

# **REQUEST FOR PROPOSAL (RFP) No. PUR 107 for DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES**

## ***ADDENDA***

Prospective bidders are responsible for reviewing any published addenda regarding this bid at [ebmud.com/business-center/](http://ebmud.com/business-center/)

## ***CONTACT***

Valerie Weekly, Principal HR Analyst  
(510) 287-0760  
[valerie.weekly@ebmud.com](mailto:valerie.weekly@ebmud.com)

## ***RESPONSE DUE***

**September 22, 2021  
4:00 p.m. PST**

## ***SUBMIT ELECTRONICALLY TO\****

**Valerie Weekly, EBMUD**  
[valerie.weekly@ebmud.com](mailto:valerie.weekly@ebmud.com)

# EAST BAY MUNICIPAL UTILITY DISTRICT

RFP No. PUR 107

for

DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES

## TABLE OF CONTENTS

<b>I.</b>	<b>STATEMENT OF WORK .....</b>	<b>3</b>
<b>A.</b>	<b>BACKGROUND .....</b>	<b>3</b>
<b>B.</b>	<b>PROJECT OVERVIEW .....</b>	<b>3</b>
<b>C.</b>	<b>SCOPE OF SERVICES .....</b>	<b>4</b>
<b>D.</b>	<b>PROPOSER QUALIFICATIONS .....</b>	<b>7</b>
<b>E.</b>	<b>SUBMITTAL REQUIREMENTS .....</b>	<b>7</b>
<b>II.</b>	<b>CALENDAR OF EVENTS .....</b>	<b>8</b>
<b>III.</b>	<b>DISTRICT PROCEDURES, TERMS, AND CONDITIONS .....</b>	<b>9</b>
<b>A.</b>	<b>RFP ACCEPTANCE AND AWARD.....</b>	<b>9</b>
<b>B.</b>	<b>EVALUATION CRITERIA/SELECTION COMMITTEE .....</b>	<b>9</b>
<b>C.</b>	<b>PRICING.....</b>	<b>10</b>
<b>D.</b>	<b>NOTICE OF INTENT TO AWARD AND PROTESTS.....</b>	<b>10</b>
<b>E.</b>	<b>INVOICING .....</b>	<b>12</b>
<b>IV.</b>	<b>RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION .....</b>	<b>12</b>
<b>A.</b>	<b>DISTRICT CONTACTS .....</b>	<b>12</b>
<b>B.</b>	<b>SUBMITTAL OF RFP RESPONSE .....</b>	<b>13</b>
<b>C.</b>	<b>RESPONSE FORMAT .....</b>	<b>14</b>

## ATTACHMENTS

EXHIBIT A – RFP RESPONSE PACKET

EXHIBIT B – INSURANCE REQUIREMENTS

EXHIBIT C – CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

EXHIBIT D – IRAN CONTRACTING ACT CERTIFICATION

EXHIBIT E – COPIES OF INVESTMENT POLICY STATEMENT

**I. STATEMENT OF WORK****A. BACKGROUND**

East Bay Municipal Utility District (referred to as “District”) is a publicly owned utility formed under the Municipal Utility District Act passed by the California Legislature in 1921. The District provides high quality drinking water for customers in Alameda and Contra Costa counties. The District also provides wastewater treatment to protect public health and the San Francisco Bay. Today, the District delivers water to over 1.4 million customers in a 332 square mile area extending from Crockett on the north, southward to San Lorenzo, eastward from San Francisco to Walnut Creek and south through the San Ramon Valley. The District’s wastewater system serves almost 700,000 people in an 88-square mile area of Alameda and Contra Costa counties along the Bay’s east shore.

The District has approximately 1900 employees, 1900 retirees, and a Governing Board with 7 Directors. There are four unions representing the various employee classifications within the District as well as unrepresented management and confidential employee units.

The District sponsors 457b, 401a and 401k plans with assets totaling over \$635 million as of March 31, 2021. The current Investment Advisor is Hyas Group, who provides services on a lump sum fixed price basis. The District currently contracts with Fidelity Investments for recordkeeping services for the plans.

**B. PROJECT OVERVIEW**

It is the intent of these specifications, terms, and conditions to describe requirement to perform and provide a full range of benefit program and consulting services.

East Bay Municipal Utility District (District) intends to award a three(3)-year contract beginning approximately January 1, 2022 and ending December 31, 2025, with two (2) options, to be exercised at the sole discretion of the District, to extend the contract for additional one (1)-year periods

The District is requesting for proposals from qualified investment advice and consulting services in support of the District’s Deferred Compensation Advisory Committee (DCA Committee) that provides oversight of the 457b, 401a and 401k plans (collectively ‘Plan’ or ‘Plans’). The primary objectives of the Request for Proposal (hereinafter “RFP”) include the following:

- Sustain and/or enhance current Plan governance practices
- Enhance participant outcomes
- Assess the competitiveness of the Plan’s fees

- Improve communication and education
- Outsource administrative functions, where appropriate
- Review Plan assets

Instructions for preparation and submission of a proposal are contained in this packet. Submitted proposals must meet all the requirements set forth in this RFP.

The following is a summary of the District Plans and some key data:

Recordkeeper data shows total balance as of March 31, 2021 of \$635 million and 2,342 participants with an average balance of \$266 thousand.

Investment advisor data shows the following:

Plan	Total Assets	Average Balances
457	\$151 million	\$129 thousand
401(a)	\$68 million	\$124 thousand
\$401(k)	\$429 million	\$199 thousand

Asset Class	Fund Name	457 balance (\$ million)	401(a) balance (\$ million)	401(k) balance (\$ million)
Fixed Income	Fidelity Government Money Market K6	3.7	1.3	8.6
Fixed Income	T. Rowe Price Stable Value Common Tr A	12.1	2.4	23.0
Fixed Income	Carillon Reams Core Plus Bond Instl	4.1	2.3	13.0
Fixed Income	Fidelity US Bond Index	2.1	1.1	4.6
Large Cap	Dodge & Cox Stock	8.0	3.5	21.0
Large Cap	Fidelity 500 Index	16.3	10.0	60.2
Large Cap	Fidelity Blue Chip Growth K	16.5	8.8	64.7
Mid Cap	Wells Fargo Special Mid Cap Value R6	1.0	0.3	2.8
Mid Cap	MFS Mid Cap Growth R4	3.4	2.3	8.8
Small Cap	DFA US Targeted Value I	2.6	0.9	7.8
Small Cap	Artisan Small Cap Inst	4.0	1.8	7.7
International	American Funds EuroPacific Growth R6	4.1	2.6	11.4
International	Fidelity Total International Index	0.8	0.4	2.4
Asset Allocation	(including target-date funds)	49.4	22.5	141.9
n/a	Brokerage	23.1	7.0	46.4

### C. SCOPE OF SERVICES

The selected broker will perform a full range of benefit program and consulting services including, but not limited to, the following:

#### 1. Plan Governance

- a. Provide and maintain an annual checklist of plan governance compliance to the District. The checklist is intended to document the annual review of items important to the oversight of the Plans, including but not limited to the investment policy statements, plan documents, trust documents, annual plan budget, and meeting minutes.
- b. Participate in meetings as needed to prepare for DCA Committee meetings, reviewing plan governance items and assisting the District with establishing and maintaining industry and fiduciary operational and monitoring best practices.
- c. Review the Plan's Investment Policy Statement, no less than annually, and where appropriate make recommendations based on "fiduciary best practice" or regulatorily-required changes. Recommendations shall include, but not be limited to, ongoing fund performance standards applicable to each investment style/asset class and criteria for selection, placement or resolution of watch status, retention, and termination of funds. A copy of the Investment Policy Statement is included in EXHIBIT E.
- d. Attend quarterly DCA Committee meetings, present any prepared reports, and answer questions from DCA Committee members or staff during the meetings.

## 2. Plan Investments

- a. Prepare a quarterly performance measurement report including objective, selected comparison to indices and peer group universes, and other relevant data for each fund. Measurement periods must include at least 1-, 3-, 5-, and 10-year time periods.
- b. Prepare a quarterly in-depth investment performance analysis report, identify changes in firm organization and key personnel; changes in investment guidelines, fund management process or style; and a detailed attribution for fund performance results for each fund.
- c. Prepare a summary report of each fund's standing compared to the Plan's Investment Policy Statement watch status criteria. Identify any fund that warrants placement on watch status.
- d. Prepare a report, as warranted, recommending fund(s) for termination based on items in III.B.2. or III.B.3. above, or any other cause.
- e. Prepare a report, as needed, recommending fund(s) for selection as new investment funds as replacements or new additions to the Plan.
- f. Prepare a summary report of economic conditions, market conditions, and other investment-related items relevant to the Plan.
- g. Present any reports covered in subsections III.B.1.-6. to the DCA Committee for review and discussion.
- h. Communicate with fund managers as requested by the DCA Committee or staff. Coordinate fund managers attendance at DCA Committee meetings.

- i. Review annually and produce a report on the current Qualified Default Investment Alternative providing recommendations on adjustments to conform to the Plan's Investment Policy Statement.
- j. Review annually and produce report on target-date and stable value options.
- k. Review all investment separate account and stable value agreements, as requested by staff.
- l. Analyze and review revenue sharing funds and related agreements, when applicable.

### 3. Plan Fees

- a. Ensure fiduciary oversight over District fund administration.
- b. Provide an analysis of all plan-related fees, including but not limited to investment management fees, administration and recordkeeping fees, and other investment-related and non-investment fees.
- c. Recommend changes to plan-related fees upon request or as a result of the analysis in III.C.2.
- d. Reconcile plan fee analysis with vendor contracts and check for accuracy. Prepare a report on any discrepancy with recommendation for resolution.
- e. Present, at least annually, a review of plan sponsor and participant related fees, including suggestions for reduction or increase of those fees.
- f. Assist the District in the negotiations of all provider service agreements.
- g. Review all service provider agreements, at least annually, and prepare a report on any discrepancy with recommendation for resolution.
- h. Review all service provider fee disclosure documents (both plan sponsor and participant disclosures). Prepare a report on any issues discovered with recommendation for resolution.
- i. Review, at least annually or upon request from staff, that service providers are meeting their commitments under their agreement.
- j. Prepare, at least annually, a vendor activity report documenting the review in III.C.9. for the previous year.
- k. Communicate with service providers as requested by the DCA Committee or staff. Coordinate managers attendance at DCA Committee meetings.
- l. Prepare a report recommending service goals and initiatives for the prospective year.
- m. Develop material for outreach to members on changes in plan structure (e.g., fees).
- n. Present, as requested, prepared outreach material in a member forum.

### 4. Plan Administrator Consulting Support

- a. Provide consulting services support to the District as Plan Administrator.
- b. Send action memo following DCA Committee meetings.
- c. Review staff materials, as requested, for correctness and content

- d. Provide and analyze plan-relevant data upon request.
- e. Review all investment-related communications received from participants.
- f. Provide government defined contribution plan industry-related experience and knowledge to DCA Committee meetings as background to decision making.

5. Education and Training

- a. Provide and/or facilitate, as requested, education and training sessions for DCA Committee members or staff.

**D. PROPOSER QUALIFICATIONS**

1. Proposer Minimum Qualifications

- a. Proposer, Proposer's principal, or Proposer's staff shall have been regularly engaged in the business of providing investment broker consulting services for at least five (5) years.
- b. Assigned Consultant(s) shall have a Series 65 license or the necessary designation waiver of CFP, CFA, ChFC, CIC or PFS.
- c. Proposer shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.

**E. SUBMITTAL REQUIREMENTS**

All 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, Consultant Questionnaire, Client References, etc.).

- 1. **Proposer Information and Acceptance Form**
- 2. **Executive Summary on Letter of Transmittal:** This letter of transmittal should not exceed three (3) pages in length.
- 3. **Consultant Questionnaire**
- 4. **Client References**
- 5. **Staffing Proposal**
- 6. **Price Proposal Form**

**7. Exceptions, Clarifications, Amendments:**

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

**8. Contract Equity Program & Equal Employment Opportunity:**

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

**II. CALENDAR OF EVENTS**

EVENT	DATE/LOCATION
RFP Issued	August 24, 2021
Response Due	September 22, 2021 by 4:00 p.m.
Anticipated Contract Start Date	January 1, 2022

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

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 proposer 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 proposals 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.

The District will award a contract to the responsible and responsive Proposer whose proposal is most advantageous and favorable to the District. Only those proposals which meet the submission requirements will be evaluated. All proposals will be evaluated by a Selection Committee. Each proposal will be evaluated and scored according to the evaluation criteria below:

	<b>Evaluation Criteria</b>
<b>A.</b>	<b>Responsiveness to the RFP</b>
<b>B.</b>	<b>Project Approach</b>
<b>C.</b>	<b>Qualifications, Relevant Experience and Quality of References</b>
<b>D.</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. PRICING**

1. Prices quoted shall be firm for the first months of any contract that may be awarded pursuant to this RFP.
2. All prices quoted shall be in United States dollars.
3. Price quotes shall include any and all payment incentives available to the District.
4. Proposers are advised that in the evaluation of cost, if applicable, it will be assumed that the unit price quoted is correct in the case of a discrepancy between the unit price and extended price.

**D. NOTICE OF INTENT TO AWARD AND PROTESTS**

At the conclusion of the RFP response evaluation process, all entities who submitted a proposal package will be notified in writing by e-mail or USPS mail with the name of the Proposer being recommended for contract award. The document providing this notification is the Notice of Intent to Award.

Negotiations for a Consulting Services Agreement with a “not to exceed” contract price (for time and expenses) will be scheduled shortly after the Notice of Intent to Award. If

an Agreement cannot be achieved, the District will proceed to negotiate with the next highest ranked Proposer.

Protests must be in writing and must be received no later than seven (7) workdays after the District issues the Notice of Intent to Award. 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.

Proposal 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 proposal, 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, hand delivered, or emailed to the Manager of Purchasing, Mailstop 102, 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 workday time limit. Any proposal protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

In the event that the protest is denied, the 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 workdays from the date which the protest determination was transmitted by the District, to the protesting party. The appeal shall focus on the points raised in the original protest, and no new points shall be raised in the appeal.

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 proposal protester must also send the Purchasing Division a copy of all materials sent to the Department Director.

The Department Director will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will

make a recommendation for award and inform the protester it may request to address the Board of Directors at that meeting.

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

**E. INVOICING**

1. Following the District's acceptance of product(s) meeting all specified requirements, and/or the complete and satisfactory performance of services, the District will render payment within thirty (30) days of receipt of a correct invoice.
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 REGARDING TECHNICAL SPECIFICATIONS:

Attn: Valerie Weekly, Principal HR Analyst  
EBMUD-Employee Services Division/Human Resources Department  
E-Mail: [valerie.weekly@ebmud.com](mailto:valerie.weekly@ebmud.com)  
PHONE: (510) 287-0760

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office  
PHONE: (510) 287-0114

AFTER AWARD:

Attn: Valerie Weekly, Principal HR Analyst  
EBMUD-Employee Services Division/Human Resources Department

E-Mail: [valerie.weekly@ebmud.com](mailto:valerie.weekly@ebmud.com)

PHONE: (510) 287-0760

**B. SUBMITTAL OF RFP RESPONSE**

1. At this time, no hardcopy proposals will be accepted. Upload your RFP response in pdf format and prior to the bid due date/time RFP submittals, in their entirety, shall be emailed to [valerie.weekly@ebmud.com](mailto:valerie.weekly@ebmud.com). The District's email has limitations on attachment size. Make sure your response is less than 25 megabytes. If the file exceeds the limit, you will need to send multiple emails. Proposers are solely responsible for ensuring timely delivery of the proposals. The District shall not be responsible for any issues related to transfer of files through email. You may call at (510)287-0760 to check receipt of the proposals.
2. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.
3. 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.
4. 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.
5. 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.
6. 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, or 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 No. PUR 107 – DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES**

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

From: \_\_\_\_\_  
(Official Name of Proposer)

### RFP RESPONSE PACKET GUIDELINES

- **SUBMITTAL SHALL CONTAIN THE FOLLOWING:**
  - **EXHIBIT A – RFP RESPONSE PACKET**
    - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A-REQUIRED DOCUMENTATION AND SUBMITTALS”**
- **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.**
- **PROPOSORS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE BY INSERTING THEIR OWN LANGUAGE OR FALSE CLAIMS IN THEIR RESPONSE. ANY EXCEPTIONS AND CLARIFICATIONS MUST BE PLACED IN THE “EXCEPTIONS/ CLARIFICATIONS” PAGE, NOT BURIED IN THE PROPOSAL ITSELF.”.**



## 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\_\_\_\_\_



## PROPOSAL FORM

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

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

Include a comprehensive and specific description indicating how the firm would price the District's account and the estimated annual cost of the services for each of the three years of the initial term of the contract and for the potential additional two (2) one-year extensions that may follow. Indicate whether pricing is based on an annual fee for service or a combination of the two. Include all commissions and fees that your firm would expect to receive from the existing programs for services requested herein, as well as additional services that are being recommended. Identify any split commission or joint marketing arrangements with other agents, brokers, firms, or associations.

The District reserves the right to review and/or audit any records of the selected broker related to commissions, fees, etc. related to the District's account.

Proposals in which the costs do not reflect a reasonable relationship to the work to be conducted may be viewed as failing to comprehend the requirements of the scope of work and, therefore, cause the proposal to be rejected as being nonresponsive.

Additionally, prior to award of a contract, the successful proposer shall be required to submit two (2) years of the firm's most recently completed financial statements, including footnotes and auditor's opinion or other financial instrument that would establish the firm's ability to complete the obligations of the contract resulting from this solicitation.

Description	Unit of Measure		Annual Cost	Extended Cost
Year One	1		\$	
Year Two	1		\$	
Year Three	1		\$	
Year Four (extension)	1		\$	
Year Five (extension)	1		\$	
RFP TOTAL COST				\$



## 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.).

1. **Letter of Transmittal:** 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:** 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, fax number, and e-mail address;
  - d. The person's educational background; and
  - e. The person's relevant experience, certifications, and/or merits.
3. **Description of the Proposed Services:** RFP response shall include a description of the terms and conditions of services to be provided during the contract term including response times. The description shall contain a basis of estimate for services including its scheduled start and completion dates, the number of Proposer's and District personnel involved, and the number of hours scheduled for each person. The description shall identify spare or replacement parts that will be required in performing maintenance services, the anticipated location(s) of the spare parts, and how quickly the parts shall be available for repairs. Finally, the description must: (1) specify how the services in the RFP response will meet or exceed the requirements of the District; (2) explain any special resources or approaches that make the services of the Proposer particularly advantageous to the District; and (3) identify any limitations or restrictions of the Proposer in providing the services that the District should be aware of in evaluating its RFP response to this RFP.
4. **Implementation Plan and Schedule:** The RFP response shall include an implementation plan and schedule. The plan for implementing the proposed equipment/system and services shall include an Acceptance Test Plan. In addition, the plan shall include a detailed schedule indicating how the Proposer will ensure adherence to the timetables for the final equipment/system and/or services.



5. **Sustainability Statement:** Contractors shall submit a statement regarding any sustainable, environmental, or socially responsible initiatives or practices that they or their suppliers engage in. This information can be in relation to the specific services or work products solicited via this RFP, or in relation to the manufacture, delivery, or business practices of your firm.
6. **References:**
  - a. Proposers must use the templates in the “References” section of this Exhibit A – RFP Response Packet to provide references.
  - b. References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
    - 1) Proposers must verify the contact information for all references provided is current and valid.
    - 2) 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.
7. **Exceptions, Clarifications, Amendments:**
  - a. The RFP response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, which shall be submitted with the proposer’s RFP response using the template in the “Exceptions, Clarifications, Amendments” section of this Exhibit A – RFP Response Packet.
  - b. **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.**
8. **Contract Equity Program:**
  - a. Every proposer must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink contained in the last page of this Exhibit A. Special attention should be given to completing Form P-25, "Employment Data and Certification". 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.



## CONSULTANT QUESTIONNAIRE

### RFP No. PUR 107 – DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES

**Please submit answers to ALL questions. These can be copied to your own form for response as long as no changes are made to the questions.**

QUESTION	RESPONSE
1. Provide a description of the organizational structure of the firm.	
2. Describe plans for managing future growth of your firm.	
3. Has your firm established any limitation on the number of clients it intends to accept?	
4. What is your client-to-consultant ratio?	
5. How many public-sector clients does your firm currently provide investment advisory services to?	
6. Describe any pending litigation and any conflicts of interest that may exist in working with certain providers.	
7. Does your firm have a conflict-of-interest policy? If so, please provide a copy.	
8. Please describe any conflicts of interest that have arisen within the firm and how they were resolved.	
9. Disclose any existing or potential conflicts of interest between the scope of work required by the District and your firm's other business activities.	
10. Describe in detail the method by which the scope of work and requirements described in this RFP will be accomplished. Please reference at a minimum all the specific items listed in the scope of services (Section III of this document) in your answer.	
11. What is your firm's Service Level Agreement for returning phone calls, emails, written questions, or remote-access meetings?	
12. Give an example that demonstrates your firm's ability to be proactive in finding opportunities to enhance services to the client.	
13. If you are the successful new consultant, outline your transition plan with dates, tasks, and responsible parties.	
14. Describe technical or professional support available at no extra cost through your firm.	
15. Describe any brokerage or consulting services your firm will offer the District not covered in the scope of services that may be of interest.	
16. Describe how you track and communicate legislative updates to your clients?	
17. Provide a sample of legislative updates.	
18. What training resources does your firm provide to assist your public service clients in educating their staff?	
19. How do you track and communicate industry trends to your clients?	
20. Provide a sample of industry trend updates.	
21. Describe how your firm would handle ad-hoc projects that arise due to changes in legislation or other events which create additional service needs for the District.	
21. Describe in detail how you monitor and report on other provider performance including fund managers and recordkeeper.	
22. Provide a sample of other provider performance reports including fund managers and recordkeeper your firm has completed for current clients	
23. Do you have access to an attorney who could render opinions to the District on relevant matters to the Plans? If so, please provide the cost for this service.	
24. Are there any other relevant consulting services that are not listed that you will provide as part of your consulting services to the District? If so, please provide the cost for these services.	





**CLIENT REFERENCES**  
**STAFFING PROPOSAL**

**RFP No. PUR 107 – DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES**

List of proposed staff to be dedicated to the District’s account and their ability to meet the District’s needs based on the scope of work. Designate an Account Manager who would provide day-to-day direction of the required work. Attach each person's resume and work experience. Experience working with public sector clients is preferred. Use additional sheets if necessary.

Proposed Staff Name(s) and Title(s)	Brief Description of Areas of Responsibility	Brief Description of Education, Experience and Professional Qualification	Brief Description of Similar Clients/Programs Currently Assigned To







## 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 proposal the appropriate forms.

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

**[Contract Equity 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**

PROPOSER shall take out and maintain during the life of the Agreement all insurance required and PROPOSER shall not commence work until such insurance has been approved by DISTRICT. The proof of insurance shall be on forms provided by DISTRICT directly following these Insurance Requirements.

PROPOSERS are not required to submit completed insurance verification documents with their bid but will be required to submit them upon notification of award. By signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP.

#### **I. The following provisions applicable to all required insurance:**

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, CONTRACTOR shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. CONTRACTOR shall provide Verification of Insurance as required by this Agreement by providing the completed Verification of Insurance as requested below signing and submitting this Exhibit B to the DISTRICT. The Exhibit B may be signed by an officer of the CONTRACTOR (Agent) or by the Insurance Broker for the CONTRACTOR. CONTRACTOR shall update Exhibit B throughout the specified term of the insurance required by this Agreement by resubmitting the completed Exhibit B prior to the expiration date of any of the required insurance. The updated Exhibit B shall become a part of the Agreement but shall not require a change order to the Agreement. The Notice to Proceed shall not be issued, and CONTRACTOR shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. CONTRACTOR shall carry and maintain the minimum insurance requirements as defined in this Agreement. CONTRACTOR shall require any subcontractor to carry and maintain the minimum insurance required in this Agreement to the extent they apply to the scope of the services to be performed by subcontractor.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve CONTRACTOR of any of the insurance requirements, nor decrease liability of CONTRACTOR.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Agreement.
- F. Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, CONTRACTOR shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.
- H. Any policies with a SIR shall provide that any SIR may be satisfied, in whole or in part, by the DISTRICT or the additional insured at its sole and absolute discretion.



- I. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A- V.
- J. CONTRACTOR shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.
- K. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified) the retroactive date must be shown and must be before the date of this Agreement, and before the beginning of any Services related to this Agreement.
- L. Insurance must be maintained, and updated Verification of Insurance be provided to the DISTRICT before the expiration of insurance by having CONTRACTOR's insurance broker or agent update, sign and return Exhibit B to the DISTRICT's contract manager. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration of this Agreement.
- M. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement or the start of any Services related to this Agreement, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after expiration of the Agreement.
- N. If requested by the DISTRICT, a copy of the policies' claims reporting requirement must be submitted to the DISTRICT for review.
- O. Where additional insured coverage is required, the additional insured coverage shall be "primary and non-contributory," and will not seek contribution from the DISTRICT's insurance or self-insurance.
- P. CONTRACTOR agrees to provide immediate Notice to the DISTRICT of any loss or claim against CONTRACTOR arising out of, pertaining to, or in any way relating to this Agreement, or Services performed under this Agreement. The DISTRICT assumes no obligation or liability by such Notice but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the DISTRICT.
- Q. CONTRACTOR agrees, upon request by the DISTRICT, to provide complete, certified copies of any policies and endorsements within 10 days of such request (copies of policies may be redacted to eliminate premium details.)
- R. It is CONTRACTOR's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.
- S. Notice of Cancellation/Non-Renewal/Material Reduction The insurance requirements hereunder are mandatory, and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by CONTRACTOR, should CONTRACTOR breach its obligations to maintain the required coverage and limits set forth in this Agreement. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be



provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the DISTRICT of an updated Verification of Insurance which shall be met by having the CONTRACTOR's insurance broker or agent update, sign and return this EXHIBIT B.

## **INSURANCE VERIFICATION DOCUMENTS**

### **II. Workers' Compensation and Employer's Liability Insurance Coverage**

- A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:
- |             |  |
|-------------|--|
| Coverage A. | Statutory Benefits Limits                                |
| Coverage B. | Employer's Liability of not less than:                   |
|             | Bodily Injury by accident:     \$1,000,000 each accident |
|             | Bodily Injury by disease:     \$1,000,000 each employee  |
|             | Bodily Injury by disease:     \$1,000,000 policy limit   |
- B. CONTRACTOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- C. If there is an onsite exposure of injury to CONTRACTOR, subcontractor, and/or subcontractor's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.
- D. If CONTRACTOR is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, CONTRACTOR must return the completed Verification of Insurance confirming that CONTRACTOR has no employees and is exempt from the State of California Workers' Compensation requirements.
- E. If CONTRACTOR is self-insured with respect to Workers' Compensation coverage, CONTRACTOR shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section "F."
- F. Waiver of Subrogation. Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that CONTRACTOR and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. CONTRACTOR shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to CONTRACTOR's failure to provide waiver of subrogation from the insurance carrier.



**Verification of Workers' Compensation and Employer's Liability Insurance Coverage**

☐ By checking the box and signing below, I hereby verify that the CONTRACTOR is exempt from the State of California's requirement to carry workers' compensation insurance.

As the CONTRACTOR's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries workers' compensation insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured Retention Amount: \$ \_\_\_\_\_

Policy Limit: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker or Agent: Print Name: \_\_\_\_\_

Insurance Broker or Agent's Signature: \_\_\_\_\_



### **III. Commercial General Liability Insurance (“CGL”) Coverage**

- A. CONTRACTOR’s insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:
  - Bodily Injury and Property Damage: \$2,000,000 per occurrence & aggregate
  - Personal Injury/Advertising Injury: \$2,000,000 per occurrence & aggregate
  - Products/Completed Operations: \$2,000,000 per occurrence & aggregate
- D. Coverage must be on an occurrence basis.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by CONTRACTOR and/or subcontractor under this Agreement.
- F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all premises and operations in any way related to this Agreement.
- G. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by Subcontractor on CONTRACTOR’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONTRACTOR under this Agreement as an “insured contract.”
- J. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the CONTRACTOR and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. CONTRACTOR shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from CONTRACTOR’s failure to provide the waiver of subrogation from its insurance carrier(s).
- K. “Independent CONTRACTOR’s Liability” shall not limit coverage for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Agreement.



To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of CONTRACTOR, in any way related to Services performed under this Agreement.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies' limit(s).

**Verification of Commercial General Liability (CGL) Insurance Coverage**

**As the CONTRACTOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Commercial General Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Occurrence: \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:** \_\_\_\_\_





#### **IV. Business Auto Liability Insurance Coverage**

CONTRACTOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

- A. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- B. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:  
Each Occurrence Limit (per accident) and in the Aggregate:      \$2,000,000  
Bodily Injury and Property Damage:      \$2,000,000

- C. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile

This provision ensures the policy covers losses arising out of use of company-owned vehicles ("owned autos"), employee's personal autos ("non-owned autos" meaning not owned by company/insured) or autos that are rented or leased ("hired autos").

- D. If CONTRACTOR is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.
- E. If CONTRACTOR's Scope of Services under this Agreement exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to CONTRACTOR's and/or Subcontractor's performance under this Agreement, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the CONTRACTOR's Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Agreement. Coverage shall also include leakage of fuel or other "pollutants" needed for the normal functioning of covered autos.
- F. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole, or in part, from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of CONTRACTOR, in any way related to Services performed under this Agreement.
- G. A severability of interest provision must apply for all the Additional Insureds, ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the insurer's limits of liability.



**Verification of Business Auto Liability Insurance Coverage**

**As the CONTRACTOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Business Automobile Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Limit: Per Accident/Occurrence \$** \_\_\_\_\_ **Aggregate: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print Name:** \_\_\_\_\_

**Insurance Broker or Agent's Signature:** \_\_\_\_\_



#### **V. Professional Liability (also known as Errors and Omissions) Insurance Coverage**

- A. CONTRACTOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- C. Minimum Requirements: Professional Liability Insurance with minimum limits as follows:
  - Each Claim or Occurrence Limit: \$10,000,000
  - Aggregate Limit: \$10,000,000
- D. If Coverage is written on a claims-made form, the following shall apply:
  - 1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
  - 2. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
  - 3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, CONTRACTOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.
- E. Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.
- F. Coverage shall be included for all premises and operations in any way related to this Agreement.



**Verification of Professional Liability (Errors and Omissions) Insurance Coverage**

As the CONTRACTOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Professional Liability insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured: Amount: \$ \_\_\_\_\_

Policy Limit: Per Claim \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from: \_\_\_\_\_ to: \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker or Agent: Print Name: \_\_\_\_\_

Insurance Broker or Agent's Signature: \_\_\_\_\_



## **VI. Excess and/or Umbrella Liability Insurance Coverage**

- A. CONTRACTOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- C. Minimum Requirements: It is expressly understood by the parties that CONTRACTOR's Excess and/or Umbrella Liability policies shall, at minimum, comply with all insurance requirements set forth within this Agreement.
  - 1. Coverage for Products, Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any "prior work" coverage limitation or exclusion applicable to any Services performed under this Agreement and, if it is a claims-made policy, it must be maintained for a minimum of three (3) years following final completion of the Services.
  - 2. Coverage shall be included for all premises and operations in any way related to this Agreement.
  - 3. There will be no exclusion for explosions, collapse, or underground damage (XCU).
  - 4. Insurance policies and Additional Insured Endorsements shall not exclude coverage for liability and damages from services performed by Subcontractor on CONTRACTOR's behalf.
  - 5. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONTRACTOR under this Agreement as an "insured contract."
  - 6. "Independent CONTRACTOR's Liability" shall not limit coverage for liability and/or damage arising out of, pertaining to, or in any way related to Services provided under this Agreement.
  - 7. To the fullest extent permitted by law, the DISTRICT, its directors, officers, officials, agents, volunteers, and employees must be covered as Additional Insureds on a primary and noncontributory basis on all excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole or in part from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of CONTRACTOR, in any way related to Services performed under this Agreement.
  - 8. A severability of interest provision must apply for all the Additional Insureds, ensuring that the CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policy's limits.



9. CONTRACTOR and its excess and/or umbrella Liability insurance coverage must waive any rights of subrogation against the DISTRICT, its directors, officers, officials, employees, agents, and volunteers, and CONTRACTOR shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

D. CONTRACTOR shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

**Verification of Excess and/or Umbrella Liability Insurance Coverage**

**As the CONTRACTOR’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Excess and/or Umbrella Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Self-Insured: Amount: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from:** \_\_\_\_\_ **to:** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker or Agent: Print Name:** \_\_\_\_\_

**Insurance Broker or Agent’s Signature:** \_\_\_\_\_

# EXHIBIT C

## EBMUD SAMPLE CONSULTANT AGREEMENT

(Standard Consulting Agreement for  
Contracts Greater than \$80,000 - Revised 5/8/19)  
(Note: Reference District Procedure No. 451)

### CONSULTING AND PROFESSIONAL SERVICES AGREEMENT FOR EAST BAY MUNICIPAL UTILITY DISTRICT

#### REQUEST FOR PROPOSAL (RFP) No. PUR 107 for DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES

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."

#### V. 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 (pro-rata 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 sub consultant 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/sub consulting 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 sub consultant. Any change of CONSULTANT'S listed sub consultants shall be subject to approval by the DISTRICT'S Project Manager.

## **ARTICLE 7 - INDEMNIFICATION AND INSURANCE**

### **07.1 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', sub consultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.

### **7.2 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.

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.

For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified), the retroactive date must be shown and must be before the date of this Agreement, and before the beginning of any Services related to this Agreement.

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

### **7.3 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 sub consultant to provide it with evidence of Workers Compensation Insurance.

Workers' Compensation insurance must contain a waiver of subrogation endorsement providing that each insurer waives any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, officers, officials, agents, volunteers, and employees. CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier.

#### 7.4 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 sub consultant 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.

#### 7.5 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 \$10,000,000 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.

If Errors and Omissions or Pollution Coverage is written on a claims-made form, the following shall apply:

- a. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
- b. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
- c. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, CONTRACTOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.

### **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 \_\_\_\_\_  
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: \_\_\_\_\_  
*(Name),*  
*(Insert title)*

Date \_\_\_\_\_

Approved As To Form

By: \_\_\_\_\_  
for the Office of the General Counsel

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

By: \_\_\_\_\_  
*(Name),*  
*(Title)*

Date \_\_\_\_\_



## EXHIBIT D IRAN CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) § 2204, an Iran Contracting Act Certification is required for solicitations of goods or services of \$1,000,000 or more.

To submit a bid or proposal to East Bay Municipal Utility District (District), you must complete **ONLY ONE** of the following two paragraphs. To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1. To complete paragraph 2, check the corresponding box and attach a copy of the written permission from the District.

- ☐ 1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to PCC § 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

### CERTIFICATION FOR PARAGRAPH 1:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer/bidder to the clause in paragraph 1. This certification is made under the laws of the State of California.

Firm: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Bidder)

Title: \_\_\_\_\_

Signed at: \_\_\_\_\_ County, State of: \_\_\_\_\_

**OR**

- ☐ 2. We have received written permission from the District to submit a bid or proposal pursuant to PCC § 2203(c) or (d). *A copy of the written permission from the District is included with our bid or proposal.*

## **EXHIBIT E**

### **COPIES OF INVESTMENT POLICY STATEMENTS**

**RFP No. PUR 107 – DEFERRED COMPENSATION INVESTMENT CONSULTING SERVICES**

# **EBMUD 401(a) Plan**

## **STATEMENT OF INVESTMENT POLICIES AND GUIDELINES**

### **East Bay Municipal Utility District**

**May 2021**

**East Bay Municipal Utility District  
401(a) Plan**

**STATEMENT OF INVESTMENT POLICIES AND GUIDELINES**

**TABLE OF CONTENTS**

<b>INTRODUCTION AND PURPOSE.....</b>	<b>3</b>
<b>SUMMARY OF RESPONSIBILITIES.....</b>	<b>3</b>
<b>GENERAL COMPLIANCE.....</b>	<b>5</b>
<b>GENERAL INVESTMENT POLICY, OBJECTIVES AND STANDARDS.....</b>	<b>5</b>
<b>INVESTMENTS.....</b>	<b>6</b>
<b>INVESTMENT OPTION SELECTION GUIDELINES.....</b>	<b>8</b>
<b>INVESTMENT OPTION REVIEW GUIDELINES AND MONITORING.....</b>	<b>8</b>
<b>INVESTMENT OPTION TERMINATION AND WATCH GUIDELINES.....</b>	<b>10</b>
<b>INVESTMENT OVERSIGHT RESPONSIBILITY AND PROXY VOTING.....</b>	<b>12</b>
<b>GLOSSARY.....</b>	<b>13</b>

## INTRODUCTION AND PURPOSE

This statement is set forth to provide a clear understanding of the investment policies, guidelines and objectives related to the administration of the East Bay Municipal Utility District (District) 401(a) Plan (the Plan). The Plan is a voluntary, deferred compensation plan available to eligible employees who are interested in saving for retirement on a tax-advantaged basis. The Plan is also available to retired and separated employees to the extent that they wish to continue utilizing the Plan after leaving service. The purposes of the Plan is to provide a vehicle for and to encourage additional retirement savings to supplement the core retirement benefits provided to District employees.

This Investment Policy Statement is further intended to assist the Advisory Committee in making investment-related decisions in a prudent manner. It outlines the underlying philosophies and processes for selecting, monitoring, and evaluating investment options and investment providers utilized by the Plan. This Investment Policy Statement will be reviewed at least annually and it can be revised at any time by the Advisory Committee to reflect changes in the capital markets, federal and state laws and policies affecting deferred compensation plan, plan participant objectives, or other factors relevant to the Plan.

## SUMMARY OF RESPONSIBILITIES

**Plan Sponsor** – The District is the Sponsor of the Plan. The responsibilities of the Plan Sponsor include but are not limited to:

- Adopting and amending Plan Documents;
- Approving Plan services contracts; and
- Designating other fiduciaries of the Plan.

**Plan Committee** – The 401(a) Plan Advisory Committee selects, monitors, and evaluates investment alternatives and investment providers utilized by the 401(a) Plan. It is the intent of the Advisory Committee to fulfill its responsibilities with respect to the Plan solely in the interest of the participants and beneficiaries. The Committee members, as fiduciaries, are required to perform their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Committee's responsibilities include the following:

- Selecting the investment design features of the Plan, including establishing the investment policy and objectives and the number and types of investment alternatives available to Plan participants;
- Appointing, monitoring, and evaluating all investment providers and managers in accordance with guidelines and benchmarks established within this document and consistent with applicable laws;
- Monitoring costs that are charged to Plan assets and/or paid by Plan participants, including but not limited to investment management fees, custodial fees and other fees paid to Plan service providers from Plan and/or participant assets.

**EBMUD Staff** – Human Resources Department staff members assist with the operation of the Plan and assist the Committee in several ways. Their responsibilities include:

- Review, approve, and process hardship/safe harbors, QDROs, and death transfers
- Conduct Request for Proposal processes for Investment Consultants and Service Providers
- Serve as the liaison to Service Providers, coordinating delivery of services, etc.
- Contribution and withdrawal reconciliation and processing

**Investment Consultant** - The Committee may engage an independent investment consultant (hereinafter “Consultant”) to assist in carrying out the duties and responsibilities of this Investment Policy Statement. Such Consultant must be registered with either State or Federal securities regulators pursuant to the Investment Advisors Act of 1940. The Consultant’s role is to provide information and advice to the Committee on various investment related issues. The Consultant has no discretionary control over the Plan and its assets. In providing advice to the Committees, the Consultant must assume a co-fiduciary role. The services of the Consultant will be set forth in a separate agreement, in which the Consultant’s co-fiduciary role is described.

**Investment Provider** – An entity that offers investment option products and manages assets for the Plan. Examples of investment option products offered by an investment provider may include mutual funds, commingled trust funds, separate accounts and/or annuity contracts.

**Investment Manager** – The person(s) at the Investment Provider responsible for implementing an investment option product’s investing strategy and managing the investment portfolio trading activities.

**Service Provider** – An entity engaged to assist the Plan Sponsor and the Committee in administration of the Plan. This assistance includes Plan enrollment, communication, education, including providing general investment information to Plan participants regarding the procedures for making investment choices under the Plan and providing general investment information regarding each of the investment options offered under the Plan, distribution processing, record keeping and other administrative functions as prescribed in an agreement entered into between the Plan Sponsor and the Service Provider.

## **GENERAL COMPLIANCE**

The Plans are designed to meet the Internal Revenue Code (the Code) requirements, as amended. The Plan's investment policies and guidelines shall be reviewed by the Committee on an annual basis for modification, as needed, but may be modified by the Committee at any time, as necessary.

At minimum, it is intended that Plan participants shall be provided with the following investment opportunities:

- A. Choose from a minimum of three diverse investment categories, each with materially different risk and return characteristics. At least one of the categories will provide for a high degree of safety and capital preservation.
- B. Make and/or modify investment decisions at least annually.
- C. Receive or have access to the following information, as updated:
  - A description of the investment alternatives available under the Plan including a general description of the investment objectives, risk and return characteristics, and type and diversification of assets comprising each alternative;
  - Identification of the designated investment managers and investment products;
  - A description of any transaction fees or expenses charged to participant accounts, and information on costs and fees for an investment product that reduces the rate of return to Plan participants (expense ratios); and
  - Prospectuses, annual reports, and semi-annual reports on investment products, if available.

## **GENERAL INVESTMENT POLICY, OBJECTIVES AND STANDARDS**

It is the policy of the Plan to foster an investment environment that encourages and facilitates participant efforts to supplement other sources of retirement income. The Plan will be structured in an attempt to provide Plan participants with an array of investment options with an objective of reducing fund fees, expenses, and administrative fees normally associated with these investments. Participants in the Plan are solely responsible for their own investment decisions and bear the risks and assume responsibility for the results of the investment options that they select. No representations, promises, or warranties are made by the District regarding the suitability of Plan participation for any participant's individual investment or retirement needs. Additionally, no representations, promises or warranties are made by the District about the performance of the Plan or Plan investments.

The primary investment objective of the Plan is to present participants with a range of investment options that give participants an opportunity to increase the value of their investment assets in a manner consistent with varying levels of participant risk/reward tolerances and investment decision making skills. While the Plan cannot meet all participant investment preferences and attitudes, the Plan attempts to provide investment options for participants at various levels of investment sophistication and with varying requirements for risk and return.



Information that may be used to select which investment products to offer includes, but is not limited to, the following:

- Age, income, and other demographic data on Plan participants
- Liquidity and administrative constraints imposed on the Plan by service providers
- Development of new investment products in the marketplace
- Level of participant usage of investment products

To enable participants to establish different investment strategies, the Plan will offer investment categories that have varying return and volatility characteristics. It is the responsibility of each participant to evaluate the investment alternatives and to select an appropriate mix.

A risk/reward structure is basic to investments. Generally, those investment options offering the greatest return over time also carry the highest risk or volatility of return. The inherent conflict between volatility and long-range asset accumulation can be lessened through diversification among asset classes. To provide participants the opportunity to select risk/reward strategies and to diversify the Plan's assets, the Plan will offer a number of investment alternatives.

In addition to providing a range of investment options, the Plan seeks to provide investment options that are competitive in terms of performance relative to appropriate investment performance and risk benchmarks. The performance and risk relationships of the Plan's investment options will be reviewed periodically by the Committee. Investment options should generally be given a full market cycle to achieve stated objectives (market cycles normally occur over 3-5 year time periods). Investment options are expected to meet or exceed their pre-determined benchmark index net of fees. Where peer groups are definable, investment options are expected to perform within the ranked upper half of a sample of same style peers, net of fees. In addition to investment performance (net of fees), the funds' risk characteristics will also be reviewed by the Committee. The risk associated with an investment option should generally be similar to the risk associated with a same-style peer group.

## **INVESTMENTS**

Investment options offered by the Plan will be categorized or grouped by similarities in investment objectives, style, and risk. The Plan's service provider(s) may be utilized to assist in determining the categories of investment options. The Plan is intended to assist participants in meeting their long-term investment objectives by providing investment options within the following permitted investment categories (these categories are further explained later in this document):

- A. Tier 1: Balanced, Risk-Based, or Target Date Funds
- B. Tier 2: Asset Class Funds

- Stable Value/Money Market
- Bond/Fixed Income Funds
- Equity Funds
- International Funds

C. Tier 3: Self-Directed Brokerage Account

Plan investment options and categories may be added or deleted as deemed necessary by the Committee. At least one investment option shall be available within each listed investment category. The following table outlines the objectives and performance benchmarks for each of the Plan's investment options. The risk associated with an investment option will be compared to appropriate risk benchmarks or measures for a same-style group of peer funds, where definable.

<b>Investment Category</b>	<b>Description</b>
<b>Stable Value/Money Market Funds</b>	Investment options offered under this Plan category are invested in money market instruments with an average maturity of less than 90 days or stable value instruments with maturities appropriate to the investment option product.
<b>Bond/Fixed Income Funds</b>	Investment options offered under this Plan category are invested primarily in investment grade debt securities with varying maturities.
<b>Balanced, Risk Based or Target Date Funds</b>	Investment options offered under this Plan category may be invested among domestic and international stocks, bonds, and cash, and are to be designed to realize the benefits of strategic asset allocation among these asset classes.
<b>Equity Funds</b>	Investment options offered under this Plan category may include an array of domestic equity alternatives that will provide participants with the ability to invest in funds that differ in investment style (growth vs. value) and capitalization bias (large cap, mid cap, small cap).
<b>International Funds</b>	Investment options offered under this Plan category are invested in securities of countries outside the U.S. Some diversify their investments across a broad range of markets and securities, while others target a particular country or region.

Investment Category	Description
<b>Self-Directed Brokerage Accounts</b>	Under this Plan investment category, employees are permitted to open a self-directed brokerage account in addition to the core menu. There is no oversight by the Committee as to the quality or viability of the investment option products selected by the participant.

## **INVESTMENT OPTION SELECTION GUIDELINES**

The Plan is a defined contribution plan provided by the District for its employees and retirees. The Committee acknowledges that a defined contribution program may provide a primary method for retirement savings and that individual participants will have differing circumstances and investment objectives. The Plan offers a variety of investment options intended to provide a sound and flexible means for participants to affect both the potential return and the degree of risk of their accounts.

Investment options offered to participants will be provided through investment provider(s) accessible on the services provider's platform. Before introducing a new investment option, the Committee, in consultation with the Consultant and services provider will define the niche to be filled and assess any prospective investment option's performance, quality, and risk characteristics. At a minimum, investment options under consideration should satisfy performance and risk considerations under actual, not modeled, conditions and over an appropriate time period. Investment option selection considerations may include, but are not limited to the following:

- The investment option should generally, but not necessarily, have a history that spans a full market cycle, normally three to five (3-5) years.
- The investment option should generally meet or exceed its predetermined benchmark index, net of fees.
- The investment option should generally perform at median or within the upper half of a recognized and defined sample of same-style peer funds.
- The investment option should be able to demonstrate a consistent performance track record attributable to a specific investment manager or team of managers.
- The current and prospective composition of the Target Date funds (based on their glide path), and the corresponding risk and return implications relative to the benchmark and peer group constituents will be taken into consideration.

The investment performance for each option in the Plan will be assessed in comparison an appropriate benchmark and peer group, as shown in the Plans' on-going performance reports and other evaluation materials.

## **INVESTMENT OPTION REVIEW GUIDELINES AND MONITORING**

Investment providers and investment managers are required to comply with all applicable laws, rules, and regulations. However, the Committee

takes no responsibility for the failure of such option and/or investment manager to comply with any and all applicable laws, rules, or regulations.

All options must have readily ascertainable market values and be easily marketable. It is recognized that Stable Value/GIC funds often have liquidity restrictions. Investment options with sales loads, redemption fees, or other non-investment management related expenses will be avoided to the extent possible. Options with deferred sales charges and/or market value adjustments will not be permitted.

Each investment option portfolio shall be diversified adequately to reduce risk and comply with current regulations and applicable state laws.

Investment option performance, risk and style consistency is intended to be evaluated on a semi-annual basis. Performance and risk results will be evaluated using comparisons with this policy, pertinent market indices and against other same-style peers, where definable. When necessary, investment option performance and risk may be reviewed more frequently.

The Committee will periodically review the investment options' progress in meeting the Plan's investment objectives. Investment options will be expected to comply with all stated investment objectives, guidelines and applicable rules contained in the prospectus or fund fact sheet. The Committee will review the performance of investment options quarterly to determine if they are achieving the established objectives. Investment performance reviews may include, but are not limited to, a review of:

- Investment portfolios;
- Fees and expenses;
- Investment style, process, and philosophy;
- Investment management personnel;
- Index tracking error; and
- The current and prospective composition of the Target Date funds (based on their glide path), and the corresponding risk and return implications relative to the benchmark and peer group constituents.

The performance review will also include measuring the options' investment performance relative to stated benchmarks or respective indexes and peer groups; as well as the monitoring risk measures. The following will be evaluated:

## **Quantitative Measures**

### **Active Investment Strategies**

Investment options employing active management are expected to outperform their stated asset class or style benchmark net of all management fees over a trailing five-year time period; and to rank above the 50<sup>th</sup> percentile of the appropriate peer group for the same trailing five-year time period. It is also expected that the risk of each option, as defined by standard deviation of returns, be commensurate with the prescribed strategy relative to the appropriate market index and/or peer group.

### **Passive Investment Strategies**

Passive investment options are expected to track the performance of the index strategy that the option is designed to replicate, less management fees, with marginal tracking error. It is also expected that the risk of each passive option, as defined by standard deviation of returns, be commensurate with the appropriate market index.

– It should also be noted that certain passive investment options operate in a marketplace that includes foreign markets whose exchanges close prior to that of the United States. In these instances, some fund managers may engage in a method of “Fair Value Pricing,” whereby the managers adjust the pricing of securities in the Fund to reflect any information that has become available after the close of the applicable foreign exchange market. Discrepancies in performance between the applicable investment option and its performance benchmark that are due to “Fair Value Pricing” will be taken into consideration in evaluating performance of the affected investment options and generally will not be counted as underperformance.

### **Qualitative Measures**

The investment providers and managers will also be monitored on an ongoing basis for other material changes which the Committee may determine are of importance to the decision of whether or not to retain an investment option, such as personnel departures; organizational changes; or alterations in investment style, philosophy, or strategy; and adherence to stated guidelines.

### **Time Periods**

The Committee acknowledges that fluctuating rates of return characterize the securities markets, particularly during short-term time-periods. Recognizing that short-term fluctuations may cause variations in an option’s performance, the Committee intends to employ investment options with long-term investment strategies and will evaluate option performance from a long-term perspective. Performance over market cycles of three to five years will be weighted more heavily than performance over shorter time periods, such as one year or less.

In addition to the qualitative and quantitative measures referenced above, the Committee will also review the investment options’ risk characteristics in relation to that performance. Risk will be measured in various ways including, but not limited to:

- Standard deviation
- Downside risk or semi-variance
- Risk/return ratios such as Sharpe or Treynor Ratios
- Other statistical measures such as Beta, Alpha and Variance

## **INVESTMENT OPTION TERMINATION AND WATCH GUIDELINES**

Generally, all investment options are expected to remain true to their stated investment objectives and to perform as well as or better than their

prescribed performance benchmarks, net of fees. The Committee recognizes the long-term nature of retirement plan investing and the variability of market returns. Periodic underperformance in any of the criteria outlined in this Investment Policy will not necessitate the termination of an option; however, any underperformance will result in consideration by the Committee of the factors causing underperformance and possible courses of action that the Committee may take.

The Committee may, at any time, place any investment option that it views as having a pattern of under-performance on a watch-status. Reasons the Committee might place an option on a watch status, include but are not limited to, the following:

### **Quantitative Measures**

#### **Actively Managed Investment Options**

- Performance below the prescribed benchmark index over a trailing five-year period, combined with
- Performance below the median of its peer group over a trailing five-year period

#### **Passively Managed Investment Options**

- Net of fee performance tracking error relative to the respective index that is greater than 15 basis points for the trailing five-year period
- Target Date funds will be evaluated based on the performance of the entire suite as held within the Plan. A Target Date suite will normally be viewed as being in violation of investment policy performance criteria if over one-half of the funds in a Target Date suite held within the Plan lag this Investment Policy Statement's prescribed performance measures. The Committee may elect to deviate from this approach if it appears reasonable to do so.

### **Qualitative Measures**

- Management team or other significant personnel turnover;
- Changes in the product's investment philosophy, process, style or risk profile;
- Excessive or rapid asset growth or decline;
- Pending regulatory investigations or material legal proceedings;
- Changes to firm ownership;
- Significant increase in management fees or expense ratio.

An investment option may remain on watch status until the Committee decides to take further action. Committee actions include, but are not limited to, the following:

- Removing the investment option from watch status; and

- Terminating the investment option and reallocating the assets to an alternate or replacement investment option(s) by Committee direction.

To be removed from quantitative, performance related watch status, generally, performance for the preceding five-year trailing periods should be above the benchmark index or median for at least two consecutive quarters. However, the Committee may decide to leave an option on watch for as long as they feel it is prudent to do so.

The Committee reserves the right to terminate investment option relationships at any time, for any reason when it determines such termination is in the best interests of the Plans and their participants and beneficiaries. Once the decision to terminate an option and remove it from the Plans is made, asset transfer and liquidation should be handled to the best advantage of the Plans, with due consideration given to the anticipated effect on affected participants and beneficiaries.

## **INVESTMENT OVERSIGHT RESPONSIBILITY AND PROXY VOTING**

Using this Investment Policy Statement, the Committee shall have overall responsibility for the selection, monitoring and termination of investment providers and investment option products. Additionally, the Committees shall be responsible for reviewing and maintaining these investment policies and guidelines.

Proxy voting rights shall be exercised in the best interest of the participants and beneficiaries of the Plan. The Committee may delegate the responsibility for promptly voting all proxies and related actions in a manner consistent with the long-term interest and objectives of the Plan. The Committee shall keep records of the voting of proxies and related actions and will comply with all applicable regulatory obligations.

On behalf of the East Bay Municipal Utility District Deferred Compensation Plans this Investment Policy Statement is adopted by the Committee and is effective as of the date entered below:

For the 401(a) Plan Advisory Committee:

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

## **GLOSSARY**

### **Annualized Return**

Rate of return of the account smoothed as though the return occurred equally over twelve-month periods. When the specified time frame is for less than a year, the rate of return is projected as though the same performance continues to occur for a twelve-month period.

### **Benchmarks**

A standard against which the performance of the portfolio can be measured, typically against a standard index, although a client manager may also set the benchmark.

### **Duration**

The weighted maturity of a fixed-income investment's cash flows, used in the estimation of the price sensitivity of fixed-income securities for a given change in interest rates. Time periods are weighted by multiplying by the present value of its cash flow divided by the bond's price (a bond's cash flows consist of coupon payments and repayment of capital). A bond's duration will almost always be shorter than its maturity, with the exception of zero-coupon bonds, where maturity and duration are equal.

### **Growth Style Investing**

Growth investors purchase companies that have above-average earnings growth and/or above-average sales growth rates.

### **Investment Objectives**

The overall financial objectives of an investor. For example, whether the investor requires income or capital appreciation. The investor's objectives govern the investment strategy.

### **Investment Options**

Investment products (such as mutual funds, separate account funds, commingled investment trust funds, annuity products, etc.) that have been selected by the Committee to be offered within the Plan for investment by participants.

### **Large Cap**

Large Capitalization – refers to those companies with a market capitalization of greater than \$10 billion.

### **Liquidity**

The ability to buy or sell an asset quickly and in large volume without substantially affecting the asset's price.



## **GLOSSARY - CONTINUED**

### **Market Capitalization**

The dollar value of a public company based on the total number of shares of stock available multiplied by the price per share.

### **Mid Cap**

Mid-Capitalization – refers to those companies with a market capitalization between \$2 and \$10 billion.

### **Net of Fees**

After subtraction of management fees.

### **Participants**

Current and former employees of East Bay MUD that have opened and are maintaining accounts in the East Bay MUD 401(a) Plan.

### **Peer Group**

Contemporaries of the same asset class that can be compared against one another to achieve a larger sense of how the particular portfolio is performing.

### **Portfolio**

Refers to the complete list of securities held in an investment product.

### **Small Cap**

Small Capitalization – refers to those companies with a market capitalization between \$500 million and \$1.99 billion.

### **Standard Deviation**

Measures the range of returns and is based on a Normal Curve. Managers with lower standard deviations than the index have historically had returns that tended to fall closer to their mean return compared to the index. Managers with higher standard deviations than the index have historically had returns that tended to be further dispersed around the mean than the index. This is another measure of volatility, but it doesn't distinguish downside performance from upside performance.

### **Value Style Investing**

Value investors rely on an examination of the underlying or unrealized value of a company as the primary criterion for deciding whether or not to buy a company's stock. Value stocks are often priced lower than growth stocks due to slower growth expectations, recent financial difficulty, or a host of other reasons.

**401(k) and 457 DEFERRED COMPENSATION PLANS**  
**STATEMENT OF INVESTMENT POLICIES AND GUIDELINES**

**East Bay Municipal Utility District**

**May 2021**

**East Bay Municipal Utility District  
401(k) and 457 DEFERRED COMPENSATION PLANS  
STATEMENT OF INVESTMENT POLICIES AND GUIDELINES**

**TABLE OF CONTENTS**

<b>INTRODUCTION AND PURPOSE.....</b>	<b>3</b>
<b>SUMMARY OF RESPONSIBILITIES.....</b>	<b>3</b>
<b>GENERAL COMPLIANCE.....</b>	<b>4</b>
<b>GENERAL INVESTMENT POLICY, OBJECTIVES AND STANDARDS.....</b>	<b>5</b>
<b>INVESTMENTS.....</b>	<b>6</b>
<b>INVESTMENT OPTION SELECTION GUIDELINES.....</b>	<b>8</b>
<b>INVESTMENT OPTION REVIEW GUIDELINES AND MONITORING.....</b>	<b>8</b>
<b>INVESTMENT OPTION TERMINATION AND WATCH GUIDELINES.....</b>	<b>10</b>
<b>INVESTMENT OVERSIGHT RESPONSIBILITY AND PROXY VOTING.....</b>	<b>12</b>
<b>GLOSSARY.....</b>	<b>13</b>

## INTRODUCTION AND PURPOSE

This statement is set forth to provide a clear understanding of the investment policies, guidelines and objectives related to the administration of the East Bay Municipal Utility District (District) 401(k) and 457 Deferred Compensation Plans (the Plans). The Plans are voluntary, deferred compensation plans available to eligible employees who are interested in saving for retirement on a tax-advantaged basis, and provides the option of investing through either pre-tax payroll deduction or post-tax (Roth) payroll deduction. The Plans are also available to retired and separated employees to the extent that they wish to continue utilizing the Plans after leaving service. The purposes of the Plans are to provide a vehicle for and to encourage additional retirement savings to supplement the core retirement benefits provided to District employees.

This Investment Policy Statement is further intended to assist the Advisory Committee in making investment-related decisions in a prudent manner. It outlines the underlying philosophies and processes for selecting, monitoring, and evaluating investment options and investment providers utilized by the Plans. This Investment Policy Statement will be reviewed at least annually and it can be revised at any time by the Advisory Committee to reflect changes in the capital markets, federal and state laws and policies affecting deferred compensation plans, plan participant objectives, or other factors relevant to the Plans.

## SUMMARY OF RESPONSIBILITIES

**Plan Sponsor** – The District is the Sponsor of the Plans. The responsibilities of the Plan Sponsor include but are not limited to:

- Adopting and amending Plan Documents;
- Approving Plan services contracts; and
- Designating other fiduciaries of the Plans.

**Plan Committee** – The 401(k)/457 Advisory Committee selects, monitors, and evaluates investment alternatives and investment providers utilized by the 401(k) and 457 Plans. It is the intent of the Advisory Committee to fulfill its responsibilities with respect to the Plans solely in the interest of the participants and beneficiaries. The Committee members, as fiduciaries, are required to perform their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

The Committee's responsibilities include the following:

- Selecting the investment design features of the Plans, including establishing the investment policy and objectives and the number and types of investment alternatives available to Plan participants;
- Appointing, monitoring, and evaluating all investment providers and managers in accordance with guidelines and benchmarks established within this document and consistent with applicable laws;
- Monitoring costs that are charged to Plan assets and/or paid by Plan participants, including but not limited to investment management fees, custodial fees and other fees paid to Plan service providers from Plan and/or participant assets.

**EBMUD Staff** – Human Resources Department staff members assist with the operation of the Plans and assist the Committee in several ways. Their responsibilities include:

- Review, approve, and process hardship/safe harbors, QDROs, and death transfers
- Conduct Request for Proposal processes for Investment Consultants and Service Providers
- Serve as the liaison to Service Providers, coordinating delivery of services, etc.
- Contribution and withdrawal reconciliation and processing

**Investment Consultant** - The Committee may engage an independent investment consultant (hereinafter “Consultant”) to assist in carrying out the duties and responsibilities of this Investment Policy Statement. Such Consultant must be registered with either State or Federal securities regulators pursuant to the Investment Advisors Act of 1940. The Consultant’s role is to provide information and advice to the Committee on various investment related issues. The Consultant has no discretionary control over the Plans and their assets. In providing advice to the Committees, the Consultant must assume a co-fiduciary role. The services of the Consultant will be set forth in a separate agreement, in which the Consultant’s co-fiduciary role is described.

**Investment Provider** – An entity that offers investment option products and manages assets for the Plans. Examples of investment option products offered by an investment provider may include mutual funds, commingled trust funds, separate accounts and/or annuity contracts.

**Investment Manager** – The person(s) at the Investment Provider responsible for implementing an investment option product’s investing strategy and managing the investment portfolio trading activities.

**Service Provider** – An entity engaged to assist the Plan Sponsor and the Committee in administration of the Plans. This assistance includes Plan enrollment, communication, education, including providing general investment information to Plan participants regarding the procedures for making investment choices under the Plans and providing general investment information regarding each of the investment options offered under the Plans, distribution processing, record keeping and other administrative functions as prescribed in an agreement entered into between the Plan Sponsor and the Service Provider.

## **GENERAL COMPLIANCE**

The Plans are designed to meet the Internal Revenue Code (the Code) requirements, as amended. The Plans' investment policies and guidelines shall be reviewed by the Committee on an annual basis for modification, as needed, but may be modified by the Committee at any time, as necessary.

At minimum, it is intended that Plan participants shall be provided with the following investment opportunities:

- A. Choose from a minimum of three diverse investment categories, each with materially different risk and return characteristics. At least one of the categories will provide for a high degree of safety and capital preservation.
- B. Make and/or modify investment decisions at least annually.
- C. Receive or have access to the following information, as updated:
  - A description of the investment alternatives available under the Plans including a general description of the investment objectives, risk and return characteristics, and type and diversification of assets comprising each alternative;
  - Identification of the designated investment managers and investment products;
  - A description of any transaction fees or expenses charged to participant accounts, and information on costs and fees for an investment product that reduces the rate of return to Plan participants (expense ratios); and
  - Prospectuses, annual reports, and semi-annual reports on investment products, if available.

## **GENERAL INVESTMENT POLICY, OBJECTIVES AND STANDARDS**

It is the policy of the Plans to foster an investment environment that encourages and facilitates participant efforts to supplement other sources of retirement income. The Plans will be structured in an attempt to provide Plan participants with an array of investment options with an objective of reducing fund fees, expenses, and administrative fees normally associated with these investments. Participants in the Plans are solely responsible for their own investment decisions and bear the risks and assume responsibility for the results of the investment options that they select. No representations, promises, or warranties are made by the District regarding the suitability of Plan participation for any participant's individual investment or retirement needs. Additionally, no representations, promises or warranties are made by the District about the performance of the Plans or their investments.

The primary investment objective of the Plans is to present participants with a range of investment options that give participants an opportunity to increase the value of their investment assets in a manner consistent with varying levels of participant risk/reward tolerances and investment decision making skills. While the Plans cannot meet all participant investment preferences and attitudes, the Plans attempt to provide investment options for participants at various levels of investment sophistication and with varying requirements for risk and return.

Information that may be used to select which investment products to offer includes, but is not limited to, the following:

- Age, income, and other demographic data on Plan participants
- Liquidity and administrative constraints imposed on the Plans by service providers
- Development of new investment products in the marketplace
- Level of participant usage of investment products

To enable participants to establish different investment strategies, the Plans will offer investment categories that have varying return and volatility characteristics. It is the responsibility of each participant to evaluate the investment alternatives and to select an appropriate mix.

A risk/reward structure is basic to investments. Generally, those investment options offering the greatest return over time also carry the highest risk or volatility of return. The inherent conflict between volatility and long-range asset accumulation can be lessened through diversification among asset classes. To provide participants the opportunity to select risk/reward strategies and to diversify the Plans' assets, the Plans will offer a number of investment alternatives.

In addition to providing a range of investment options, the Plans seek to provide investment options that are competitive in terms of performance relative to appropriate investment performance and risk benchmarks. The performance and risk relationships of the Plans' investment options will be reviewed periodically by the Committee. Investment options should generally be given a full market cycle to achieve stated objectives (market cycles normally occur over 3-5 year time periods). Investment options are expected to meet or exceed their pre-determined benchmark index net of fees. Where peer groups are definable, investment options are expected to perform within the ranked upper half of a sample of same style peers, net of fees. In addition to investment performance (net of fees), the funds' risk characteristics will also be reviewed by the Committee. The risk associated with an investment option should generally be similar to the risk associated with a same-style peer group.

## INVESTMENTS

Investment options offered by the Plans will be categorized or grouped by similarities in investment objectives, style and risk. The Plans' service provider(s) may be utilized to assist in determining the categories of investment options. The Plans are intended to assist participants in meeting their long-term investment objectives by providing investment options within the following permitted investment categories (these categories are further explained later in this document):

A. Tier 1: Balanced, Risk-Based, or Target Date Funds

B. Tier 2: Asset Class Funds

- Stable Value/Money Market

- Bond/Fixed Income Funds
- Equity Funds
- International Funds

C. Tier 3: Self-Directed Brokerage Account

Investment options and categories may be added or deleted as deemed necessary by the Committee. At least one investment option shall be available within each listed investment category. The following table outlines the objectives and performance benchmarks for each of the Plans' investment options. The risk associated with an investment option will be compared to appropriate risk benchmarks or measures for a same-style group of peer funds, where definable.

<b>Investment Category</b>	<b>Description</b>
<b>Stable Value/Money Market Funds</b>	Investment options offered under this Plan category are invested in money market instruments with an average maturity of less than 90 days or stable value instruments with maturities appropriate to the investment option product.
<b>Bond/Fixed Income Funds</b>	Investment options offered under this Plan category are invested primarily in investment grade debt securities with varying maturities.
<b>Balanced, Risk Based or Target Date Funds</b>	Investment options offered under this Plan category may be invested among domestic and international stocks, bonds, and cash, and are to be designed to realize the benefits of strategic asset allocation among these asset classes.
<b>Equity Funds</b>	Investment options offered under this Plan category may include an array of domestic equity alternatives that will provide participants with the ability to invest in funds that differ in investment style (growth vs. value) and capitalization bias (large cap, mid cap, small cap).
<b>International Funds</b>	Investment options offered under this Plan category are invested in securities of countries outside the U.S. Some diversify their investments across a broad range of markets and securities, while others target a particular country or region.



Investment Category	Description
<b>Self-Directed Brokerage Accounts</b>	Under this Plan investment category, employees are permitted to open a self-directed brokerage account in addition to the core menu. There is no oversight by the Committee as to the quality or viability of the investment option products selected by the participant.

## INVESTMENT OPTION SELECTION GUIDELINES

The Plans are defined contribution plans provided by the District for its employees and retirees. The Committee acknowledges that a defined contribution program may provide a primary method for retirement savings and that individual participants will have differing circumstances and investment objectives. The Plans offer a variety of investment options intended to provide a sound and flexible means for participants to affect both the potential return and the degree of risk of their accounts.

Investment options offered to participants will be provided through investment provider(s) accessible on the services provider's platform. Before introducing a new investment option, the Committee, in consultation with the Consultant and services provider will define the niche to be filled and assess any prospective investment option's performance, quality, and risk characteristics. At a minimum, investment options under consideration should satisfy performance and risk considerations under actual, not modeled, conditions and over an appropriate time period. Investment option selection considerations may include, but are not limited to the following:

- The investment option should generally, but not necessarily, have a history that spans a full market cycle, normally three to five (3-5) years.
- The investment option should generally meet or exceed its predetermined benchmark index, net of fees.
- The investment option should generally perform at median or within the upper half of a recognized and defined sample of same-style peer funds.
- The investment option should be able to demonstrate a consistent performance track record attributable to a specific investment manager or team of managers.
- The current and prospective composition of the Target Date funds (based on their glide path), and the corresponding risk and return implications relative to the benchmark and peer group constituents will be taken into consideration.

The investment performance for each option in the Plans will be assessed in comparison with an appropriate benchmark and peer group, as shown in the Plans' on-going performance reports and other evaluation materials.

## INVESTMENT OPTION REVIEW GUIDELINES AND MONITORING

Investment providers and investment managers are required to comply with all applicable laws, rules, and regulations. However, the Committee

takes no responsibility for the failure of such option and/or investment manager to comply with any and all applicable laws, rules, or regulations.

All options must have readily ascertainable market values and be easily marketable. It is recognized that Stable Value/GIC funds often have liquidity restrictions. Investment options with sales loads, redemption fees, or other non-investment management related expenses will be avoided to the extent possible. Options with deferred sales charges and/or market value adjustments will not be permitted.

Each investment option portfolio shall be diversified adequately to reduce risk and comply with current regulations and applicable state laws.

Investment option performance, risk and style consistency is intended to be evaluated on a semi-annual basis. Performance and risk results will be evaluated using comparisons with this policy, pertinent market indices and against other same-style peers, where definable. When necessary, investment option performance and risk may be reviewed more frequently.

The Committee will periodically review the investment options' progress in meeting the Plans' investment objectives. Investment options will be expected to comply with all stated investment objectives, guidelines and applicable rules contained in the prospectus or fund fact sheet. The Committee will review the performance of investment options quarterly to determine if they are achieving the established objectives. Investment performance reviews may include, but are not limited to, a review of:

- Investment portfolios;
- Fees and expenses;
- Investment style, process, and philosophy;
- Investment management personnel;
- Index tracking error; and
- The current and prospective composition of the Target Date funds (based on their glide path), and the corresponding risk and return implications relative to the benchmark and peer group constituents.

The performance review will also include measuring the options' investment performance relative to stated benchmarks or respective indexes and peer groups; as well as the monitoring risk measures. The following will be evaluated:

## **Quantitative Measures**

### **Active Investment Strategies**

Investment options employing active management are expected to outperform their stated asset class or style benchmark net of all management fees over a trailing five-year time period; and to rank above the 50<sup>th</sup> percentile of the appropriate peer group for the same trailing five-year time period. It is also expected that the risk of each option, as defined by standard deviation of returns, be commensurate with the prescribed strategy relative to the appropriate market index and/or peer group.

### **Passive Investment Strategies**

Passive investment options are expected to track the performance of the index strategy that the option is designed to replicate, less management fees, with marginal tracking error. It is also expected that the risk of each passive option, as defined by standard deviation of returns, be commensurate with the appropriate market index.

– It should also be noted that certain passive investment options operate in a marketplace that includes foreign markets whose exchanges close prior to that of the United States. In these instances, some fund managers may engage in a method of “Fair Value Pricing,” whereby the managers adjust the pricing of securities in the Fund to reflect any information that has become available after the close of the applicable foreign exchange market. Discrepancies in performance between the applicable investment option and its performance benchmark that are due to “Fair Value Pricing” will be taken into consideration in evaluating performance of the affected investment options and generally will not be counted as underperformance.

### **Qualitative Measures**

The investment providers and managers will also be monitored on an ongoing basis for other material changes which the Committee may determine are of importance to the decision of whether or not to retain an investment option, such as personnel departures; organizational changes; or alterations in investment style, philosophy, or strategy; and adherence to stated guidelines.

### **Time Periods**

The Committee acknowledges that fluctuating rates of return characterize the securities markets, particularly during short-term time-periods. Recognizing that short-term fluctuations may cause variations in an option’s performance, the Committee intends to employ investment options with long-term investment strategies and will evaluate option performance from a long-term perspective. Performance over market cycles of three to five years will be weighted more heavily than performance over shorter time periods, such as one year or less.

In addition to the qualitative and quantitative measures referenced above, the Committee will also review the investment options’ risk characteristics in relation to that performance. Risk will be measured in various ways including, but not limited to:

- Standard deviation
- Downside risk or semi-variance
- Risk/return ratios such as Sharpe or Treynor Ratios
- Other statistical measures such as Beta, Alpha and Variance

## **INVESTMENT OPTION TERMINATION AND WATCH GUIDELINES**

Generally, all investment options are expected to remain true to their stated investment objectives and to perform as well as or better than their

prescribed performance benchmarks, net of fees. The Committee recognizes the long-term nature of retirement plan investing and the variability of market returns. Periodic underperformance in any of the criteria outlined in this Investment Policy will not necessitate the termination of an option; however, any underperformance will result in consideration by the Committee of the factors causing underperformance and possible courses of action that the Committee may take.

The Committee may, at any time, place any investment option that it views as having a pattern of under-performance on a watch-status. Reasons the Committee might place an option on a watch status, include but are not limited to, the following:

### **Quantitative Measures**

#### **Actively Managed Investment Options**

- Performance below the prescribed benchmark index over a trailing five-year period, combined with
- Performance below the median of its peer group over a trailing five-year period

#### **Passively Managed Investment Options**

- Net of fee performance tracking error relative to the respective index that is greater than 15 basis points over a trailing five-year period
- Target Date funds will be evaluated based on the performance of the entire suite as held within the Plans. A Target Date suite will normally be viewed as being in violation of investment policy performance criteria if over one-half of the funds in a Target Date suite held within the Plans lag this Investment Policy Statement's prescribed performance measures. The Committee may elect to deviate from this approach if it appears reasonable to do so.

### **Qualitative Measures**

- Management team or other significant personnel turnover;
- Changes in the product's investment philosophy, process, style or risk profile;
- Excessive or rapid asset growth or decline;
- Pending regulatory investigations or material legal proceedings;
- Changes to firm ownership;
- Significant increase in management fees or expense ratio.

An investment option may remain on watch status until the Committee decides to take further action. Committee actions include, but are not limited to, the following:

- Removing the investment option from watch status; and
- Terminating the investment option and reallocating the assets to an alternate or replacement investment option(s) by Committee direction.

To be removed from quantitative, performance related watch status, generally, performance for the preceding five-year trailing periods should be above the benchmark index or median for at least two consecutive quarters. However, the Committee may decide to leave an option on watch for as long as they feel it is prudent to do so.

The Committee reserves the right to terminate investment option relationships at any time, for any reason when it determines such termination is in the best interests of the Plans and their participants and beneficiaries. Once the decision to terminate an option and remove it from the Plans is made, asset transfer and liquidation should be handled to the best advantage of the Plans, with due consideration given to the anticipated effect on affected participants and beneficiaries.

## **INVESTMENT OVERSIGHT RESPONSIBILITY AND PROXY VOTING**

Using this Investment Policy Statement, the Committee shall have overall responsibility for the selection, monitoring and termination of investment providers and investment option products. Additionally, the Committees shall be responsible for reviewing and maintaining these investment policies and guidelines.

Proxy voting rights shall be exercised in the best interest of the participants and beneficiaries of the Plans. The Committee may delegate the responsibility for promptly voting all proxies and related actions in a manner consistent with the long-term interest and objectives of the Plans. The Committee shall keep records of the voting of proxies and related actions and will comply with all applicable regulatory obligations.

On behalf of the East Bay Municipal Utility District Deferred Compensation Plans this Investment Policy Statement is adopted by the Committee and is effective as of the date entered below:

For the 401(k)/457 Advisory Committee:

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

## GLOSSARY

### **Annualized Return**

Rate of return of the account smoothed as though the return occurred equally over twelve-month periods. When the specified time frame is for less than a year, the rate of return is projected as though the same performance continues to occur for a twelve-month period.

### **Benchmarks**

A standard against which the performance of the portfolio can be measured, typically against a standard index, although a client manager may also set the benchmark.

### **Duration**

The weighted maturity of a fixed-income investment's cash flows, used in the estimation of the price sensitivity of fixed-income securities for a given change in interest rates. Time periods are weighted by multiplying by the present value of its cash flow divided by the bond's price (a bond's cash flows consist of coupon payments and repayment of capital). A bond's duration will almost always be shorter than its maturity, with the exception of zero-coupon bonds, where maturity and duration are equal.

### **Growth Style Investing**

Growth investors purchase companies that have above-average earnings growth and/or above-average sales growth rates.

### **Investment Objectives**

The overall financial objectives of an investor. For example, whether the investor requires income or capital appreciation. The investor's objectives govern the investment strategy.

### **Investment Options**

Investment products (such as mutual funds, separate account funds, commingled investment trust funds, annuity products, etc.) that have been selected by the Committee to be offered within the Plan for investment by participants.

### **Large Cap**

Large Capitalization – refers to those companies with a market capitalization of greater than \$10 billion.

### **Liquidity**

The ability to buy or sell an asset quickly and in large volume without substantially affecting the asset's price.

## **GLOSSARY - CONTINUED**

### **Market Capitalization**

The dollar value of a public company based on the total number of shares of stock available multiplied by the price per share.

### **Mid Cap**

Mid-Capitalization – refers to those companies with a market capitalization between \$2 and \$10 billion.

### **Net of Fees**

After subtraction of management fees.

### **Participants**

Current and former employees of East Bay MUD that have opened and are maintaining accounts in the East Bay MUD 401(k) or 457(b) Plans.

### **Peer Group**

Contemporaries of the same asset class that can be compared against one another to achieve a larger sense of how the particular portfolio is performing.

### **Portfolio**

Refers to the complete list of securities held in an investment product.

### **Small Cap**

Small Capitalization – refers to those companies with a market capitalization between \$500 million and \$1.99 billion.

### **Standard Deviation**

Measures the range of returns and is based on a Normal Curve. Managers with lower standard deviations than the index have historically had returns that tended to fall closer to their mean return compared to the index. Managers with higher standard deviations than the index have historically had returns that tended to be further dispersed around the mean than the index. This is another measure of volatility, but it doesn't distinguish downside performance from upside performance.

### **Value Style Investing**

Value investors rely on an examination of the underlying or unrealized value of a company as the primary criterion for deciding whether or not to buy a company's stock. Value stocks are often priced lower than growth stocks due to slower growth expectations, recent financial difficulty, or a host of other reasons.