

# EAST BAY MUNICIPAL UTILITY DISTRICT

## REQUEST FOR PROPOSAL (RFP) for Pardee Tunnel Chemical Feed Shaft Design

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For complete information regarding this project, see RFP posted at <https://www.ebmud.com/business-center/requests-proposal-rfps/> or contact the EBMUD representative listed above. Please note that prospective bidders are responsible for reviewing this site during the RFP process, for any published addenda regarding this RFP.

**RESPONSE DUE**  
by  
**4:00 p.m.**  
on  
**January 4, 2018**  
at  
**EBMUD, Purchasing Division**  
**375 Eleventh St. First Floor**  
**Oakland, CA 94607**



375 Eleventh Street, Oakland, CA 94607  
Website: [ebmud.com](http://ebmud.com)

# EAST BAY MUNICIPAL UTILITY DISTRICT

RFP

for

Pardee Tunnel Chemical Feed Shaft Design

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## I. STATEMENT OF WORK

### A. PROJECT BACKGROUND

The East Bay Municipal Utility District (EBMUD) provides water to over 1.4 million customers east of San Francisco Bay. The primary source of the District's water is Pardee Reservoir, which is fed by the Mokelumne River basin snowmelt. Water from Pardee Reservoir is transported over 90 miles through the Pardee Tunnel and Mokelumne Aqueducts, where it is treated at one of five treatment plants and distributed throughout a 322 square mile service area.

The District is designing a lime slaker and CO<sub>2</sub> injection facility, approximately 1,500 feet to the west of Pardee Reservoir in Valley Springs, California, that will dose chemical into Pardee Tunnel to improve the water chemistry of the raw water. It is estimated that this will require the construction of two (2) 300 feet deep approximately 16 inches diameter shafts in volcanic rock that penetrate onto the crown of the Pardee Tunnel, to house a total of four (4), five-inch (nominal diameter) chemical lines. The shafts will be identical and are expected be sited within 50-100 feet from each other.

Specialized services are needed to design the new shaft and tunnel repair, select appropriate equipment and technology for proper alignment of shaft to the tunnel crown, and develop a design that minimizes or eliminates the need to completely drain and shut down the Pardee Tunnel.

### B. TUNNEL DESCRIPTION

The Pardee Tunnel (see Exhibit D, Reference 3.a), constructed in the late 1920s, is 11,615 foot long (Sta. 0+00 to Sta. 116+15), concrete lined tunnel with an 8-foot diameter horseshoe cross-section over most of its length. The tunnel begins at the eastern portal inlet structure, approximately 840 feet downstream of the Pardee Reservoir outlet tower located in Pardee Reservoir and crosses through rolling hills west of Pardee Reservoir ending at Campo Seco Center (west portal area) where the water enters the Mokelumne Aqueducts.

The tunnel is straight in plan and has a 0.025 percent slope to the west. The tunnel operates under gravity flow, with an elevation change of 3 feet between the eastern portal and Campo Seco. The head on the tunnel at Pardee Reservoir is 175 feet when the reservoir level is at spillway elevation. Under normal operating conditions the tunnel transfers between 180 and 230 million gallons of raw water per day to the EBMUD water treatment plants.

The majority of the tunnel concrete lining is unreinforced except for the reach at the west portal, as indicated in Exhibit D, Reference 3.a. Between Sta. 94+00 and Sta. 107+00, the horseshoe section is reinforced with a single layer of reinforcing, while from Sta. 107+00 to Sta. 116+15 the circular tunnel cross section is reinforced with a double layer of reinforcing. The westernmost 156 feet of the tunnel (from Sta. 114+59 to Sta. 116+15) is lined with a 0.5-inch-

thick steel liner. In 1950 additional concrete lining was installed between Sta. 23+64 and Sta. 23+96. See Figure in Exhibit D, Reference 3.a.

The tunnel was constructed between 1926 and 1929. The tunnel excavation was initially supported by timber sets with timber lagging. No construction records have been found that provide any specific details regarding ground conditions encountered or tunnel support used during tunnel excavation. No construction records have been found that provide any details regarding tunnel support or condition of the ground.

Access into the Pardee Tunnel is located at the Pardee Reservoir Outlet Tower structure, the 5'x 3' raw water access shaft at Pardee Chemical Plant (located approximately 1,400 feet west of the Outlet Tower), and at the portal at Campo Center (located approximately 11,615 feet west of the Intake Tower (see Exhibit D, Reference 3.a).

The Pardee Tunnel's last documented inspection was about 55 years ago (in 1962), and it was found to be in reasonable condition. In the early 1980's, a manned inspection was attempted but abandoned because the tunnel could not be successfully isolated from a safety standpoint due to excessive ground water inflow. Recently in 2018, the District completed an unmanned tunnel inspection using a tethered operated underwater vehicle (ROV).

A completely drained shut down of Pardee Tunnel to construct the needed improvements are risky, costly and operationally challenging. The Pardee Tunnel has not been fully drained and taken out of service since the 1980s when the District constructed a 10-inch drilled shaft into the tunnel at the Pardee Chemical Plant, located approximately 1,450 feet west of the Outlet Tower. The new shafts are expected to be located within 100 feet of this location.

#### C. SCOPE

It is the intent of these specifications, terms, and conditions to describe the services required by the consultant to prepare and develop alternatives, identify and select the preferred project, complete detailed design, provide bidding and engineering support services for the construction of shaft penetrations and chemical feed line into Pardee Tunnel. Construction methods that do not require the Tunnel to be shut down or drained are preferred.

East Bay Municipal Utility District (District) intends to award a four-year contract to the Proposer(s) who best meets the District's requirements.

#### D. PROPOSER QUALIFICATIONS

##### 1. Proposer Minimum Qualifications

The Successful Consultant Team shall have been regularly engaged in the business of providing well shaft design, large diameter tunnel repair, civil, structural, geological, and mining services for at least fifteen (15) years.

The consultant shall provide the following key personnel on the Project:

- a. **Project Manager** Perform duties required for managing the shaft design. responsible for signing off on all project deliverables. Minimum qualifications:
  - (1) Fifteen (15) years verifiable professional engineering work experience.
  - (2) Ten (10) years' experience with engineering design in tunnel infrastructure, civil, structural, geological, geotechnical engineering and /or construction.
  - (3) Experienced in developing and coordinating technical reports, design documents for construction with signed construction contract specification and drawings, scheduling, constructability assessments and QA of design projects.
  - (4) Experience coordinating staff from multiple engineering disciplines, consulting firms, and stakeholders.
- b. **Lead Design Engineer** –responsible for the development of the chemical shaft construction alternatives and detailed design. Minimum qualifications include:
  - (1) Fifteen (15) years verifiable professional engineering work experience designing tunnels and/or well shafts, tunnel penetrations and repair, civil, structural, geotechnical engineering, mining services, and/or construction.
  - (2) Experience in developing and coordinating technical reports, design documents for construction with signed construction contract specification and drawings.
  - (3) Experience coordinating staff from multiple engineering disciplines.
- c. **Health and Safety Manager** - is responsible for ensuring all plans and procedures are in place for the safe execution of the work. Some duties may include risk assessment, mitigation planning, and preparation of outage specific safety plan (as needed). Minimum qualifications includes:
  - (a) Ten (10) years verifiable tunnel safety experience

- (b) Experience with Cal-OHSA Mining & Tunnel as a CAL-OSHA Certified Tunnel Safety Representative with Gas Tester Certification.
- d. Proposer shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.

## E. SPECIFIC REQUIREMENTS

### **SCOPE OF WORK:**

The following sections provide the major scope items to be included and the assumptions used.

#### **Task 1 – Project Management**

The consultant shall provide overall project control for its work under this agreement. This includes general coordination and communication required to maintain and advance the project, providing periodic updates and monthly report to District staff on work progress, scheduling and preparation and review of monthly invoices. This work shall also include attendance and coordination of an on-site kick-off meeting with District staff at Pardee Reservoir to discuss the proposed new shafts, obtain any additional background information on the project, and to inspect potential work locations above the tunnel. The project manager shall have regular coordination calls with the District's Engineer.

#### Meetings:

- Assume 1 meetings with Engineering Staff
  - Meeting 1: Kick off meeting at Pardee Reservoir to discuss proposed new shaft, obtain background information and design criteria
  - Monthly coordination calls with District Engineer during Design

#### **Task 2 – Chemical Injection Shaft Alternatives**

*Task 2.1: Review existing documents:* This Consultant work includes review existing documents, including as-builts, inspection records, geotechnical data, and any reports associated with the Pardee Tunnel and related facilities. Findings from this review shall be incorporated into the design criteria and detailed design, as appropriate.

#### *Task 2.2: Develop Design Criteria:*

This work includes developing and coordinating the design criteria with District staff for the purposes of developing the shaft design alternatives and construction approach. The design criteria may include, but are not limited to the following:

- Number of chemical shafts and minimum diameter.

- Space limitations.
- Constructability needs (height, length, width of key equipment; duration of construction).
- Tunnel repair requirements.
- Construction sequencing.
- Pardee Tunnel operational requirements during construction (shutdown, draining, etc.).

### *Task 2.3: Chemical Shaft Design and Tunnel Repair Alternatives:*

This work includes developing shaft and tunnel repair alternatives that meet design criteria established in Task 2.2. Develop and evaluate alternatives that achieve the project goals. The range of alternatives developed shall at a minimum include the installation of a new shaft and tunnel connection, utilizing the existing access shaft (See Dwg DH-4359-5), divers, and other Pardee Tunnel entry points for access. The alternatives shall consider construction methods that keep the tunnel in service during construction as well as methods that require removing the tunnel from service and dewatering.

Evaluation criteria will be established by working closely with the District. The evaluation criteria for the alternatives presented shall, at a minimum, consider the construction approach, operational impacts, surface access requirements, quality control for alignment of shaft connection to the tunnel, tunnel liner repair, liner debris removal, construction risk and construction cost.

A constructability review of the selected design shall be completed by a tunnel construction professional or driller that is retained by the Consultant. This reviewer shall be familiar and experienced in the construction methods proposed.

A report shall be prepared to document the design criteria, alternatives analysis, constructability review, evaluation process and results, and identify the preferred project alternative for implementation in Task 3.

### Deliverables:

- Draft and Final Chemical Shaft Alternatives Analysis Report

### Meetings:

- Assume 2 meetings with Engineering Staff
  - Meeting 1: Meeting at District's Oakland office to discuss design criteria.
  - Meeting 2: Meeting at District's Oakland office to discuss alternatives, construction approach and recommendations

## **Task 3 – Detailed Design**

*Task 3.1: Design of Shaft and Tunnel Connection- 50%:* This task will advance the design of the preferred/recommended alternative and shall be completed upon successful review of the design concept in Task 3.1. This work includes preparation of 50% drawings and specifications for the construction of the new shafts, chemical feed lines and tunnel repair. The 50% drawing set shall be submitted to the District for circulation and review. Review comments will be provided by the District for incorporation into the 90% design set.

Meetings:

- Assume 2 meetings/field visit
  - Meeting 1: Meeting/ field visit at Pardee Reservoir to discuss project elements
  - Meeting 2: Meeting at District's Oakland office to discuss 50% deliverables

Deliverables:

- 50% Design Drawings

*Task 3.2: Design of Shaft and Tunnel Connection – 90% and 100%:*

This work includes preparation of 90% and 100% drawings and specifications for the construction of the new shafts, chemical feed lines and tunnel repair.

The 90%-Design consists of the Consultant's completed drawings and specifications including resolution and incorporation of all comments submitted during the 50% Design review. During the 90%, the Consultant shall work with District staff to establish a construction schedule, develop work restrictions and plan for outages as necessary to complete the work. The Basis of Estimate Report and Draft AACE Class 1 Cost Estimate shall be provided with the 90% drawing deliverable.

Upon the District's 90% review, the Consultant shall address all and incorporate the District's comments into the final 100% design submittal. The final 100%-Design submittal consists of all drawings and specification sections necessary for a complete construction bid package. All disagreements and open issues shall be resolved prior to submittal. The Consultant shall prepare a final cost estimate for bidding purposes. Final calculations shall be submitted to the District.

Meetings:

- Assume 1 meeting
  - Meeting 1: at District's Oakland office to discuss 90% deliverables

Deliverables:

- 50% review comments and resolutions
- 90% review comments and resolutions
- 90% Design Drawings and Specifications
- Draft and Final AACE Class I (100%-Design Cost Estimate) Consultant's Estimate and Basis of Estimate Report



- 100% Final Design Drawings and Specifications
- Final calculations

#### **Task 4: Construction Risk Management Plan**

This work includes the development of a construction risk management plan that identifies risk and mitigation measures for the design completed in Task 3.1. The plan shall include requirements for emergency entry into Pardee Tunnel as a contingency. The plan shall be developed in coordination with District staff prior to the 90% Design in Task 3.3 and any requirements shall be incorporated into the 90% design documents. The plan should include but are not limited to the following:

- Construction Risks and Mitigation Measures
- Emergency Tunnel Entry Requirements including
  - Location of proposed tunnel entry
  - Minimum ventilation requirements
  - Equipment plan for surface and in-tunnel equipment
  - Anticipated duration of access
  - Required personnel protective equipment
  - Safety and rescue contingency plan

#### Meetings:

- Assume 1 on-site meeting/field visit
  - Meeting 1: Meeting at District's Oakland office with stakeholders

#### Deliverables

- Draft and Final Construction Risk Management Plan

#### **Task 5 – Bid and Award Services**

The Consultant shall support the District in providing information during the bid and award phase and reviewing the submitted information to support this phase. Activities may include addendum preparation, responding to questions from bidders, bid evaluation and conformed drawings.

#### **Task 6 – Engineering Support Services during Construction (Optional)**

The Consultant shall provide the design related services and carry out coordination responsibilities throughout the active construction period. The Consultant shall work closely and collaboratively with the District's Construction Management (CM) staff to ensure coordination of critical engineering information throughout construction.

##### *Task 6.1: Progress meetings:*

The Consultant shall attend construction progress meetings as needed to support coordination with the key project stakeholders. The Consultant shall be prepared to discuss status of all

deliverables (shop drawings, RFIs, design clarifications, change orders, etc.) and support timely resolution of design-related issues that may impact the project budget or schedule.

Meetings:

- Assume 5 phone-in progress meetings

*Task 6.2: Site Visits/Inspection*

The Consultant shall conduct periodic site visits to ensure that the work is progressing per the contract documents and design intent. The appropriate technical expert of the Consultant team shall also be on-site during identified “high risk” work that would benefit from visual observation by the Consultant. All high risk work shall be identified by the Proposer and transmitted to the District’s Construction Manager in the form of a Technical Memorandum prior to Construction.

Notes shall be prepared after each site visit and shall include observations on the quality of progressed work and identify any areas that require closer oversight attention or upcoming work that requires specific instruction.

Meetings:

- Assume 2, two day site visits to Pardee Chemical Plant

*Task 6.3: Submittal/Shop Drawing Review*

The Consultant shall complete the initial review of all shop drawings submitted by the Contractor(s) to ensure compliance with the Contract Documents, prior to District final review/approval. The target turnaround time (metric) is 10 calendar days with submittals on the critical path reviewed as quickly as possible. It is expected that all shop drawings shall be returned to the Contractor as Approved or Approved as Noted within no more than 3 submittal rounds. If issues with the quality of the submittals or shop drawings are identified, the Proposer shall bring it to the District’s attention to take corrective action with the Contractor.

*Task 6.4: Requests for Information/Clarification*

The Consultant shall evaluate and respond to the Requests for Information (RFI) generated by the Contractor and Requests for Design Clarification (RFC) generated by the District’s Construction Manager within five calendar (5) days unless it is a particular complex issue requiring additional examination.

*Task 6.5 – Preparation of Design Related Change Orders*

In the event of a design related change to the Contract in which the Contractor is entitled to a change in compensation, a Change Order must be processed. The Consultant shall evaluate and prepare all necessary design related technical documents for change orders and participate in a scoping meeting with the CM and Contractor for complex change orders that benefit from collaboration prior to scope finalization. In some cases, the Consultant may be

asked to support negotiation of the final change order with the CM and Contractor. After identification of a change order, all costs (inclusive of design work and form preparation) shall be separately tracked for each individual change order.

The Consultant shall also provide a supplemental change order justification memorandum for each change order, clarifying the need for the change (owners requested, changed condition, error or omission, etc.) and expected cost and schedule impacts. These m shall be for District use only.

**Assumptions:**

- The District uses Construction Specifications Institute (CSI) MasterFormat 2004. All specifications will be in this format. The final specifications will be submitted in both Adobe Acrobat and in Microsoft Word formats.
- All Equipment Tag Numbers and Codes will be formatted in accordance with District ESP 130.0 and per District Drawings (included in Exhibit D of this RFP for reference).
- The consultant will prepare an agenda and meeting minutes for all meetings and biweekly phone calls and will distribute minutes within three working days of meetings.
- The consultant will budget two rounds of EBMUD review for written documents before finalizing documents. The first round will be for EBMUD to provide comments on the document, and the second round will be to ensure EBMUD comments are addressed within the document to EBMUD's satisfaction.
- Draft and Final Reports will be submitted as follows:
  - Five (5) hard copies
  - One (1) electronic copy
- Monthly Progress Reports -One (1) electronic copy and one (1) hardcopy to accompany monthly invoices.

## **II. CALENDAR OF EVENTS**

<b>EVENT</b>	<b>DATE/LOCATION</b>
<b>RFP Issued</b>	December 10, 2018
<b>Response Due</b>	January 4, 2019 by 4:00 p.m.
<b>Anticipated Contract Start Date</b>	February 13, 2019
<b>Contract Duration</b>	4 years

<b>Task 1 – Project Management</b>	Ongoing for duration of Project
<b>Task 2 – Chemical Injection Shaft Alternatives Analysis Report</b>	June 2019
<b>Task 3.1 – 50% Submittal</b>	October 2019
<b>Task 3.2 – 100% Submittal</b>	February 2020
<b>Task 4 - Construction Risk Management Plan</b>	January 2020
<b>Task 5 – Bid and Award Services</b>	July 2020 – September 2020
<b>Task 6 – Engineering Support Services during Construction (Optional)</b>	2020 - 2022

**Note:** All dates are subject to change.

Proposers are responsible for reviewing <https://www.ebmud.com/business-center/requests-proposal-rfps/> for any published addenda. Hard copies of addenda will not be mailed out.

### **III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS**

#### **A. RFP ACCEPTANCE AND AWARD**

1. RFP responses will be evaluated by the Selection Committee and will be scored and ranked in accordance with the RFP section entitled “Evaluation Criteria/Selection Committee.”
2. The Selection 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 or to multiple General or Professional Service Providers, 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 purchase order or contract that may be awarded as a result of this RFP.
6. Award of contract. The District reserves the right to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to

the contrary, and to waive minor technical defects and administrative errors, 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 Selection Committee. The Selection Committee may be composed of District staff and other parties that have expertise or experience in this type of procurement. The Selection Committee 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 Selection Committee.

The Selection Committee will evaluate each RFP response meeting the qualification requirements set forth in this RFP. Proposer 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 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 ranked higher than one with a lesser-weighted total.

The Evaluation Criteria are as follows:

	<b>Evaluation Criteria</b>
<b>A.</b>	<p><b>Technical Criteria:</b> The proposed project approach will be evaluated considering the following factors:</p> <ol style="list-style-type: none"> <li>1. Is the project approach well thought out to efficiently meet project needs?</li> <li>2. Is the proposed level of effort appropriate for the scope of services?</li> <li>3. Is the Proposer's planning to make staff available for key project meetings and site visits?</li> <li>4. Are the project risks adequately identified and addressed?</li> </ol>
<b>B.</b>	<p><b>Understanding of the Project:</b> The RFP response will be evaluated against the RFP specifications and the questions below:</p> <ol style="list-style-type: none"> <li>1. Has the Proposer demonstrated a thorough understanding of the purpose, scope, and deliverables of the project?</li> <li>2. Has the Proposer demonstrated understanding of tunnel design, drilling, geology, construction, other applicable codes, and industry best-practices?</li> </ol>

	3. How well has the Proposer identified pertinent issues and potential problems related to the project?
<b>C.</b>	<b>Relevant Experience:</b> RFP responses will be evaluated against the RFP specifications and the questions below: <ol style="list-style-type: none"> <li>1. Do the individuals assigned to the project have experience on similar projects?</li> <li>2. How extensive is the applicable education and experience of the personnel designated to work on the project?</li> <li>3. Has the Proposer identified qualified staff or firm to complete constructability review of the design?</li> </ol>
<b>D.</b>	<b>References (See Exhibit A – RFP Response Packet):</b> If a short list process is used for a solicitation, references are only performed on the shortlisted Proposers and the score for reference checks is not included in the preliminary short list score.
<b>E.</b>	<b>Contract Equity Program:</b> Proposer shall be eligible for SBE or DVBE preference points if they are a certified small business entity, 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. Qualified DVBEs and/or SBEs will receive an additional 5 points to their total score.

## C. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after the District issues the Notice of Intent to Award, which is sent to all entities who submitted a proposal. 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 protester. If a firm is representing the protester, 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 requesting organization's Department Director. The appeal must be submitted to the Department Director no later than five business 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.

D. INVOICING

1. Payment will be made within thirty (30) days following receipt of a correct invoice and upon complete satisfactory receipt of product and/or performance of services.
2. The District will notify the General or Professional Service Provider of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District purchase order number, invoice number, remit to address, and itemized services description.
4. The District will pay General or Professional Service Provider in an amount not to exceed the negotiated amount(s) 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 to be contacted only for the purposes specified below:

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Emily Sing, Associate Civil Engineer

EBMUD-Infrastructure Management

E-Mail: emily.sing@ebmud.com

PHONE: (510) 287-0655

##### **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 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 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:

Kelley Smith, Manager of Purchasing  
East Bay Municipal Utility District  
Pardee Tunnel Chemical Feed Shaft Design  
EBMUD—Purchasing Division  
P.O. Box 24055  
Oakland, CA 94623



Hand Delivered or delivered by courier or package delivery service:

Kelley Smith, Manager of Purchasing  
East Bay Municipal Utility District  
Pardee Tunnel Chemical Feed Shaft Design  
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.

Proposers **must** also submit an electronic copy of their RFP response, with their hardcopy RFP response Package. The file must be on a disk or USB flash drive and enclosed with the sealed original hardcopy of the RFP response. The electronic copy should be in a single file (PDF) format, and shall be an **exact** copy of the original hard copy Exhibit A – RFP Response Packet, Contract Equity Program forms and all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A.

Proposers **must** also submit three (3) photocopies of their RFP response, with their RFP response Package. The photocopies shall be an **exact** copy of the original hard copy Exhibit A – RFP Response Packet, Contract Equity Program forms and all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A.

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 eighty (180) days, 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 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.



# EXHIBIT A

## RFP RESPONSE PACKET

### RFP For – PARDEE TUNNEL CHEMICAL FEED SHAFT DESIGN

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, ONE COPY, AND ONE (1) ELECTRONIC COPY (preferably in PDF format and on a CD or flash drive) CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:
  - EXHIBIT A – RFP RESPONSE PACKET
    - INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A-REQUIRED DOCUMENTATION AND SUBMITTALS”
  - EXHIBIT “B, INSURANCE REQUIREMENTS
- 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 WHOLE.
- 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.
- BIDDERS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE.



## PROPOSER INFORMATION AND ACCEPTANCE

1. 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.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFP documents.
3. The undersigned acknowledges acceptance of all addenda related to this RFP. List Addenda for this RFP on the line below:

Addendum #	Date

4. 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.
5. 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.
6. 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.
7. 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.

8. 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.
9. The undersigned acknowledges that 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.
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 nor a DVBE 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 CEP and EEO forms at the hyperlink contained in the CEP and EEO 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/DVBE Proposal preference please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the above 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: \_\_\_\_\_

Department of Industrial Relations (DIR) Registration 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 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, Letter of Transmittal, Key Personnel, etc.).

The Consultants proposal shall be no more than 6 pages in length, not including attachments and resumes.

1. **Letter of Transmittal, Approach, and Project Team Description (maximum 3 pages)**: RFP response shall include a description of the Proposer's capabilities and approach in providing its services to the District, and provide a brief synopsis of the highlights of the RFP response and overall benefits to the District. This synopsis should not exceed three (3) pages in length and should be easily understood.
2. **Key Personnel (1 Page)**: RFP response shall include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services/training to District staff and all key personnel who will provide maintenance and support services. For each person on the list, the following information shall be included:
  - (a) The person's relationship with the Proposer, including job title and years of employment with the Proposer;
  - (b) The role that the person will play in connection with the RFP;
  - (c) The person's telephone number, and e-mail address;
3. **Experience and Relevant Projects (1 Page, 11"x17" okay)**: The proposer must submit information demonstrating the experience of the proposed personnel with respect to technical experience relevant to the scope of work describing in the RFP, including:
  - a) Project Scope of Work Summary
  - b) Consultant roles and responsibly in the project
  - c) Consultant team members who worked on the project, if any
  - d) Client names and project name.
  - e) Date when the project was performed (start/end dates).

4. **Level of Effort (1 page 11x17 acceptable):** For each of the tasks, provide an estimated level of effort for all staff. In spreadsheet format, show estimated labor hours, direct rate, and loaded rate for Proposer's staff, including sub-consultants.
5. **References Worksheet ( Not included in page count):**
- (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.
6. **Exceptions, Clarifications, Amendments (Not included in page count):**
- (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.**
7. **Contract Equity Program(Not included in page count):**
- (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". 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.





## REFERENCES

### RFP For – Pardee Tunnel Chemical Feed Shaft Design

**Proposer Name:** \_\_\_\_\_

**Proposer must provide a minimum of three 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 For - Pardee Tunnel Chemical Feed Shaft Design

**Proposer Name:** \_\_\_\_\_

List below requests for clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, and submit with your RFP response.

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

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement all the insurance required in this section, and if requested shall submit certificates for review and approval by the District. The Notice to Proceed shall not be issued, and GENERAL OR PROFESSIONAL SERVICE PROVIDER shall not commence work until such insurance has been approved by the District. The certificates shall be on forms approved by the District. Acceptance of the certificates shall not relieve GENERAL OR PROFESSIONAL SERVICE PROVIDER of any of the insurance requirements, nor decrease the liability of GENERAL OR PROFESSIONAL SERVICE PROVIDER. The District reserves the right to require GENERAL OR PROFESSIONAL SERVICE PROVIDER to provide insurance policies for review by the District.

C. Workers Compensation Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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, the District will accept a Self-Insured Certificate from the State of California. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

D. Professional Liability Insurance (Errors and Omissions)

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall maintain during the life of the agreement professional liability insurance with a minimum of \$5,000,000/Occurrence. A three year tail is required if coverage on a claims-made basis. A deductible may be acceptable upon approval by the District. The policy will provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Consultant shall require any subcontractor to provide evidence of the same professional liability insurance coverage.

E. Commercial General Liability Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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 GENERAL OR PROFESSIONAL SERVICE PROVIDER elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, GENERAL OR PROFESSIONAL SERVICE PROVIDER 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. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor or Professional Service Provider to provide evidence of liability insurance coverages.

The amounts of insurance shall be not 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. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.
5. The policy(ies) covers the District's Property in Consultant's care, custody, and control.
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) covers explosion, collapse, and underground hazards.
8. The policy(ies) covers *products and completed operations*.
9. The policy(ies) covers the use of *owned, non-owned*, and hired automobiles.

10. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.



## **EXHIBIT C**

# **CONSULTING AGREEMENT**

The consulting agreement is not required at the time of submission. The District standard consulting agreement is provided for informational purposes.

*(Standard Consulting Agreement for  
Contracts Greater than \$80,000 - Revised 7/10/18)  
(Note: Reference District Procedure No. 451)*

**CONSULTING AND PROFESSIONAL  
SERVICES 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 \$80,000:***

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

***-OR- IF BETWEEN \$30,000 AND \$80,000:***

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*

[Certificate of General and Auto Liability Insurance 8-11.doc](#)

[Certification of Professional Liability Ins.doc](#)

[Certification of Workers Comp Insurance 3-26-10.doc](#)

[Certificate of Pollution Liability Insurance 8-23-11.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. The DISTRICT, 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.
4. The policy(ies) is/are written on an occurrence basis.
5. The policy(ies) cover(s) District's Property in Consultant's care, custody and control.
6. The policy(ies) cover(s) personal injury (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) cover(s) explosion, collapse and underground hazards.
8. The policy(ies) cover(s) products and completed operations.
9. The policy(ies) cover(s) use of owned, non-owned and hired automobiles.
10. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
11. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

#### 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. 7/10/18

## **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 offices or work locations within DISTRICT service area. For work outside of the DISTRICT's services area, DISTRICT approval to charge for vehicle usage and mileage and other travel expenses must be obtained prior to the expenses being incurred.

- 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.
- Local meals, transportation or other travel 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

	<u>Contracted Services</u>	<u>Optional Services</u>	<u>Maximum Services*</u>
Cost Ceiling	<b>\$(dollars)</b>	<b>\$(dollars)</b>	<b>\$(dollars)</b>
Professional Fee Ceiling	<b>(dollars)</b>	<b>(dollars)</b>	<b>(dollars)</b>
Agreement Ceiling	<b>(dollars)</b>	<b>(dollars)</b>	<b>(dollars)</b>

***\* (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](http://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.

$$(\ast\ast\ast) \quad (\ast\ast\ast) \quad (\ast\ast\ast) \quad (\ast\ast\ast) \quad (\ast\ast\ast) \quad (\ast\ast\ast)$$

## II. Optional Services

### Task 3:

### Task 4:

Subtotal II.

(\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*) (\*\*\*)

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

\* 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							
	Project		Drafting	Subtotal	Sub. #1			Sub. #2			Total	
	<u>Manager</u>	<u>Engineer</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)*.



## EXHIBIT D REFERENCES

The following items are available for review upon request.

1. Report by Jacobs Associates: *Pardee Outlet Tower Condition Assessment, April 2013.*
2. Report by Jacobs Associates: *Tunnel Leakage Report, July 2013.*
3. Drawings:
  - a. *Pardee Tunnel, Civil, Plan, Profile and Sections.*
  - b. *DH-1350-6, Outlet Tower at Pardee Reservoir, General Arrangement.*
  - c. *DH 1663-1-A, Concrete Cover and Ladder for Shaft at Station 23+80, Lancha Plana Tunnel*  
*(former name for Pardee Tunnel).*
  - d. *DH-4359-5, Lafayette & Pardee Tunnel Repairs Location of Repairs & Shaft Details*
4. *ESP 130 Equipment Tag and Numbering System*