which pricing adjustments will be calculated.

Tab 30 - Pricing Schedule: Provide pages as necessary. The District currently utilizes a consolidated account for all operating deposits and disbursements for the Water System, Wastewater System, Employees Retirement System and various joint powers agency agreements. There is one zero balance account, a merchant account and four revolving fund accounts. Banks must use the Pricing Pro-Forma Matrix, which details projected activity levels in these accounts, the Exceptions List and Response Information which appear in Appendix A. These documents constitute the summary of the proposal and must be included in the response.

The District may choose to amend its account structure to differentiate between the various systems and agencies currently incorporated within the consolidated account. Please discuss the impact this might have on proposed services and pricing.

Tab 31-References:

- (a) Proposers must use the templates in the "References" section of this Exhibit A – RFP Response Packet to provide references.
- (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
 - Proposers must verify the contact information for all references provided is current and valid.
 - Proposers are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
- (c) The District may contact some or all of the references provided in order to determine Proposer's performance record on work similar to that described in this RFP. The District reserves the right to contact references other than those provided in the RFP response and to use the information gained from them in the evaluation process.

Tab 32- Exceptions, Clarifications, Amendments:

- (a) The RFP response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, which shall be submitted with the Proposer's RFP response using the template in the "Exceptions, Clarifications, Amendments" section of this Exhibit A – RFP Response Packet.
- (b) **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.**

Contract Equity Program:

- (a) Every Proposer must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink contained in the last page of this Exhibit A. **Special attention should be given to completing Form P-25, "Employment Data and Certification"; and Form P-46, "Designation of Subcontractors."** Any Proposer needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFP response.

Tab – 34

PRO-FORMA PRICING MATRIX BASED ON ESTIMATED ANNUAL VOLUME

Cost shall be submitted on this Proposal Form as is. The prices quoted shall not include Sales Tax or Use Tax; said tax, wherever applicable, will be paid by the District to the General or Professional Service Provider, if licensed to collect, or otherwise directly to the State.

No alterations or changes of any kind to the Proposal Form(s) are permitted. RFP responses that do not comply may be subject to rejection in total. The cost quoted below shall be the cost the District will pay for the term of any contract that is a result of this RFP process.

Quantities listed herein are annual estimates based on past usage and are not to be construed as a commitment. No minimum or maximum is guaranteed or implied.

AFP Code	Description	Estimated Annual Volume	Unit Price	Total Annual Cost
Balance and Compensation Information:				
00 0210	DAILY USE OF UNCOLL FUNDS-ACCT LVL	4.33		
00 0230	RECOUPMENT MONTHLY	49,116.80		
General Account Services:				
01 0000	ACCOUNT MAINTENANCE-CHEXSTOR	109.00		
01 0020	ZERO BALANCE MASTER ACCOUNT MAINT	11.00		
01 0021	ZERO BALANCE MONTHLY BASE	49.00		
01 0100	DEBITS POSTED	2,945.00		
01 0310	DDA STATEMENT - PAPER	3.00		
01 0630	BANK CONFIRMATION AUDIT REQUEST	1.00		
01 9999	NON ACCT HOLDER CHK CASHING-EXEMPT	164.00		
Lockbox Services				
05 0030	E-BOX MONTHLY MAINT (W/CROSS REF)	12.00		
Purchasing Card Services:				

AFP Code	Description	Estimated Annual Volume	Unit Price	Total Annual Cost
08 0000	COMMERCIAL CARD CCER MONTHLY BASE	24.00		
08 0100	COMMERCIAL CARD TRANSACTION	22,261.00		
08 0301	COMMERCIAL CARD ISSUANCE	43.00		
Depository Services:				
10 0000	POST VERIFY DEPOSIT	565.00		
10 0015	CASH DEP/\$1 VER AT TELLER WINDOW	783,358.00		
10 0048	CURRENCY ORDERED/\$1 - BRANCH/STORE	1,220.00		
10 0140	CHANGE ORDER CHARGE-BRANCH/STORE	2.00		
10 0220	DESKTOP DEPOSIT-BANK DEPOSIT ITEM	209,946.00		
10 0223	DEPOSITED CHECKS	4,139.00		
10 0224	DESKTOP DEPOSIT-NON BANK DEP ITEM	614,175.00		
10 0230	ELECTRONIC DEPOSIT - DEP ADJUSTMENT	124.00		
10 0400	RETURN ITEM SPECIAL INSTRUCTIONS	1,712.00		
10 0401	RETURN ITEM SPECIAL INST MTHLY BASE	12.00		
10 0402	RETURN ITEM REDEPOSITED	801.00		
10 0414	RETURN ITEM SERVICE MTHLY BASE	48.00		
10 0500	DEP CORRECTION NIGHT DROP	4.00		
10 0520	CASH VAULT ADJ ADVICE - US MAIL	4.00		
10 0610	DEPOSIT LOCATION REPORTING - ITEM	1,843.00		
Paper Disbursement Services:				
15 0030	POSITIVE PAY MONTHLY BASE	31.00		
15 0100	DDA CHECKS PAID	31,928.00		
15 0122	PAYEE VALIDATION STANDARD-ITEM	31,256.00		
15 0129	POSITIVE PAY EXCEPTION CHECKS RETND	9.00		
15 0240	OTC DEBIT BLOCK MONTHLY BASE	204.00		
15 0299	PAYEE VALIDATION MANUAL REVIEW/ITEM	804.00		
15 0300	MICR CHECK REJECTS >1% THROUGH 2%	270.00		
15 0340	OVERDRAFT CHARGE-PAID ITEM	10.00		
15 0400	SEARCH	759.00		
15 0410	STOP PAYMENT - ONLINE	279.00		
15 0412	STOP PAYMENT - AUTO RENEWAL	21.00		
15 0420	STOP PAYMENT - OPERATOR ASSISTED	1.00		
15 0723	POSITIVE PAY EXCEPTION - IMAGE	14.00		
15 1350	IMAGE PAID CHECK MONTHLY BASE	12.00		
15 1352	ONLINE IMAGE VIEW < 90 DAYS - ITEM	164.00		
15 1353	IMAGE PAID CHECK PER CD	12.00		
15 1358	POSITIVE PAY MONTHLY BASE - BASIC	12.00		
15 1399	IMAGE PAID CHECK PER ITEM	24,813.00		
Paper Disbursement Recon Services:				
20 0010	ARP MONTHLY BASE - FULL	43.00		

AFP Code	Description	Estimated Annual Volume	Unit Price	Total Annual Cost
20 0100	OUTGOING TRANSMISSION - PER ITEM	6,428.00		
20 0200	REGISTER INPUT - ITEM	218.00		
20 0201	ARP FULL RECON-ITEM	32,941.00		
20 0305	ARP STMT & RPTS MONTHLY BASE	43.00		
20 0310	ARP OPTIONAL REPORTS	24.00		
20 0399	POSITIVE PAY EXCEPTIONS - ITEM	18.00		
20 9999	ARP AGED ISSUE RECORDS ON FILE-ITEM	4,809.00		
General ACH Services:				
25 0000	ACH PAYMENTS BASE FEE	48.00		
25 0102	ACH PAYMENTS TWO DAY ITEM	419,790.00		
25 0120	ACH ORIGINATED - ADDENDA REC	924.00		
25 0201	ELECTRONIC CREDITS POSTED	7,937.00		
25 0202	ACH RECEIVED ITEM	5,535.00		
25 0302	ACH NOC - INFO REPORTING ADVICE	2,067.00		
25 0400	ACH RETURN SUBSCRIPTION - ITEM	3,110.00		
25 0500	ACH PAYMENTS ONLINE BATCH RELEASE	15.00		
25 0501	ACH TRANSMISSION CHARGE	140.00		
25 0703	ACH SUBSCRIPTION - ACCOUNT	124.00		
25 0710	ACH FAX SERVICE	894.00		
25 1010	ACH SPECIAL INVESTIGATION	11.00		
25 1050	ACH FRAUD FILTER STOP MTHLYBASE	108.00		
25 1052	ACH FRAUD FILTER STOP - ITEM	12.00		
25 1053	ACH FRAUD FILTER REVIEW - ITEM	190.00		
25 1070	ACH BANK NOC-INFO REPT ADVIC	748.00		
EDI Payment Services:				
30 0010	RECEIVABLES MANAGER MONTHLY BASE	12.00		
30 0099	E-BOX PAYMENT	267,499.00		
30 0200	RECEIVABLES MGR PER ITEM-ACH	15,284.00		
30 0524	EDI PMT DETAIL SUBSC MO BASE	225.00		
Wire & Other Funds Transfer Service:				
35 0104	WIRE-OUTGOING DOMESTIC-CEO	381.00		
35 0124	WIRE - BOOK TRANSFER - CEO	20.00		
35 0202	WIRE OUT DOMESTIC-BRANCH	1.00		
35 0300	WIRE IN DOMESTIC	197.00		
35 0402	WIRE DETAIL RPT SUBSCRIPTION-ITEM	493.00		
35 0411	WIRE MAIL CONFIRMATION	404.00		
35 9999	WIRE ACCOUNT ADD	15.00		
Information Services:				
40 0000	PREV DAY SUBSCRIPTION MTHLYBASE	85.00		
40 0001	PREVIOUS DAY ITEM LOADED	37,939.00		
40 0052	ARP STMTS & RPTS (CSV/EXCEL) BASE	24.00		
40 0272	ARP STMTS & RPTS (CSV/EXCEL) / ITEM	114,828.00		

AFP Code	Description	Estimated Annual Volume	Unit Price	Total Annual Cost
40 02ZZ	EVENT MESSAGING SERVICE - EMAIL	2,160.00		
40 0340	WIRE INQUIRY DETAIL - PER ITEM	3.00		
Investment/Custody Services:				
45 0020	SWEEP INVEST MTHLY BASE	18.00		
45 0403	SWEEP INVEST ELECTRONIC	372.00		
45 0413	SWEEP INVESTMENT US MAIL	16.00		

GRAND TOTAL				\$

Exhibits to Be Included In Proposal

- I. **EXHIBIT B** - Authorization to Contract. Provide pages as necessary. Provide either an excerpt from your Corporate Resolution, Certificate of Secretary, or correspondence from the Chief Executive Officer or chairperson attesting that the individual signing the proposal has the authority to make binding representations on behalf of the bank.
- II. **EXHIBIT C** - Contract Samples. Provide pages as necessary. Include contract or agreement samples for banking services that is specific to the services represented in this RFP.
- III. **EXHIBIT D** - Financial Statements and Ratings. Provide pages as necessary. Provide the most recent audited financial statements or annual report for the bank. Also include your most current Standard & Poor's, Moody's, Fitch or equivalent credit ratings.
- IV. **EXHIBIT E** - Account Analysis. Provide pages as necessary. Provide a sample of your bank's account analysis and a user guide for the account analysis.



REFERENCES

RFP No. FIN-2016-01

EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES

Proposer Name: _____

Proposer must provide a minimum of five references.

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	

Company Name:	Contact Person:
Address:	Telephone Number:
City, State, Zip:	E-mail Address:
Services Provided / Date(s) of Service:	



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

RFP No. FIN-2016-01

EAST BAY MUNICIPAL UTILITY DISTRICT BANKING SERVICES

Proposer Name: _____

The Proposer may offer alternative or equivalent service or solutions List below any requests for alternatives, exceptions, and amendments, to the RFP and associated RFP documents, and submit with your RFP response.

Acceptability of alternatives will be solely at the District's discretion The District is under no obligation to accept any exceptions and such exceptions may be a basis for RFP response disqualification.

Reference to:			Description
Page No.	Section	Item No.	
p. 23	D	1.c.	<i>Proposer takes exception to...</i>



CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

The District's Board of Directors adopted the Contract Equity Program (CEP) to enhance equal opportunities for business owners of all races, ethnicities, and genders who are interested in doing business with the District. The program has contracting objectives, serving as the minimum level of expected contract participation for the three availability groups: white-men owned businesses, white-women owned businesses, and ethnic minority owned businesses. The contracting objectives apply to all contracts that are determined to have subcontracting opportunities, and to all General or Professional Service Providers regardless of their race, gender, or ethnicity.

All Contractors and their subcontractors performing work for the District must be Equal Employment Opportunity (EEO) employers, and shall be bound by all laws prohibiting discrimination in employment. There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), genetic information, or sexual orientation.

Contractor and its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

All Contractors shall include the nondiscrimination provisions above in all subcontracts.

Please include the required completed forms with your proposal. Non-compliance with the Guidelines may deem a proposal non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

- 1) Reading and understanding the CEP guidelines.
- 2) Filling out and submitting with your bid the appropriate forms.

The CEP guidelines and forms can be found at the following direct link:

[Contract Equity Program Guidelines and Forms](#)

The CEP guidelines and forms can also be downloaded from the District website at the following link:

<http://ebmud.com/business-center/contract-equity-program/>

If you have questions regarding the Contract Equity Program please call (510) 287-0114.



EXHIBIT B

INSURANCE REQUIREMENTS

Insurance certificates are not required at the time of submission; however, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District, prior to award.

The following are the minimum insurance limits, required by the District, to be held by the GENERAL OR PROFESSIONAL SERVICE PROVIDER performing on this RFP:

INDEMNIFICATION AND INSURANCE

A. Indemnification

GENERAL OR PROFESSIONAL SERVICE PROVIDER expressly agrees to defend, indemnify, and hold harmless the District and its Directors, officers, agents, and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from GENERAL OR PROFESSIONAL SERVICE PROVIDER's, its associates', employees', subcontractors', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

B. Insurance Requirements

Prior to the beginning of and throughout the duration of the Services, and for any additional period of time as specified below, CONSULTANT shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below. CONSULTANT shall submit Verifications of Insurance, utilizing DISTRICT-provided forms, for DISTRICT'S review and acceptance. The Notice to Proceed shall not be issued, and CONSULTANT shall not commence Services until such insurance has been accepted by DISTRICT.

The Insurance Requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured. It is agreed that these Insurance Requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required here. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONSULTANT under this Agreement.

Acceptance of the Verifications shall not relieve CONSULTANT of any of the insurance requirements, nor decrease the liability of CONSULTANT. DISTRICT reserves the right to require CONSULTANT to provide insurance policies for review by DISTRICT.

C. Workers' Compensation Insurance

CONSULTANT shall take out and maintain during the life of the Agreement, Workers Compensation Insurance, for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, DISTRICT will accept a Self-Insured Certificate from the State of California. CONSULTANT shall require any subconsultant to provide it with evidence of Workers Compensation Insurance.

CONSULTANT and its Workers' Compensation insurance and/or self-insurance must waive any rights of subrogation against the DISTRICT and its directors, officers, officials, agents, volunteers, and employees, and CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

D. Commercial General and Automobile Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims that may arise from operations or performance under this Agreement. If CONSULTANT elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONSULTANT is required to notify the DISTRICT immediately. Any request to self-insure must first be approved by the DISTRICT before the changed terms are accepted. CONSULTANT shall require any subconsultant to provide evidence of liability insurance coverages.

The amounts of insurance coverages shall not be less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage - General Liability.

The following coverages or endorsements must be included in the policy(ies):

1. DISTRICT and its Directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Agreement; The additional insured coverage shall NOT have any exclusions for completed operations and/or for coverage for work performed, in relation to this Agreement, by the CONSULTANT, its employees, sub-consultants, agents, and/or volunteers.
2. The coverage is primary and non-contributory to any other insurance carried by DISTRICT;
3. The policy(ies) cover(s) contractual liability;

4. The policy(ies) is(are) written on an occurrence basis;
5. The policy(ies) cover(s) broad form property damage liability;
6. The policy(ies) cover(s) personal injury (libel, slander, false arrest, wrongful entry or eviction) liability;
7. The policy(ies) cover(s) products and completed operations.
8. The policy(ies) cover(s) use of owned, non-owned, and hired automobiles.
9. CONSULTANT and its Commercial General and Automobile Liability insurance must waive any rights of subrogation against DISTRICT and its directors, officers, officials, agents, volunteers, and employees, and CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).
10. The policy(ies) shall not be canceled nor reduced unless 30 days' written notice is given to DISTRICT.

E. Professional Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement, Professional Liability Insurance (Errors and Omissions) with a minimum of \$3,000,000 of liability coverage per occurrence or claim. A deductible may be acceptable upon approval of the DISTRICT.

Coverage may be written on a "claims-made" form. If coverage is on a "claims made" basis, the coverage must be maintained for at least three years after all Services under this Agreement are complete, and additional "claims-made" coverage requirements apply as described below. CONSULTANT and its Professional Liability insurance must waive any rights of subrogation against DISTRICT and its directors, officers, officials, agents, volunteers and employees, and CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

The policy shall provide 30 days advance written notice to DISTRICT for cancellation or reduction in coverage.



EXHIBIT C

Sample District Consulting Agreement

*(Standard Consulting Agreement for
Contracts Greater than \$70,000 - Revised 3/24/14)
(Note: Reference District Procedure No. 451)*

• **CONSULTING AGREEMENT
FOR
EAST BAY MUNICIPAL UTILITY DISTRICT**

(Project Title)

THIS Agreement is made and entered into this _____ day of (*month*), 201_, by and between **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, hereinafter called "DISTRICT," and (*CONSULTANT'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity [corporation, etc.]*), hereinafter called "CONSULTANT."

• **WITNESSETH**

WHEREAS, DISTRICT requires consulting services for (*need for project*); and

WHEREAS, DISTRICT has completed (*completed projects that pertain to this project - optional*); and

WHEREAS, CONSULTANT has submitted a proposal to provide consulting services for (*state type - "preparation of planning documents", "preparation of design documents", or "construction management support services"*) for the (*project title*) and CONSULTANT represents that it has the experience, licenses, qualifications, staff expertise and where necessary the required Department of Industrial Relations (DIR) registration to perform said services in a professional and competent manner; and

IF OVER \$70,000:

WHEREAS, DISTRICT Board of Directors has authorized the contract by Motion Number _____;

-OR- IF BETWEEN \$30,000 AND \$70,000:

WHEREAS, DISTRICT has authorized the contract by approval of the General Manager.

NOW, THEREFORE, it is mutually agreed by DISTRICT and CONSULTANT that for the considerations hereinafter set forth, CONSULTANT shall provide said services to DISTRICT, as set forth in greater detail herein.

ARTICLE 1 - SCOPE OF WORK

- 1.1 CONSULTANT agrees to furnish services set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein. The services authorized under this Agreement shall also include all reports, manuals, plans, and specifications as set forth in Exhibit A.
- 1.2 CONSULTANT's work products shall be completed and submitted in accordance with DISTRICT's standards specified, and according to the schedule listed, in Exhibit A. The completion dates specified herein may be modified by mutual agreement between DISTRICT and CONSULTANT provided that DISTRICT's Project Manager notifies CONSULTANT of modified completion dates by letter. CONSULTANT agrees to diligently perform the services to be provided under this Agreement. In the performance of this Agreement, time is of the essence.
- 1.3 It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed to be performed under this Agreement, that DISTRICT relies upon the professional skills of CONSULTANT to do and perform CONSULTANT's work in a skillful and professional manner, and CONSULTANT thus agrees to so perform the work. CONSULTANT represents that it has all the necessary licenses to perform the work and shall maintain them during the term of this Agreement. CONSULTANT agrees that the work performed under this Agreement shall follow practices usual and customary to the (*state type - for example "engineering"*) profession and that CONSULTANT is the engineer in responsible charge of the work for all activities performed under this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from such professional responsibility for the work performed.
- 1.4 CONSULTANT agrees to maintain in confidence and not disclose to any person or entity, without DISTRICT's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of DISTRICT. CONSULTANT further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by CONSULTANT during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

- 1.5 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by CONSULTANT or its subconsultants in connection with these services shall be delivered to and shall become the exclusive property of DISTRICT. DISTRICT is licensed to utilize these documents for DISTRICT applications on other projects or extensions of this project, at its own risk. CONSULTANT and its subconsultants may retain and use copies of such documents, with written approval of DISTRICT.
- 1.6 CONSULTANT is an independent contractor and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT.
- 1.7 CONSULTANT is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work.
- 1.8 It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligations hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by the CONSULTANT for accomplishing the results.
- 1.9 If, in the performance of this agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and DISTRICT shall have no right or authority over such persons or the terms of such employment.
- 1.10 It is further understood and agreed that as an independent contractor and not an employee of DISTRICT, neither the CONSULTANT nor CONSULTANT's assigned personnel shall have any entitlement as a DISTRICT employee, right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligation whatsoever. CONSULTANT shall not be covered by DISTRICT's worker's compensation insurance; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life or other insurance programs, or entitled to other fringe benefits payable by DISTRICT to employees of DISTRICT.

ARTICLE 2 - COMPENSATION

- 2.1 For the Scope of Services described in Exhibit A, DISTRICT agrees to pay CONSULTANT actual costs incurred, subject to a Maximum Cost Ceiling of \$(*dollars*),

plus a Professional Fee (prorata dollar profit). The Professional Fee shall be subject to a Professional Fee Ceiling of \$(*dollars*). Total compensation under the Agreement shall not exceed a Maximum Agreement Ceiling of \$(*dollars*). Compensation for services shall be in accordance with the method and amounts described in Exhibit B, attached hereto and incorporated herein. CONSULTANT acknowledges that construction work on public works projects requires DIR registration and is subject to prevailing wage rates and includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT certifies that the proposed cost and pricing data used herein reflect the payment of prevailing wage rates where applicable and are complete, current, and accurate.

- 2.2 In case of changes affecting project scope resulting from new findings, unanticipated conditions, or other conflicts or discrepancies, CONSULTANT shall promptly notify DISTRICT of the identified changes and advise DISTRICT of the recommended solution. Work shall not be performed on such changes without prior written authorization of DISTRICT.

ARTICLE 3 - NOTICE TO PROCEED

- 3.1 This Agreement shall become effective upon execution of the second signature. CONSULTANT shall commence work upon receipt of DISTRICT's Notice to Proceed, which shall be in the form of a letter signed by DISTRICT's Project Manager. DISTRICT's Notice to Proceed will authorize the Contracted Services described in Exhibit A with ceiling prices described in ARTICLE 2 – COMPENSATION. No work shall commence until the Notice to Proceed is issued.

(Include the following paragraph only if your scope of services includes Optional Services.)

- 3.2 DISTRICT may at its option issue a Notice to Proceed for some or all of the Optional Services tasks described in Exhibit A. Compensation for Optional Services shall be in accordance with the method and amounts described in Exhibit B.

ARTICLE 4 - TERMINATION

- 4.1 This Agreement may be terminated by DISTRICT immediately for cause or upon 10 days written notice, without cause, during the performance of the work.
- 4.2 If this Agreement is terminated CONSULTANT shall be entitled to compensation for services satisfactorily performed to the effective date of termination; provided however, that DISTRICT may condition payment of such compensation upon CONSULTANT's delivery to DISTRICT of any and all documents, photographs, computer software, videotapes, and other materials provided to CONSULTANT or prepared by CONSULTANT for DISTRICT in connection with this Agreement. Payment by DISTRICT for the services satisfactorily performed to the effective date of termination, shall be the sole and exclusive remedy to which CONSULTANT is entitled in the event

of termination of the Agreement and CONSULTANT shall be entitled to no other compensation or damages and expressly waives same. Termination under this Article 4 shall not relieve CONSULTANT of any warranty obligations or the obligations under Articles 1.4 and 7.1.

(Optional)

- 4.3 This Agreement may be terminated by CONSULTANT upon 10 days written notice to DISTRICT only in the event of substantial failure by DISTRICT to fulfill its obligations under this Agreement through no fault of the CONSULTANT.
- 4.4 If this Agreement is terminated, payment of the Professional Fee shall be in proportion to the percentage of work that DISTRICT judges satisfactorily performed up to the effective date of termination. The Professional Fee shall be prorated based upon a ratio of the actual Direct Labor and Indirect Costs expended to date divided by the Cost Ceiling.

ARTICLE 5 - PROJECT MANAGERS

- 5.1 DISTRICT designates (*District Project Manager's name*) as its Project Manager, who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between DISTRICT and CONSULTANT. CONSULTANT may be requested to assist in such coordinating activities as necessary as part of the services. In the event DISTRICT wishes to make a change in the DISTRICT's representative, DISTRICT will notify CONSULTANT of the change in writing.
- 5.2 CONSULTANT designates (*Consultant Project Manager's name*) as its Project Manager, who shall have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement. Any change in CONSULTANT designated personnel or subconsultant shall be subject to approval by the DISTRICT Project Manager. (*The following sentence is optional.*) CONSULTANT hereby commits an average of (*1 to 100*) percent of (*Consultant Project Manager's name*) time on this project for the duration of the project.

ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE

- 6.1 CONSULTANT expressly agrees that this Agreement is subject to DISTRICT's Contract Equity Program ("CEP"). CONSULTANT is familiar with the DISTRICT's CEP and Equal Opportunity Guidelines, and has read and understood all of the program requirements. CONSULTANT understands and agrees to comply with the CEP and all requirements therein, including each of the Good Faith Efforts. CONSULTANT further understands and agrees that non-compliance with the CEP requirements may result in termination of this Agreement.

[Paragraph 6.2 to be used when there is subcontracting/subconsulting opportunities. See CEP office for details.]

- 6.2 Designated CEP compliance for the duration of this Agreement is listed in Exhibit C, which is attached hereto and incorporated herein. CONSULTANT shall maintain records of the total amount actually paid to each subconsultant. Any change of CONSULTANT'S listed subconsultants shall be subject to approval by the DISTRICT'S Project Manager.

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

(Insurance criteria may vary – refer to the Risk Management Section Guidelines. Contact the Risk Management Section for copy of latest version.)

(IF DEPT. WANTS TO MODIFY INDEMNITY LANGUAGE, PLEASE SUBMIT JUSTIFICATION IN WRITING TO LEGAL, CC: RISK MANAGER.)

(FOR DESIGN PROFESSIONAL CONTRACTS (ENGINEERS, ARCHITECTS, LANDSCAPE ARCHITECTS, LAND SURVEYORS OR THEIR FIRMS), USE 7.1 BELOW:

7.1 Indemnification

CONSULTANT expressly agrees to defend, indemnify, and hold harmless DISTRICT and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or pertaining or relating to CONSULTANT's, its associates', employees', subconsultants', or other agents' negligence, recklessness, or willful misconduct, in the operation and/or performance under this Agreement.

(OR if contract is NOT with a design professional (engineers, architects, landscape architects, land surveyors or their firms) USE THIS PARAGRAPH 7.1 INSTEAD:

7.1 Indemnification

CONSULTANT expressly agrees to defend, indemnify, and hold harmless DISTRICT and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from CONSULTANT's, its associates', employees', subconsultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

7.2 ***(For construction management support Agreements only)***

CONSULTANT shall perform part of the work at sites where the DISTRICT's facilities are to be constructed, and which may contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees. CONSULTANT shall designate in writing to DISTRICT the field employee who is responsible for the health and safety of its employees. The responsible employee shall have experience and knowledge of all Federal, State and local health and safety regulation requirements. All CONSULTANT personnel on construction sites shall have received all OSHA required health and safety training.

7.3 ***(For construction management support Agreements only)***

In the event that any hazardous materials are encountered during the services provided by CONSULTANT or the work undertaken by construction contractors, DISTRICT shall sign any and all manifests relating to the generation, treatment, disposal or storage of all wastes associated with the work. Additionally, nothing contained in this Agreement shall be construed or interpreted as requiring CONSULTANT to assume the status of a generator, storer, treater, transporter, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the generation, storage, treatment, transportation, or disposal of wastes.

7.4 ***(For construction management support Agreements only - include only if design consultant and CM consultant are not the same)***

It is agreed and understood by CONSULTANT and DISTRICT that the design services have been completed by (*design consultant's name*) and therefore, CONSULTANT did not undertake any design activity or have design responsibility of the facilities to be constructed prior to execution of this Agreement.

7.5 **Insurance Requirements**

CONSULTANT shall take out and maintain during the life of the Agreement all the insurance required in this ARTICLE, and shall submit certificates for review and approval by DISTRICT. The Notice to Proceed shall not be issued, and CONSULTANT shall not commence work until such insurance has been approved by DISTRICT. The certificates shall be on forms provided by DISTRICT. (see
[\\EBMUD_DATA_04\\DATA\\INFO\\Forms Shop\\UF020-28.doc](#);
[\\EBMUD_DATA_04\\DATA\\INFO\\Forms Shop\\uf020-30.doc](#);
[\\EBMUD_DATA_04\\DATA\\INFO\\Forms Shop\\UF020-33.doc](#);
[\\EBMUD_DATA_04\\DATA\\INFO\\Forms Shop\\UF020-29.doc](#) print out for
consultant's use)

Acceptance of the certificates shall not relieve CONSULTANT of any of the insurance requirements, nor decrease the liability of CONSULTANT. DISTRICT reserves the right to require CONSULTANT to provide insurance policies for review by DISTRICT.

7.6 Workers Compensation Insurance

CONSULTANT shall take out and maintain during the life of the Agreement, Workers Compensation Insurance, for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, DISTRICT will accept a Self-Insured Certificate from the State of California. CONSULTANT shall require any subconsultant to provide it with evidence of Workers Compensation Insurance.

7.7 Commercial General Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from operations or performance under this Agreement. If CONSULTANT elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONSULTANT is required to notify the DISTRICT immediately. Any request to self-insure must first be approved by the DISTRICT before the changed terms are accepted. CONSULTANT shall require any subconsultant to provide evidence of liability insurance coverages.

The amounts of insurance coverages shall not be less than the following:

\$2,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage - General Liability.

The following coverages or endorsements must be included in the policy(ies): ***(Use only those coverages that apply and type [x] in boxes on Public Liability Certificate. Questions should be directed to Risk Management, x0177.)***

1. DISTRICT and its Directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Agreement;
2. The coverage is primary and non-contributory to any other insurance carried by DISTRICT;
3. The policy(ies) cover(s) contractual liability for the assumption of liability through the indemnity in this Agreement;
4. The policy(ies) is(are) written on an occurrence basis;
5. The policy(ies) cover(s) broad form property damage liability;
6. The policy(ies) cover(s) personal injury (libel, slander, and trespass) liability;

7. The policy covers explosion, collapse and underground hazards (construction contracts only).
8. The policy(ies) cover(s) products and completed operations.
9. The policy(ies) cover(s) use of non-owned automobiles and equipment.
10. The policy(ies) shall cover Pollution liability for claims related to the release or threatened release of pollutants into the environment arising out of or resulting from CONSULTANT's performance under this Agreement.
11. The policy(ies) shall not be canceled nor materially altered unless 30 days' written notice is given to DISTRICT.

7.8 Professional Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement, professional liability insurance (Errors and Omissions) with a minimum of \$1,000,000 of liability coverage. A deductible may be acceptable upon approval of the DISTRICT. The policy shall provide 30 days advance written notice to DISTRICT for cancellation or reduction in coverage.

ARTICLE 8 - NOTICES

Any notice which DISTRICT may desire or is required at any time to give or serve CONSULTANT may be delivered personally, or be sent by United States mail, postage prepaid, addressed to:

(consulting firm's name)

(address)

Attention: *(contact, usually the consultant's project manager),*

or at such other address as shall have been last furnished in writing by CONSULTANT to DISTRICT.

Any notice which CONSULTANT may desire or is required at any time to give or serve upon DISTRICT may be delivered personally at EBMUD, 375 - 11th Street, Oakland, CA 94607-4240, or be sent by United States mail, postage prepaid, addressed to:

Director of *(Wastewater Department or Engineering and Construction Department)*

P.O. Box 24055

Oakland, CA 94623-1055

or at such other address as shall have been last furnished in writing by DISTRICT to CONSULTANT.

Such personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service thereof in all such cases.

ARTICLE 9 - MISCELLANEOUS

- 9.1 This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.
- 9.2 This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and CONSULTANT shall not assign, transfer or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of DISTRICT.
- 9.3 Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 9.4 Multiple copies of this Agreement may be executed by the parties and the parties agree that the Agreement on file at the DISTRICT is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.
- 9.5 This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- 9.6 The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.
- 9.7 There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

CONSULTANT shall include the nondiscrimination provisions above in all subcontracts.

- 9.8 CONSULTANT affirms that it does not have any financial interest or conflict of interest that would prevent CONSULTANT from providing unbiased, impartial service to the DISTRICT under this Agreement.

ARTICLE 10 - TERM

Unless terminated pursuant to Article 4 herein, this Agreement shall expire when all tasks have been completed and final payment has been made by DISTRICT.

(NOTE: do not have a page break leaving signatures by themselves—must have at least the “in witness whereof” paragraph on signature page)

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____ Date _____
(Name),
(Insert title - Director of Engineering and Construction or Manager of Support Services)

Approved As To Form

By: _____
for the Office of the General Counsel

(CONSULTING FIRM'S NAME, ALL CAPS & BOLD)

By: _____ Date _____
(Name),
(Title)

Rev. 3/24/14

- **EXHIBIT A**

- **East Bay Municipal Utility District**
(Project Title)

- **SCOPE OF SERVICES**

I. CONSULTANT SERVICES

CONSULTANT shall provide the following:

Contracted Services

(State each task with associated task number; specifically call out any survey work)

Optional Services

(State each task with associated task number)

II. PROJECT SCHEDULE

(List schedule milestones and completion dates)

• **EXHIBIT B**

East Bay Municipal Utility District
(Project Title)

COMPENSATION

Compensation for services provided in Exhibit A, SCOPE OF SERVICES, shall be in accordance with the methods and specific amounts described in this Exhibit.

1. DISTRICT shall pay CONSULTANT only the actual costs incurred, subject to the agreed cost ceiling. CONSULTANT certifies that the cost and pricing information used herein are complete, current and accurate. CONSULTANT acknowledges that it will expend public funds and hereby agrees to use every appropriate method to contain its fees and minimize costs under this Agreement.
2. Compensation for CONSULTANT services authorized shall be on a cost reimbursement basis and include Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and a Professional Fee. Costs to be paid comprise the following:

2.1 Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the actual hourly rate for such employee's labor. Hours worked shall be rounded-up to the nearest quarter-hour (0.25) increment. Labor costs for principals shall be based upon the actual hourly rate of pay for those individuals. Labor rates shall be based on a normal 8-hour day, 40-hour week. DISTRICT will pay all personnel at their regular rate including any work performed on overtime or on holidays or weekends.

2.2 Indirect Costs

DISTRICT shall pay CONSULTANT an overhead expense equal to (*insert overhead rate*) percent of labor costs incurred by CONSULTANT.

CONSULTANT acknowledges and agrees that this overhead compensation is in lieu of itemized payments for indirect and overhead expenses which includes, but is not limited to:

- Clerical, word processing and/or accounting work.
- Vehicle usage and mileage between CONSULTANT's office and DISTRICT service area.
- Parking (DISTRICT does NOT provide parking to CONSULTANT in the DISTRICT Administration Building, located at 375 11th Street, Oakland, California. CONSULTANT shall be responsible for parking elsewhere).

- Postage, or for certified or registered mail. Extraordinary postage, overnight delivery, or messenger delivery charges must be approved in advance.
- Routine copying costs for in-house copying.
- Local telephone charges, including cellular phone, modem and telecopier/FAX charges.
- Office space lease.
- Office supplies.
- Computer equipment.
- Computer usage charges.
- Books, publications and periodicals.
- Insurance.
- Miscellaneous hand tools or equipment rental.
- Safety training, seminars or continuing education.
- Utilities.
- Meals, transportation or other charges.
- Inadequately described or miscellaneous expenses.

The above items are illustrative, rather than exhaustive.

2.3 Subconsultant Services

Subconsultant services shall be billed at cost (plus a (*insert rate*) percent markup).

2.4. Other Direct Costs

Other Direct Costs shall be approved by DISTRICT in advance in writing, and shall be billed at cost, without markup. These costs include, but are not limited to the following:

- 2.4.1. Automobile expenses at (*insert rate*) cents per mile when CONSULTANT is required to travel outside of the DISTRICT's service area. Mileage will NOT be reimbursed for rental car expenses, where the rental agreement specifies unlimited mileage.
- 2.4.2. DISTRICT will pay for necessary and reasonable travel expenses provided the travel is approved in advance by DISTRICT Project Manager, and providing that:
 - Each expense is separately identified (air fare, hotel, rental car) with an amount and date incurred. Confirming documents may be requested.
 - Charged mileage for vehicle mileage shall not exceed the current allowable Internal Revenue Service rate.

- Air travel is coach or economy rate for refundable tickets. Business and first class rates will not be reimbursed.
- Lodging accommodations are moderately priced.
- Meal charges are reasonable. (Reimbursement for meals will only be made in conjunction with out-of-town travel.)
- Taxis or shuttles are used rather than rental cars whenever cost effective.
- Rental cars are intermediate or compact class only.

2.5 Professional Fee

As a portion of the total compensation to be paid to CONSULTANT, DISTRICT shall pay the Professional Fee, subject to the agreed Professional Fee Ceiling of **\$(dollars)** as specified in Exhibit B-1, as profit for services rendered by CONSULTANT covered by this Agreement. CONSULTANT shall earn the Professional Fee based on a **(insert rate)** percent markup of CONSULTANT's Direct Labor and Indirect Costs billed and approved.

2.6 Budget Amounts

	• Contract ed <u>Services</u>	• Optional <u>Services</u>	• Maxi mum <u>Services*</u>
Cost Ceiling	\$(dollars)	\$(dollars)	\$(dollars)
Professional Fee Ceiling	(dollars)	(dollars)	(dollars)
Agreement Ceiling	(dollars)	(dollars)	(dollars)

**** (Maximum Services is the sum of Contracted and Optional Services. If your scope has no Optional Services, delete the Contracted and Optional Services columns.)***

The Cost Ceiling shown above is based upon the cost estimate and labor hours attached hereto as Exhibit B-1 and Exhibit B-2. Costs described above, comprising Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and Professional Fee, shall be payable up to the Agreement Ceiling as specified herein.

2.7 Billing and Payment

CONSULTANT shall invoice DISTRICT monthly for the actual costs incurred and a prorated Professional Fee for work performed during the previous month. Actual costs shall include Direct Labor, Indirect Costs, Subconsultant Services, and Other Direct Costs as specified herein. Actual costs shall be invoiced by task as described in Exhibit A. Invoices shall set forth a description of the actual costs

incurred and the services performed, the date the services were performed and the amount of time spent rounded to the nearest quarterly hour increment (.25) on each date services were performed and by whom. Supporting documentation for the invoice shall be organized to clearly identify the task charged and shall be supported by such copies of invoices, payroll records, and other documents as may be required by DISTRICT to authenticate invoiced costs. Copies of all invoices from any subconsultant(s) and outside service(s) shall be attached.

(Insert the following sentence if paragraph 2.9 below applies and is included in agreement. "Where CONSULTANT is required by law to pay prevailing wage rates, supporting documentation for such work shall be in accordance with guidelines set forth below and shall include certified payroll reports. ")

DISTRICT shall pay CONSULTANT within thirty (30) days, upon receipt of a proper CONSULTANT invoice, ***(Optional insert - include the following words here only if retention will be accumulated: "the amount invoiced less a ten percent (10%) retention amount,")***, provided that all invoices are accompanied by sufficient cost documentation, and DISTRICT Form P-47 (Subcontractor Payment Report - CEP Participation), to allow the determination of the reasonableness and accuracy of said invoice. ***(Optional insert - include the following sentence here only if retention will be accumulated: "The retention accumulated to date shall be paid by DISTRICT upon DISTRICT's acceptance of the final version of all documents specified in ARTICLE 1 - SCOPE OF WORK, paragraph 1.6.")***

A ceiling price is in effect for the entire Scope of Services. If the authorized Agreement Ceiling, including the authorized Professional Fee Ceiling, is reached, CONSULTANT shall complete the agreed-upon work for the authorized Agreement Ceiling. Labor hours may be reallocated within the tasks without renegotiation of the Agreement with written approval from the DISTRICT Project Manager in such a manner so as not to exceed the Agreement ceiling price. In no event shall the Cost Ceiling of the Agreement or the Professional Fee Ceiling be increased unless there is a written amendment of this Agreement.

2.8 Budget Status Reports

For the duration of this Agreement, the CONSULTANT shall provide DISTRICT with (***"bi-weekly" or "monthly" depending on duration of project***) budget status reports that include, in tabular or graphical format, for each report period: (1) the original cumulative projected cash flows for the duration of the project (prepared at the start of the project), (2) the actual cash flows for the work completed to date, (3) the current projected cash flows to complete the project, and (4) the earned value (the amount of work actually completed to date compared to the budget expended). Current projected cash flows shall be based on all CONSULTANT and subconsultant time sheets up to a date within 3 weeks of the date of the budget status report.

- 2.9. Prevailing Wages and Other Requirements for Construction Inspection, and Construction Related Work During Design and Preconstruction Phases of Construction. *(Optional Insert – include this paragraph 2.9 and all its subparagraphs if your Scope of Services includes construction, alteration, demolition, installation, maintenance, repair work, or other construction related work during the design or preconstruction phases of construction including but not limited to inspection and land surveying.)*
- 2.9.1 All Contractors and Subcontractors of any tier bidding on, or offering to performing work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted nor any contract entered into without proof of the Contractor and Subcontractors' current registration with the DIR (LC § 1771.1).
- 2.9.2 All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Contractors are required post job site notices, "as prescribed by regulation" (LC § 1771.4).
- 2.9.3 Pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. A copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at www.dir.ca.gov.
- 2.9.4 The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- 2.9.5 Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- 2.9.6 The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid

to such worker by the Contractor.

- 2.9.7 General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.
- 2.9.8 The Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall be on the forms provided by the DIR or contain the same information required on the Department's form
- 2.9.9 For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.
- 2.9.10 In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 2.9.11 Pursuant to the provisions of Sections 1810, et seq. of the Labor Code the time of service of any worker employed upon the work shall be limited and

restricted to eight hours during any one calendar day, and forty hours during any one calendar week, unless work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one half times the basic rate of pay.

2.9.12 The Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1813 of the Labor Code for each worker employed by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week in violation of the provisions of Labor Code, Sections 1810, et seq.

2.9.13 The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement of the State of California.

2.9.14 In the performance of a public works contract, the Contractor and any Subcontractor shall comply with the provisions concerning the employment of apprentices in Section 1777.5 of the Labor Code and any amendments thereof. In the event the Contractor or any Subcontractor willfully fails to comply with this requirement the Contractor or Subcontractor shall be subject to the penalties for noncompliance in Labor Code section 1777.7.

2.9.15 The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodb.html>.

(Note: this table is prepared by the consultant. The following is provided to show format.)

EXHIBIT B-1

East Bay Municipal Utility District
(Project Title)

COST DISTRIBUTION

[illegible]

I. Contracted Services

Task 1.1:

Task 1.2:

Task 2.1:

Task 2.2:

Subtotal I.

$$\begin{pmatrix} *** \end{pmatrix} \quad \begin{pmatrix} *** \end{pmatrix} \quad \begin{pmatrix} *** \end{pmatrix} \quad \begin{pmatrix} *** \end{pmatrix} \quad \begin{pmatrix} *** \end{pmatrix} \quad \begin{pmatrix} *** \end{pmatrix}$$

II. Optional Services

Task 3:

Task 4:

Subtotal II.

TOTAL Agreement (Total of Subtotals I. & II.)

$$(\overline{***}) \quad (\overline{***}) \quad (\overline{***}) \quad (\overline{***}) \quad (\overline{***}) \quad (\overline{***})$$

- * ODCs = Other Direct Costs.
 ** Professional Fee on consultant Direct Labor & Indirect Costs only. Should not include prime consultant markup on subconsultants.
 *** Amount includes prime consultant markup on subconsultant.
 **** ***Insert salary rate.***

(Note: this table is prepared by the consultant. The following is provided to show format.)

• **EXHIBIT B-2**

East Bay Municipal Utility District
(Project Title)

LABOR DISTRIBUTION

Consultant				Subconsultants						
<u>Project Manager</u>	<u>Project Engineer</u>	<u>Drafting</u>	<u>Subtotal</u>	<u>Sub. #1</u>			<u>Sub. #2</u>			<u>Total</u>
				<u>Project Eng.</u>	<u>Assist. Eng.</u>	<u>Subtotal</u>	<u>Project Eng.</u>	<u>Assist. Eng.</u>	<u>Subtotal</u>	
<u>Services(*)</u>										
I. Contracted Services										
Task 1.1:										
Task 1.2:										
Task 2.1:										
Task 2.2:										
Subtotal										
II. Optional Services										
Task 3:										
Task 4:										
Subtotal										
TOTAL										

(Include both consultant and subconsultant hours. Also, include the percent time commitment for key personnel if a critical issue for success of the project.)*

EXHIBIT C

East Bay Municipal Utility District (Project Title)

CEP COMPLIANCE

<u>FIRMS UTILIZED</u>	<u>MINIMUM AMOUNT*</u>	<u>MINIMUM PERCENT**</u>
<i>(Name of Subconsultant's firm)</i>	<i>\$(dollars)</i>	<i>(1 to 99)</i>
<i>(Name of Subconsultant's firm)</i>	<i>\$(dollars)</i>	<i>(1 to 99)</i>
TOTAL	<i>\$(dollars)</i>	<i>(1 to 99)</i>

* Does not include consultant's markup. *(Include this footnote only if your contract includes markup on subconsultants.)*

** Based on a Maximum Services Agreement Ceiling amount of *\$(dollars)*.